WISCONSIN MUNICIPAL JUDGE BENCHBOOK

Wisconsin Supreme Court
Director of State Courts
Office of Judicial Education

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Supreme Court of Wisconsin

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INTRODUCTION TO THE 2024 BENCHBOOK

This edition of the Municipal Judge Benchbook is reprint of the entire document. Please take whatever time is necessary to familiarize yourself with the changes that have occurred since the 2020 update. Should you find any errors or omissions in this Benchbook, please let us know.

As has always been the case with the Benchbook, the 2024 update is the product of the Municipal Judge Benchbook Advisory Committee. This year's Benchbook Committee members are: Hon. Felice Borisy-Rudin, Attorney Philip Freeburg, Hon. Jason Hanson, Hon. Eric Kasper, Hon. Scott Letteney, Attorney Hana Miura, Hon. Christine Ohlis, Atty. David Perlman, Hon. Alice Rudebusch, and Hon. Jodi Sanfelippo.

The Office of Judicial Education appreciates the considerable time and effort that these judicial educators and their predecessors have given to the Benchbook. We hope that municipal judges throughout the state will continue to find it a valuable tool. We would also like to thank those of you who took the time to write to us with your comments and questions.

Atty. David Perlman
May 2024

1: OVERVIEW

1. The Structure of the Wisconsin Court System 1-1
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4. The Wisconsin Court System 1-14

GAB Letter ref. Time for Abolishment of Municipal Court . 1-A

1. The Structure of the Wisconsin Court System

Wis. Const. art. VII, § 2
755.045(1)

A. Municipal courts, where they have been created by the governing body of the municipality, have exclusive jurisdiction over actions involving violation of municipal ordinances under which the penalty is a forfeiture

Wis. Const. art. VII, § 8
800.14(1)

B. Circuit courts have original jurisdiction in civil and criminal cases and appellate jurisdiction over municipal courts

Wis. Const. art. VII, § 5

C. The Court of Appeals has appellate jurisdiction over circuit courts

752.01(2)

1) It has original jurisdiction only to issue prerogative writs

752.02

2) It has supervisory authority over all actions and proceedings in lower courts

Wis. Const. art. VII, § 3

D. The Supreme Court has appellate jurisdiction over all courts and original jurisdiction in some actions and proceedings

Wis. Const. art. VII, § 3

1) It has supervisory and administrative authority over all courts

SCR 70.01

2) The Director of State Courts has the authority and responsibility for the overall management of the unified judicial system

SCR 70.01

a. The Director's areas of responsibility include: personnel; budget, legislative liaison, and public information; court information system; judicial education; interdistrict judicial assignments at the circuit level; and planning and research for the court system

755.03(2)

b. The Director of State Courts' Office of Judicial Education has responsibility for: collecting oaths of office that municipal judges must file after each election; developing and conducting seminars for judges and court clerks to fulfill their mandatory education requirement; and providing information to judges and court clerks

757.60

E. The state is divided into judicial administrative districts

1) The Supreme Court appoints a chief judge to supervise and direct the administration of each district

Resource 3

a. The Wisconsin Municipal Judges Association appoints one municipal judge from each district to serve as a liaison between the chief judge and the municipal judges within each district

b. Currently the districts are 1–5 and 7–10. District 6 was eliminated in 2018. *See* Resource 3

SCR 70.19(4),
SCR 70.20
SCR 70.24

2) The chief judge of the district has responsibilities that relate directly to municipal courts:

755.01(1)

a. Superintending authority as granted by the Supreme Court

800.06(1)

b. In case of illness, absence, or vacation, for a period not to exceed 30 days, the chief judge approves designation of another municipal judge from anywhere in the state to perform the judge's duties

751.03(2)
SCR 70.24
800.05
See Chap. 2 (Court Administration), Sec. 3

c. If a municipal judge is disqualified or a substitution is requested, the chief judge of the district acting as the designee of the Chief Justice of the Supreme Court, shall transfer the case to another municipal court anywhere in the state or, if none is available, to the circuit court

800.06(3)
See Chap. 2 (Court Administration), Sec. 3

d. Where a permanent vacancy exists in the office of municipal judge, the chief judge of the district may make a temporary assignment of a municipal judge from anywhere in the state to that position until the municipal governing body makes an appointment

755.01(1)

e. Certification to the Director of State Courts that newly formed municipal courts meet requirements of §§ 755.09, 755.10, 755.11, and 755.17

SCR 70.20(2)

f. If a municipal court is located in more than one judicial district, the chief judge whose district includes the county having the largest portion of the municipal court's population shall have authority over that court

SCR 70.30

3) Each judicial district has a District Court Administrator (DCA) to assist the chief judge in the administration of the district

Recommendation

Questions or concerns for the chief judge should first be presented to the DCA

2. The Municipal Court

755.01(1)

A. A municipal court is an independent branch of government. It is not a department or agency of the municipal government or the police department

B. Creating a municipal court

Wis. Const. art. VII, § 14

1) The Wisconsin Constitution grants the legislature power to authorize creation of municipal courts

755.01

2) The legislature has delegated the decision to create a municipal court to the governing body of the municipality

755.01(1)

a. The court becomes operative when:

- An ordinance or bylaw is adopted providing for election of judge and operation and maintenance of the court
- Written notification is provided to the director of state courts of the adoption of the ordinance or by law
- Certification is received from the chief judge that the court meets the requirements of §§ 755.09, 755.10, 755.11, and 755.17

17.245

b. If the court is created before December 1 preceding the spring election, the municipality may appoint the judge pending the election

755.02

c. The judge is elected at large for a term of 4 years unless a city or village passes a charter ordinance setting a lesser term. The procedures for passing a charter ordinance are set out in § 66.0101. Towns have no authority to alter the 4-year term requirement. Judge terms run from May 1 to April 30

66.0301
755.01(4)

d. Municipalities may form a joint court by passing the same ordinance creating the court. The municipalities need not be in the same county

755.01(4)

e. A change in the composition of a joint court through adding or removing municipalities constitutes the creation of a new court, requiring chief judge certification and notice to the director of state courts

755.01(4)

f. Discontinuation of a joint court is effective at end of judge's term, but only if ordinance or bylaw discontinuing the joint court is submitted to appropriate elections filing office and director of state courts prior to Oct. 1 of year preceding the end of the judge's term

C. Abolishing a municipal court

755.01(2)
755.04

1) The municipal governing body is prohibited from abolishing the municipal court and/or decreasing the municipal judge's salary during his/her term of office unless the court is abolished as part of a consolidation under § 66.0229

755.01(2)

2) The municipality must submit the ordinance or bylaw abolishing the court to the appropriate elections filing office and director of state courts prior to Oct. 1 of year preceding the end of the judge's term

D. Financing a municipal court

755.01(1)

1) The court is maintained at the expense of the municipality with the budget for the court kept separate from the budgets of other departments, including those of prosecuting attorney or police department, even if only by separate line item

Wis. Const. art. VII, § 14

2) Municipal judges must be paid a fixed sum by the municipality. The judge cannot receive any fees or payments based upon the amount of forfeitures collected or number of convictions obtained

755.04

3) The judge's salary may be raised during his/her term of office, before the start of the second and subsequent year

4) The court clerk's salary is set by the governing body

755.18
SCR ch. 33

5) A municipality must pay the cost of Supreme Court mandated education for its municipal judge and court clerks. That cost includes a yearly fee to be paid to the Supreme Court and the expenses the judge and court clerk incur in obtaining the required education credits

755.01(1)

E. Staffing a municipal court

755.10(1)
SCR 60.04(2)(c)

1) The governing body shall authorize and fund at least one clerk, full or part-time, for each municipal court and the court shall fill it. The judge shall in writing appoint court personnel and shall do so impartially and on the basis of merit. The judge shall avoid nepotism and favoritism in appointing court personnel

755.10(2)

2) In Milwaukee, the court administrator shall appoint the personnel authorized by the city council

755.17(2)

3) The governing body shall provide an armed guard or officer for court sessions, if requested by judge

755.10

4) The judge has authority over the hiring, termination, hours of employment, and work responsibilities of court personnel when working during hours assigned to the court

F. Jurisdiction of a municipal court

755.045(1)

1) The municipal court has exclusive jurisdiction over actions involving violation of municipal ordinances under which the penalty is a forfeiture

938.17(2)(a)

2) Municipal courts have concurrent jurisdiction with juvenile court of children 12 or over who allegedly violated a municipal ordinance

938.17(2)(a)

3) Municipal courts have concurrent jurisdiction with juvenile court of children any age who are alleged to be habitually truant

755.045(1)

4) A municipal court does not have jurisdiction if equitable relief, such as an injunction, is demanded

800.093
755.045(3)
346.65(2r)(b)

5) A municipal court may order restitution upon conviction of a non-traffic ordinance or an ordinance authorizing restitution under § 346.65(2r) if there is injury or death, damage to property, or theft

6) A municipal judge has the power to:

755.045(2)
800.02(5)
Form G

a. Issue civil warrants to enforce matters under the jurisdiction of the court. At the judge's discretion, the warrants may be served anywhere within the state

755.045(2)
66.0119
St v. Jackowski,
2001 WI App 187
247 Wis. 2d 430
Redevelopment Authority v. Uptown Arts & Ed, 220 Wis. 2d 458 (1999)

b. Issue inspection warrants allowing inspectors to determine compliance with building, electrical, plumbing, fire, health, zoning codes, and property assessments. Municipal judges do not have authority to issue search warrants

800.02(4)
Form F

c. Issue summonses in municipal ordinance violation cases requiring defendants to appear in court on a specific date

885.01(1)
885.04
Form E

d. Issue subpoenas anywhere in the state and for the defendant, whether the defendant is in the state or not. Subpoenas may be served to require attendance of witnesses or the defendant and the production of evidence

800.12

e. Punish contempt of court. See also Chap. 4 (Court Procedure)

- Contempt of court is:

800.12(1)(a)
800.12(3)

— Misconduct in the presence of the court and shall be imposed immediately

800.12(3)(a)

Must be for the purpose of preserving order and protecting dignity of court

800.12(3)(b)

Must allow person to address the court before finding of contempt and imposing penalty

800.12(1)(b)

— Refusal of a witness to appear without reasonable excuse

- Penalty for misconduct in presence of court

800.12(2),(3)

— Forfeiture not to exceed $200, and

800.12(3)

— Imprisonment not to exceed 7 days

- Penalty for witness failing to appear

800.12(2)

— Forfeiture not to exceed $200, and

800.12(4)(a)

— Issue a warrant to bring witness to court to testify, and for contempt

800.12(4)(b)

— Pay costs of apprehension or warrant

765.16(1m)(f)

f. Perform marriages anywhere in the state

140.10(1)(e)

g. Perform notarial acts (any act a notary public can perform)

13.24(1)
887.20
887.23

h. Preside over the taking of depositions under certain circumstances

Sun Prairie v. Davis,
226 Wis. 2d 738 (1999)
St v. Henley,
2010 WI 97
328 Wis. 2d 544

i. Exercise inherent authority. All courts, including municipal courts, have inherent authority—the implied and incidental powers that must necessarily be used to enable a judicial branch to accomplish its constitutionally or legislatively mandated functions. They are powers conceded to courts because, without them, courts could not maintain their dignity, transact their business or accomplish the purpose of their existence. However, this power must not expand the court's jurisdiction or abridge a constitutional right. It must also be something necessary to the operation of courts in general, not just a particular court

G. Proceedings in municipal court

757.14
938.299(1)

1) Municipal court proceedings must be public with the exception of juvenile non-traffic matters

800.13

2) Municipal courts are not courts of record. However, any proceeding in which testimony is taken under oath and hearings regarding poverty or motions to reopen must be recorded by electronic means

SCR 61.01–61.12

3) Municipal courts are subject to the Supreme Court's rules permitting the use of cameras and audio recorders in Wisconsin courtrooms

3. The Municipal Judge

A. Eligibility for office

Wis. Const. art. VII, § 10(1)
60.30(2)(a)
61.19
62.09(2)(a)

1) At the time of election or appointment, must be qualified elector within the jurisdiction

6.10

a. Qualified elector must be resident of jurisdiction

6.10(1)

b. In general, residence is the place where a person's habitation is fixed, without any intent to move, and when absent, a person intends to return

8.28

2) Must maintain residency in jurisdiction during term

B. Steps to take after being elected, appointed, or reelected

755.03

1) Take the official oath of office

a. This is printed in § 757.02(1) of the Wisconsin Statutes

60.24
887.01

- Among the persons who may administer the oath are: the town chair, city, village, or town clerk, any notary public, any judge, and all other officials set out in § 887.01 or court commissioners

755.03(1), (2)

b. Within 10 days of taking the oath, file the oath with the clerk of the city, village or town where you are elected and send a certified copy of it to the Director of State Courts

- The oath of a judge of a joint municipal court must be filed with the clerks of each municipality that the joint court serves

755.03(1), (2)

2) Execute and file an official bond with the clerk of the city, village, or town where you are elected, in the amount set by and paid by your municipality

   a. The bond of a judge of a joint municipal court must be filed with the clerk of each municipality that the joint court serves

755.03(1)

   b. Your municipality may obtain a dishonesty insurance policy that covers the judge in place of a bond

NOTE:

You do not have the authority to act, nor may you be paid, until both the oath and bond (or insurance policy) have been filed with the appropriate parties

755.10(1)
Form AA

3) You shall appoint, in writing, clerks or deputy clerks as authorized by your municipal governing body. The clerk shall take the oath provided by § 19.01 of the statutes

   a. The municipality must authorize and fund the position of court clerk and you must fill it

   b. You, not the municipal governing body or the police, are to select the person to serve as clerk

19.43

4) File a Statement of Economic Interests with the Wisconsin Ethics Commission within 21 days of your initial appointment and thereafter annually be April 30. However, in the year in which you run for office the statement is due in January. Check with the Wisconsin Ethics Commission each year for the exact date that the statement is due

   a. The purpose of the Statement of Economic Interests is to provide information as to potential conflicts of interest

   b. The Ethics Commission generally emails reminders re: the Statement of Economic Interests

- If you do not receive one, you can download an SEI at https://ethics.wi.gov/Pages/home.aspx
- or contact the Commission at

  Wisconsin Ethics Commission
  P.O. Box 7125
  Madison, WI 53707-7125
  Tel: (608) 266-8123

c. Local rule: check with your local municipality to see if it has a separate local rule regarding the filing of a Statement of Economic Interest

SCR ch. 60

5) Become familiar with the Code of Judicial Conduct. *See* Chap. 16 (Judicial Ethics) for full discussion of the Code

SCR 60.07

a. SCR ch. 60 applies to full-time municipal judges in its entirety. Part-time municipal judges are bound by all of the provisions of SCR ch. 60 with the exception of the following: SCR 60.05(3)(a), (b), (c)1.b., 2.a. and c., (4)(a)1.b., (b), (c), (d), and (e), (5), (6), (7), and (8)

SCR 60.06
Seifert v. Alexander
608 F3d 974
(7th Cir. 2010)

- You may belong to a political party. You may not actively participate in partisan political activities or publicly support a partisan political candidate or position

SCR 60.06

- You may not run for a non-judicial elective office while holding office as a municipal judge

SCR 60.05

- You may not engage in extra-judicial activities that would cast reasonable doubt on your capacity to act impartially as a judge

SCR 60.05

b. Part-time municipal judges can:

- Practice law, if an attorney
- Be otherwise employed

755.18(1), (2)
SCR 33.04

6) Attend the earliest municipal judge orientation institute scheduled after your first election or appointment and one judicial education seminar per calendar year thereafter

Resource 1

7) Familiarize yourself with the legal sources you will need to function as a municipal judge. A list of resources is included in this benchbook. The most important sources are:

35.85(3)

a. A current copy of the Wisconsin Statutes (your municipality is required to provide you with a copy)

35.85(3)

b. A current copy of your local ordinances

345.26(2)(a)

c. The Wisconsin Revised Uniform State Traffic Deposit Schedule. You may not change the bail deposit schedule for traffic cases. Deposit schedule is available online at https://www.wicourts.gov/publications/fees/index.htm

d. Your municipality's uniform deposit schedule for non-traffic offenses

800.037

- You must review or create a deposit schedule. The municipal court, with the approval of the governing body of the municipality, shall set the deposit schedule

e. The State of WI (DNR) Uniform Schedule for Conservation, Boating or Snowmobile Forfeiture Violations, available online at: https://www.wicourts.gov/publications/fees/index.htm

f. The published decisions of the Wisconsin Supreme Court and Court of Appeals

C. Your courtroom

755.17(2)

1) Your municipality is required to provide you with a courtroom

755.17(2)

2) The courtroom shall be designed and furnished to create and promote the proper atmosphere of dignity and decorum for the operation of the court and must be an area separate from the police department by design or signage

3) The courtroom must be in a public building unless there is no suitable public building available in the municipality

755.17(2)

4) The governing body shall provide an armed guard or officer for court sessions, if requested by judge

755.09(2)

5) Your court or office cannot be in a tavern or in or adjacent to a room in which intoxicating liquors are sold

6) Your courtroom should be large enough to accommodate all parties involved plus any interested spectators:

   a. In front, there should be a raised bench with a place below the bench on one side for witnesses and on the other side for clerk or bailiff

   b. In the rear of the room, there should be enough chairs or benches to accommodate all parties or spectators

   c. Between the bench and the audience, there should be tables and chairs for the prosecutor and defendant and/or defense counsel; the tables should be placed to allow counsel to consult with witnesses or defendant without being overheard

7) The American flag should be properly displayed

800.13(1)

8) Your courtroom should have a place for recording equipment so that the proceedings can be recorded

See Ch. 16

D. Your demeanor

1) Be self-confident, fair, and firm

2) Retain control over spectators

3) Be considerate and courteous to all parties and spectators:

   a. Use proper titles of respect in court and when on official duty. You should be addressed as “Judge” or “Your Honor” and a police officer should be addressed as “Officer”

   b. Avoid familiarity. Do not use first names in court

4) Remain in control of the proceedings. Do not allow the prosecutor, police or anyone else to run your courtroom

5) Be conscious of the fact that you represent the judiciary when you are on the bench. Not only must you be satisfied that justice is being done and that you are acting in an appropriate and ethical manner, it must also appear so to all observers

SCR 62.02
755.17(1)

6) Judges shall wear black robes while presiding on the bench except when exceptional circumstances exist

7) Maintain neutrality in partisan issues in the community

8) Be independent. Avoid being pressured by segments of the community, police, or members of the governing body

NOTE:

Most people appearing before you have never been in any court before. Your conduct will leave a lasting impression regarding our system of justice. It is critical that you treat people fairly and with respect

E. Your Notary Powers

140.10(1)(e)

1) A municipal judge may perform notarial acts

140.01(7)

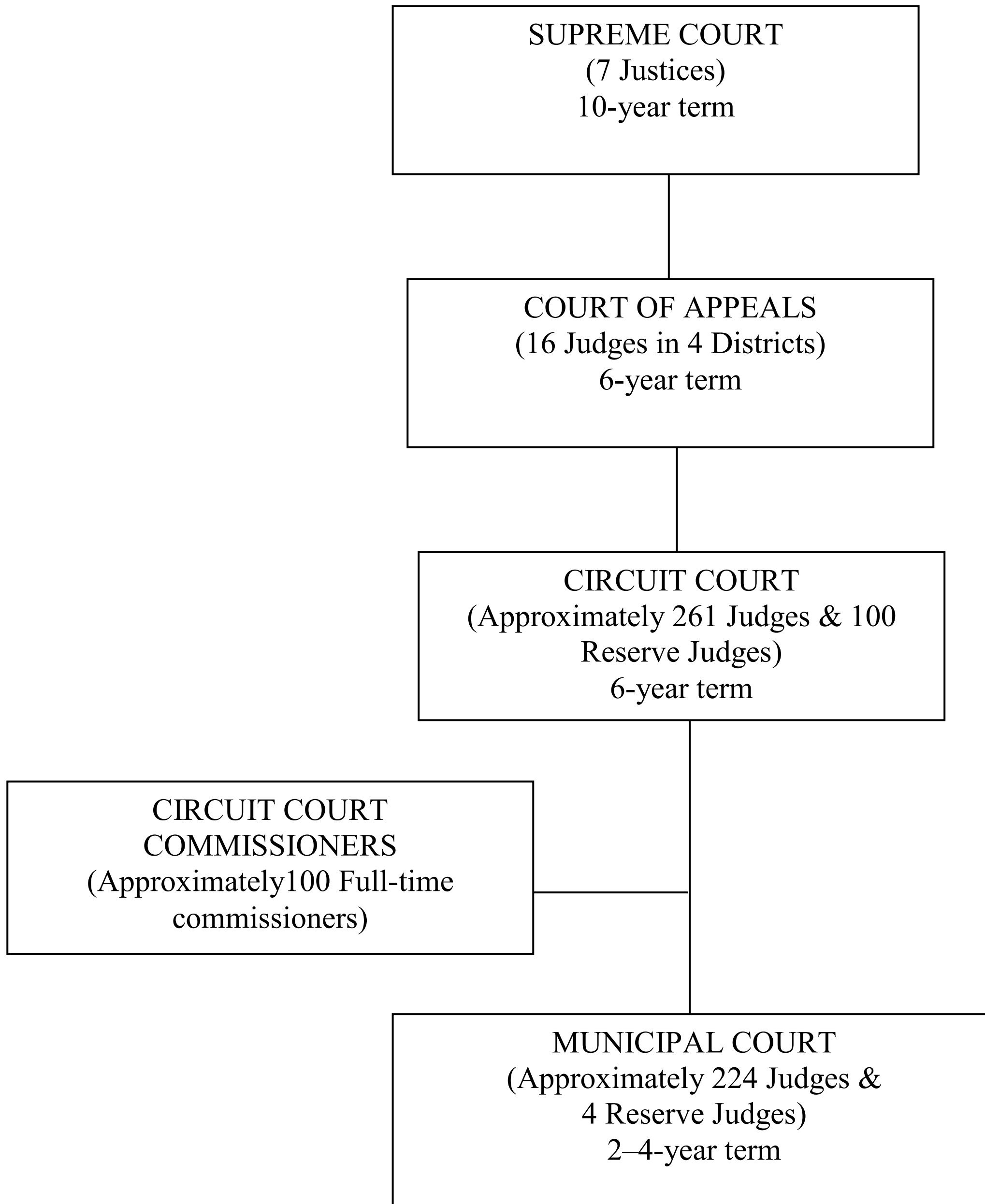
2) "Notarial act" means any act that a notary public of this state is authorized to perform, whether performed with respect to a tangible or electronic record, and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument

Recommendation

When exercising your notary powers, sign your name and title. Indicate the last day of your term in the space asking for the expiration of your powers.

4. The Wisconsin Court System

a



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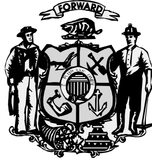

JUDGE THOMAS BARLAND
Chair

KEVIN J. KENNEDY
Director and General Counsel

December 15, 2011

Scott K. Johnson
Tenth District Court Administrator
4410 Golf Terrace, Suite 150
Eau Claire, WI 54701

Re: Timing for Abolishment of Municipal Courts

Dear Mr. Johnson:

This letter is in response to your inquiry from May 18, 2011, by which you sought a formal opinion from the Government Accountability Board.

General Information

Pursuant to §5.05, Wis. Stats., the Government Accountability Board (G.A.B.) is responsible for administering laws relating to elections and election campaigns (chs. 5-12, subch. III of ch. 13, or subch. III of ch. 19). As part of this administrative function, the G.A.B. shall review requests for advisory opinions regarding Wisconsin's elections and election campaign laws, and may issue a formal written or electronic advisory opinion to the person making the request.

Facts

You have submitted a request for a formal opinion on behalf of two municipalities in the 10th Judicial District, the Village of New Auburn and the Village of Star Prairie. As stated in your correspondence, both New Auburn and Star Prairie elected municipal judges in April of 2011, but are now seeking to abolish their municipal courts pursuant to Wis. Stats. §755.01(2). The facts applicable to the nomination of each judge are slightly different. New Auburn utilizes the nomination paper distribution method, but no potential candidates circulated nomination papers, and a new municipal judge was instead elected as a write-in candidate with five votes. In Star Prairie, nomination is conducted by a caucus system. A candidate was nominated, filed a declaration of candidacy, and was placed on the election ballot. This candidate was then elected with a total of 74 votes. You indicate that the New Auburn Village Board is postponing abolishment until the current judge's term has ended, but that Star Prairie is seeking immediate abolishment of its municipal court, after the election and prior to the end of the current incumbent's term.

Question

You ask whether or not there is a specific time frame or date by which a municipality must accomplish abolishment of their municipal court pursuant to Wis. Stat. §755.01(2).

Discussion

Wis. Stats. §755.01(2) provides: "The governing body may by ordinance or bylaw abolish the municipal court as part of a consolidation under s. 66.0229 or at the end of any term for which the judge has been elected or appointed." Under Wis. Stats. §755.02, a municipal judge's term begins on May 1 of the year of the judge's election, and spans 4 years "unless a different term, not exceeding 4 years nor less than 2 years, is provided by charter ordinance enacted under s. 66.0101." Prior to the enactment of 2009 Act 402, the default term for a municipal judge was two years. A charter ordinance changing the term cannot take effect until the end of the current judge's term.

Pursuant to the above language in §755.01(2), Stats., it is clear that, except as part of a municipal consolidation, the effective date of abolishing a municipal court cannot occur until after the term has ended. The remaining questions are when must the municipality's action to abolish the court be completed and when is the effective date of that abolishment?

While individuals may declare their candidacies at any time, several dates are significant in triggering the official start of the Spring Election cycle for local candidates. Under Wis. Stats. §10.06 (3)(a), municipal clerks publish the Type A notice for a Spring Election on the fourth Tuesday of November preceding the Spring Election. Under Wis. Stats. §8.10 (2), candidates in municipalities using nomination papers may begin to circulate papers for offices to be filled at the Spring Election on December 1 and must file the nomination papers on the first Tuesday in January prior to the Spring Election. Pursuant to Wis. Stats. §8.05 (1), in towns and villages using the caucus system, the governing body determines the date of the caucus between December 1 and January 1, and the caucus must be held between the first and last Tuesdays in January.

It is the opinion of the Government Accountability Board (Board) that a municipality must complete action to abolish a municipal court prior to the time the Type A notice is published on the fourth Tuesday in November. The legislature established a specific election procedure in Wisconsin Statutes Chapters 5-10, beginning with publication of the Type A "Notice of Election." This notice informs the public and all potential candidates that an election is going to take place, the offices that will be voted upon and filled at the election, and the timetable for candidates to circulate nomination papers and to file nomination papers. Even in the case of a caucus system, where nomination papers are not used, the Type A notice informs the public and potential candidates of the offices to be voted upon and filled at the Spring Election.

Candidates campaign for office in reliance on the official announcement in the Type A notice that the office will be on the ballot. Whether or not candidates initiate or conduct campaigns after that date, to abolish the office after the Type A notice has been published would

compromise the integrity of the elections process by creating the perception that the governing body may be taking the action based on the particular candidates who are or are not pursuing the office.

In 2006, the State Elections Board addressed a similar issue in an informal opinion. The Board advised that the office of coroner should not be abolished after the date for filing nomination papers, to take effect at the end of the current term. The Board's reasoning also applies to your inquiry:

> *The Elections Board and its staff have a natural bias in favor of conducting elections for offices that have been noticed and for which nomination papers have been filed…The Board's staff does not believe that the legislature intended that an election for a publicly noticed office for which candidates have duly campaigned and qualified by nomination paper may be cancelled at any time after nomination papers have been filed or even after the first day for circulation of nomination papers*.

The Elections Board staff applied similar reasoning in previous informal opinions issued in 1999 and 2001, finding that, in the absence of more specific statutory provisions, its interpretation more closely followed the edict in §5.01, Stats., to construe the statutes to "give effect to the will of the electors." In this way, the governing body eliminates any perception that it might attempt to manipulate the process and take an electoral decision away from the voters after the public has received notice that the office will be on the upcoming ballot.

The Board hereby adopts the S.E.B.'s reasoning, and further concludes that as of the date of publishing a Type A notice listing the office of municipal court judge, a municipality shall not take action to abolish a municipal court which is effective prior to the end of the term for the individual chosen at that election, whether as a registered or a write-in candidate. A municipality may adopt an ordinance to abolish a municipal court on or after a Type A notice has been published for that office; however, the effective date of the abolishment shall not occur prior to the end of the term of the individual that is elected at the Spring Election that follows the Type A notice.

The Board acknowledges that there are no appellate court decisions specifically addressing the facts in your request and that there may be facts which convince a court that an office could be abolished after the Type A notice is published, such as when the municipality has accomplished all but final passage of the ordinance to abolish the office. In the interests of certainty and uniform guidance, however, the Board believes it is more consistent with the legislative intent and also the better practice for municipalities to complete actions to abolish a municipal court prior to the Type A notice publication date, if the municipality intends to no longer elect the office at the Spring Election following the publication date of a Type A notice. Any action taken to abolish a municipal court after the publication date of the Type A notice shall not be effective until the end of the term for the office elected at the Spring Election following that Type A notice.

Advice

Based upon the above opinion, the Government Accountability Board advises:

1) Regarding the Village of New Auburn, the term of the write-in candidate elected in April of 2011 must be completed before abolishment of the office can become effective. New Auburn may begin the action of abolishing the court, by ordinance or bylaw, which must be completed before the Type A Notice is published for the next Spring Election at which the office would be on the ballot.

2) Regarding the Village of Star Prairie, any abolishment of the municipal court will not be effective until the end of the term of the municipal judge elected in April of 2011. The Village may begin the action of abolishing the court, by ordinance or bylaw, which must be completed before the Type A Notice is published for the next Spring Election at which the office is on the ballot.

I hope this information is helpful, but please feel free to contact us if you have any additional questions.

Sincerely,

Wisconsin Government Accountability Board

Kevin J. Kennedy
Director and General Counsel

2: COURT ADMINISTRATION

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1. Court Records

A. Responsibility of maintaining court records

755.11
19.33(1)

1) You have the ultimate responsibility of maintaining court records, but you may delegate much of the actual recordkeeping duties to a clerk or assistant

SCR 72.01(24a), (24m), (45), (47)

B. Court records include various types of records

755.001(3)

1) Records means all of the records subject to Supreme Court Rule ch. 72 and includes both paper and non-paper records, such as emails and audio recordings

800.11

2) A court record must be maintained and include all information listed in § 800.11. You may use the back of the citation or you can create your own recordkeeping form provided it contains all the legally required information

C. Court records must be retained

SCR 72.01(24a), (24m)

1) Records must be retained for 5 years after the entry of final judgment (*See* Page 2-A for relevant Supreme Court Rules)

SCR 72.01(47)

2) Audio recordings must be held 10 years

SCR 72.01(45)

3) Exhibits must be held for one year after the time for appeal has expired and the party who submitted the exhibit must be offered the return of the exhibit

SCR 72.02(2)

4) Any records defined as confidential by rule or statute, such as non-traffic juvenile records, must be destroyed by shredding, burning, or other means that will obliterate the record

D. Court records should be kept in certain areas

800.11(4)

1) If the municipal judge is elected to serve a joint court under § 755.01(4), a separate court session record must be kept for each municipality

800.11(1)(g)

2) A formal record of all judgments should be kept

755.11

3) All records kept for a case shall be kept together, separate from other cases

938.396(2)(a)

4) Juvenile non-traffic case files must be kept separately from adult files

938.396(2)(a)

a. The contents of such files cannot be disclosed except under specified circumstances

938.396(3)

b. Juvenile traffic cases can be disclosed

E. Access to court records

1) Access to the records shall be restricted to court personnel except as authorized by the judge or by law:

755.11

a. This does not restrict the ability of counsel or parties to read the records

48.396(3)

b. Records of any juvenile case may be disclosed to a law enforcement agency, a criminal court, or the district attorney, for use in a criminal investigation or criminal court case. Municipal courts and circuit courts must make the **electronic** records of a juvenile case available to another municipal or circuit court; to an attorney or guardian ad litem for a parent or child who is a party to a proceeding in a juvenile case in circuit or municipal court; and to district attorneys, municipal prosecutors, law enforcement agencies, and the department of corrections. A municipal court receiving this confidential information from another court must keep the information received confidential and may only use or allow access to that information for the purpose of conducting or preparing for a proceeding in municipal court

WHAT MAY NOT BE DISCLOSED: Any disclosure from municipal court should exclude information relating to the physical or mental health of an individual or that deals with other sensitive personal information unless there is the informed consent of a person authorized to consent, or an order from a court to release that information

F. Electronic records management systems

755.11

1) The purchase or implementation of any electronic records management system used by the court shall be approved by the judge

G. Public Records

19.32(1)

1) The Public Records Law (§§ 19.31–39) applies to "any court of law." *See generally* Wis. DOJ, *Wisconsin Public Records Law Compliance Guide* (Oct. 2019), https://www.doj.state.wi.us/sites/default/files/office-open-government/Resources/PRL-GUIDE.pdf

19.32(1bd)
19.21(1)

2) A municipal judge is an "elective official" and therefore is the "legal custodian" of the records in his/her court but may assign the responsibility to their court clerk

Recommendation

If such assignment is made, it should be in writing

19.356(1)
938.396(2)(a)

3) Municipal court citations and case files are public records that the public has a right to inspect. The judge's decision to provide a requester with access to a record is not subject to judicial review. This right of inspection does not apply to non-traffic juvenile records unless the inspection request is from authorized persons and/or agencies. *See* Chap. 8, Sec. 9.E and Chap. 2, Sec. 1.G.

4) Police reports are not records of the court unless admitted into evidence at trial or other court hearing. A police report admitted into evidence at a non-traffic juvenile proceeding is a confidential record

St v. Panknin, 217 Wis. 2d 200, 216 (Ct. App. 1998)

5) Any notes prepared by a judge to assist in performing his/her judicial duties are NOT public records

Schill v. Wisconsin Rapids School Dist., 2010 WI 86
327 Wis. 2d 572

6) Emails and electronic records are considered to be public records subject to disclosure under the law. A requester may demand that the electronic record be provided in its original format. Work product, privileged communications, and purely personal or private information contained in emails are not subject to disclosure

Sample policy at 2-B

7) The municipal judge should develop and post a written access policy to inform the public of when and how they may inspect and/or copy municipal court records

8) The Public Records Law requires that:

19.34(2)(a)

a. The public be allowed to inspect existing records during regular office hours

b. The public be allowed to request or make copies of existing records they inspect

19.35(4)(a)
Wisconsin Mfrs. & Com. v. Evers, 2022 WI 38, ¶ 8, *reconsideration denied*, 2023 WI 5, 405 Wis. 2d 478

c. The record keeper should respond "as soon as practicable and without delay." This usually means within 10 days or less

19.35(4)(b)
19.37(1), (2)
ECO, Inc. v. City of Elkhorn,
2002 WI App 302
259 Wis. 2d 276

d. Any written denial of a public records request shall inform the requester that if the request for the record was made in writing they have the right to either file a mandamus action for release of the records or request that the District Attorney or Attorney General do so on their behalf. In the event that such an action is successful, the circuit court shall order the custodian of the records to pay reasonable attorney fees, damages of not less than $100, and other actual costs to the requester

19.31
Wisconsin Mfrs. & Com. v. Evers, 2022 WI 38, ¶ 8, *reconsideration denied*, 2023 WI 5, 405 Wis. 2d 478
Wisconsin State J. v. Blazel, 2023 WI App 18, ¶ 17, 407 Wis. 2d 472
Milwaukee Deputy Sheriffs' Ass'n v. County of Milwaukee Cnty. Clerk, 2021 WI App 80, ¶ 15, 399 Wis. 2d 769

9) The Public Records Law carries with it a strong presumption of public access. The decision whether to allow access lies with the records custodian. Before denying a request, the judge "must conduct a balancing test of the public interests in favor of release and in favor of declining to release the record at issue." The request should only be denied for an exceptional case if "the public policy interests favoring nondisclosure outweigh the public policy interests favoring disclosure"

State ex rel. Blum v. Bd. of Education,
209 Wis. 2d 377 (Ct. App. 1997)

a. In those rare instances where a request to view or copy court records is denied, the requesting party must be informed in writing of the reasons for the denial if they initially made the request in writing. The same policy should be applied to the denial of oral requests for public records access

WIREdata v. Village of Sussex, 2008 WI 69, ¶ 104, 310 Wis. 2d 397

b. An offer to comply with a request that is conditioned on unauthorized costs and terms constitutes a denial of that request even though the response does not specifically indicate it is denying or refusing to comply with the request

Hempel v. City of Baraboo, 2005 WI 120, ¶ 4, 284 Wis. 2d 162

c. The most common reasons upon which a public records request is denied are: failure of the requesting party to comply with court access procedures; statutory prohibition; and public policy. **Use with caution**

10) There are certain things that are **NOT** required:

19.35(1)(i)
State ex rel. Gehl v. Connors, 2007 WI App 238, 306 Wis. 2d 247

a. The requesting party does not have to give a reason for his or her request to inspect a court record

19.35(1)(h), (i)

b. Requests do **NOT** have to be in writing and the requester does not have to identify him/herself

George v. Record Custodian, 169 Wis. 2d 573, 579 (Ct. App. 1992)
19.35(1)(L)
Leuders v. Krug, 2019 WI App 36, 388 Wis. 2d 147

c. A municipal court does not have to compile or create records in a form that is not within its normal recordkeeping procedure (e.g., report of number of trials in speeding cases and the outcomes). However, when records are created in electronic form, such as emails, and an electronic copy is requested, the copy should be provided in electronic form that includes all metadata

Recommendation

The court should, however, offer the requester the opportunity to secure the records if he or she is willing to pay the actual and necessary cost of creating or compiling such records above $5.00

19.35(3)
Milwaukee Journal Sentinel v. City of Milwaukee, 2012 WI 65, 345 Wis. 2d 607

d. Copies of records do not have to be made free of charge. A court may charge the "actual, necessary and direct cost of reproduction and transcription" and "mailing or shipping." The actual cost of locating records may also be charged if the cost is $50 or more. But you cannot pass the cost of redacting nondisclosable information onto the requester

19.35(1)(h)
State ex rel. Gehl v. Connors, 2007 WI App 238, 306 Wis. 2d 247

e. The court is not required to provide future records beyond the original records request. Requests without limitations as to time or subject matter are unreasonable

19.35(3)(f)
Borzych v. Paluszcyk, 201 Wis. 2d 523 (Ct. App. 1995)

f. You CANNOT require prepayment of copies unless the cost is in excess of $5.00

George v. Record Custodian, 169 Wis. 2d 573, 580 (Ct. App. 1992)

g. You may provide free or reduced-rate copies to requesting parties, but are not required to, even if they claim to be indigent. However, you must provide the requester the opportunity to view the record at no cost

Media Placement Services, Inc. v. DOT, 2018 WI App 34 392 Wis. 2d 191

h. You are not required to provide massive-volume public record requests for free and immediate access to bulk data via the court's database

2. Administrative Procedures

A. Municipal Court Hours

755.06

1) The municipal court shall be open daily or as determined by the judge and approved by the governing body

B. Calendaring and Scheduling

800.02(2)(ag)4.

1) The police officer enters the plea date on the citation as established by the court

2) Prior to the plea date, defendant or his or her attorney may request an adjournment

Recommendation

It is good practice to require that the request be in writing.

800.035(2)(a)

3) If defendant appears in court personally, or by an attorney, he or she has the right to request a continuance:

   a. The plea date can be adjourned to a subsequent court date

   b. You or your clerk should authorize all adjournments and verify them in writing

   c. It is within the discretion of the court whether or not to grant a continuance

Recommendation

A continuance of an ordinance violation should be granted once as a matter of course.

800.035(1)

4) Pleas can be entered in writing by mail or email unless the citation or complaint includes a statement that an in-person appearance is mandated by the judge

800.035(2)(e)

5) When you receive a not guilty plea, you may immediately set the pre-trial date or inform defendant that he or she will be notified in writing of the pre-trial or trial date

C. Computing filing times when deadlines are set

800.005
801.15(1)
801.15(5)

1) Time is computed by excluding the first day and including the last day, but:

   a. If the time period is 10 days or less, weekends and legal holidays are excluded from the calculation

   b. If the deadline is in response to a notice served by mail, 3 days shall be added to the prescribed time period

   c. If the deadline is in response to a notice served by fax or email transmitted between 5:00 p.m. and midnight, 1 day shall be added to the prescribed time period

801.15(1)(b)

   d. When the last day for filing is a Saturday, Sunday, state or federal legal holiday, or a day that the clerk of courts office is closed, the act may be taken on the next regular business day

D. Processing records after judgment is entered

Appendix 2

1) Upon receipt of a plea of no contest, if you accept it, you or your clerk must record the conviction and enter deposits as forfeitures, surcharges, costs, and/or fees

110.07(1)(b)
343.28, 345.48(1m)

2) In all traffic cases, the DOT copy of the Uniform Traffic Citation must be sent to the DOT within 5 working days of the date of disposition. Send to:

   https://trust.dot.state.wi.us/cows/COWSServlet

938.344, 343.28

3) Dispositions for certain juvenile alcohol beverage and drug violations must be reported to the DOT (Driver Record Files, P.O. Box 7993, Madison, WI 53707) on the blue copy of the WI Uniform Municipal Court Citation or on form MVD 3029

343.28(4)

4) Failure of judge or clerk to forward convictions to DOT is a crime

E. Disbursing Payments

800.10(2)

1) All forfeitures, fees, surcharges, and costs collected by municipal court shall be paid to the municipal treasurer within 30 days of receipt. Some courts have their own accounts for transfer of funds

F. Follow-up of cases sent to circuit court

1) Keep a copy of all papers sent to circuit court

2) Learn the disposition of all appeals sent to circuit court

800.14(6), 778.105

3) Make sure the clerk of circuit court knows he or she must give you written notification of the disposition of all appeals within 30 days of judgment. If judgment is in favor of municipality, forfeiture is payable to municipality

4) Docket the disposition of all appeals determined in circuit court

814.63(4)

5) For OWI cases transferred to circuit court, no further action is necessary in municipal court and all collections are done by circuit court, with the forfeiture forwarded to the municipal treasurer by the circuit court

3. Judicial Reassignment

A. Requests for Substitutions

800.05(1)
Form N

1) Defendant may file a written request for a substitution of judge, not later than 7 days after the initial appearance

SCR 70.24
751.03(3), 757.19

2) The Chief Judge of your judicial administrative district is responsible for assigning a substitute judge from anywhere with the state

3) When a substitution request if filed, determine, within 7 days, if the request was timely and in proper form

4) If you do not make a determination within 7 days your clerk of court shall refer the matter to the Chief Judge of your judicial administrative district for the determination

800.05(3)

5) When a new judge has been assigned, you shall make all the papers in the case available to the judge

B. Substitution and Recusal

1) Substitution

800.05(3)
SCR 70.24

a. "Upon transfer, the municipal judge shall immediately transmit, to the appropriate judge, all the papers in the action"

b. The prosecutor of the transferring court shall be responsible for prosecution before the new judge

c. The new judge shall specify the court's location in which the matter will be heard, but shall consider any objection to the proposed location

778.105
City of West Allis v. Sheedy,
211 Wis. 2d 92 (1977)

d. If there is a conviction in front of the new judge, the forfeiture and the court costs are paid to the original court

800.05(5)
SCR 70.21,
SCR 70.24
See also Ch. 3, Sec. 1.I (Recusal)

2) Recusal (self-disqualification of judge)

Form N

a. The judge will file a written request to recuse him or herself from the case with the Chief Judge of the Judicial District stating the reason for recusal. Proper reasons for recusal are listed under § 757.19(2)

b. Once the case is reassigned to another judge the municipal court clerk should provide the new judge with the necessary information about the case

C. Illnesses, Absences, Vacations

800.06(1)
Form N

1) If you are temporarily absent, sick, or disabled, you may, subject to the order of the chief judge of the judicial district, designate another municipal judge from any municipality within the state to perform your duties for a period not to exceed 30 days

Recommendation

If you are going to be unavailable for more than a day or two, make arrangements with another municipal judge to handle any emergencies. Inform your police department of the arrangement and the Chief Judge of your decision

751.03(2)

2) If municipal judges are incompetent, unable or fail to fulfill their judicial duties, the Chief Justice of the Supreme Court will assign a new municipal judge

800.06(3)
8.50(4)(fm)

D. Permanent Vacancy

1) When there is a permanent vacancy in the office of municipal judge, the Chief Judge of the district may appoint another municipal judge from the district to serve until the municipal governing body fills the vacancy by temporary appointment

2) Under a policy adopted by the Committee of Chief Judges, absent special circumstances, appointments will be for no more than 90 days

800.065(3)

E. Compensation

Recommendation
See, Sample Invoice 2-E

1) The Wisconsin Municipal Judges Association recommends that whenever a municipal judge temporarily replaces a municipal judge at the regularly scheduled court session OR is assigned a case from another municipal court because of substitution of recusal:

   a. The replacement municipal judge should receive $100 per hour on the assigned case and not less than $200 to preside over the court session and if that court session is longer than 2 hours that $100 per hour to compensate for any additional time

   b. All fees should be calculated on a door-to-door basis

c. The substitute judge should advise the court clerk of the court in which he or she sat of the total amount due as soon as possible after the court session

2) No compensation is generally paid for "special" court sessions, held between regular court sessions, for the purpose of releasing defendant on a bond, etc.

4. Cameras in the Courtroom

A. See SCR 61 at the end of this Chapter

SCR 61.03

B. Equipment and personnel

1) Except as otherwise provided in paragraph 2), below, three TV cameras, each operated by one person, and three still photographers, each using not more than two cameras, are authorized **in any court proceeding**. Priority consideration shall be extended to one of the three cameras to televise an entire proceeding

2) The judge may authorize additional cameras/persons or may limit the number of cameras if circumstances permit the increase or require limitation

3) An audio system for radio broadcast purposes is authorized **in any court proceeding**. Audio pickup for all media purposes shall be made through any existing audio system in the court facility, if practical. If no suitable audio system exists, microphones and related wiring shall be as unobtrusive as possible

SCR 61.04

C. Sound and light criteria

1) Only audio and visual equipment which does not produce distracting light or sound may be used to cover a court proceeding. Artificial lighting devices shall not be used. Only equipment approved by the trial judge in advance of the court proceeding may be used during the proceeding

SCR 61.05

D. Location of equipment and personnel

1) The trial judge shall designate the location in the courtroom for the camera equipment and operators. The judge shall restrict equipment and operators to areas open to the public, but they shall not block the view of persons seated in the public area of the courtroom

2) Camera operators shall occupy only the area authorized by the trial judge and shall not move about the courtroom for picture taking purposes during the court proceeding. Equipment authorized by these rules shall not be moved during the proceeding

SCR 61.06

E. Courtroom light sources

1) Modifications in the lighting of a court may be made only with the approval of the trial judge. Approval of other authorities may also be required

SCR 61.07

F. Conferences

1) Audio pickup, broadcast, or recording of a conference in a court facility between an attorney and client, co-counsel, or attorneys and the trial judge held at the bench is not permitted

5. Bankruptcy and the Municipal Court

A. Introduction

1) The following is for **informational purposes only**, to acquaint the municipal judge with the existence of potential problems that may arise after defendant has filed a bankruptcy petition and the municipality attempts to collect court-ordered forfeitures, costs or restitution and/or enforce collection by license suspensions or commitments. If you have questions, contact your municipal attorney

2) The bankruptcy code 11 U.S.C. §§ 101–1532, contains four types of bankruptcies:

   a. Chapter 7 is a business or individual liquidation

   b. Chapter 11 is usually for large business or individuals with complex finances

c. Chapter 12 is for extended payment plans of business farmers

d. Chapter 13 involves extended payment plans of individuals with regular income

e. Chapters 12 and 13 are similar in operation. Both may continue for three to five years. Chapter 7 takes the shortest time, usually about three months

3) Municipal court debts and the bankruptcy petition

a. Few debtors include the municipal court or municipality in their list of debts when filing a bankruptcy petition after a forfeiture has been incurred

b. All debts owed by the debtor, including those owed to a municipality (as creditor), should be listed in the bankruptcy case, but the debtor may not include a debt because of oversights or other reasons. This means that court or municipality might not receive notice of the filing

B. The automatic stay, 11 U.S.C. § 362(a)

1) Whether the court or municipality receives notice or not, upon the filing of the petition, an "automatic stay" (a self-effectuated injunction) immediately stops all collection efforts by creditors, including license revocations to enforce collection of debts which arose before the commencement of the bankruptcy case. As soon as the municipality becomes aware of the filing, all collection efforts must stop. Any collection efforts for debts that arose pre-petition, including any means of enforcement of money judgments such as driver license suspensions or jail sentences, are prohibited by the automatic stay. The stay remains in effect until it is "lifted" or expires or until the debtor is discharged by the bankruptcy court. It is in effect for the entire term of a Chapter 12 or 13 plan

2) The municipal court, or the municipality, CANNOT:

a. Try to collect a judgment

b. Commit defendant for failure to pay, or

c. Suspend defendant's driver license for failure to pay UNTIL notified of discharge

C. Exceptions to the stay, 11 U.S.C. § 362(b)

1) The automatic stay does <u>not</u> stop:

a. Enforcement of the municipality's police or regulatory powers including issuing citations, imposing (but not collecting) fines for pre-petition infractions, and enforcing environmental regulations even if they may involve correction costs for the debtor

b. Enforcement of a judgment, other than a money judgment, which furthers such municipal powers

c. Collection of post-petition debts (those accrued after the bankruptcy petition was filed) from property that is not under the bankruptcy court jurisdiction. Protected property usually includes the debtor's earned income in a Chapter 12 or 13, but not in a Chapter 7 or 11

d. Collection of debts held to be non-dischargeable (see below) or later not discharged by the bankruptcy case, and/or

e. Collection of debts that the debtor has "reaffirmed" (agreed to pay in spite of the possible discharge)

D. Dischargeability of specific debts

1) After the automatic stay expires, debts that are "nondischargeable" may be collected

2) Under Chapters 7, 11, and 12, debts for fines, penalties, forfeitures, or criminal restitution and costs payable to and for the benefit of the municipality that are not compensation for actual pecuniary loss and which constitute punishment, are nondischargeable debts. Court costs are part of restitution. Such debts will be unaffected at the end of the bankruptcy. All other debts are discharged if included in the Chapter 7 case

3) Under Chapter 13, more debts may be discharged under the “super” discharge. Almost all fines penalties, forfeitures, and civil restitution and costs are discharged. Restitution included in a sentence on the debtor's conviction of a “crime” is not discharged. Any debt not provided for in the Chapter 12 or 13 plan is not discharged and survives the bankruptcy unaffected

4) In a Chapter 13 case, the stay continues until:

   a. Debtor completes all payments and obtains a discharge in which case the civil forfeiture is also discharged

   b. Debtor is unable to continue and the bankruptcy case is dismissed, or

   c. Debtor applies for and obtains a “hardship” discharge, without completing payments under the plan, in which case the civil forfeiture is not discharged

E. Filing of claims, objections

1) Filing a claim allows the municipality to receive distributions from a debtor’s Chapter 12 or 13 plan or from a Chapter 7 estate that has assets. Therefore, the municipal attorney should always file a claim in a Chapter 12 or 13, and sometimes in a Chapter 7 or 11

2) In addition, the municipality may, under certain circumstances, want to object to provisions in the debtor’s proposed plan or seek to have the stay annulled

F. Post-petition citations

1) If defendant is working, “post-petition” citations can be collected, upon conviction, from future earnings

Recommendation

In order to avoid municipal liability for executing on a bankruptcy party's property improperly, the municipality’s attorney should bring a motion before the bankruptcy court if there is a desire to proceed against the bankrupt defendant prior to the lifting of the stay

6. Notice to Creditors

1) This is a type of non-bankruptcy payment plan. If you get a "Notice to Creditor," stop all collection efforts, vacate any commitments, and stop any driver license suspension. Under this type of payment plan, payments should be made by the debtor, in full, over the next 36 months

7. Tax Interception—*See*, Chap. 13, Judgment

8. State Debt Collection—*See*, Chap. 13, Judgment

SCR 72.01 Retention of original record.

Except as provided in SCR 72.03 to 72.05, the original paper records of any court shall be retained in the custody of the court for the following minimum time periods:

(24a) Traffic forfeiture, conservation forfeiture, and ordinance violation court record. A history and index of proceedings disposed as traffic forfeitures, conservation forfeitures, or ordinance violations, including juvenile ordinance violations: 5 years after entry of final judgment. If the proceeding results in a dismissal or acquittal of all charges, the record retained under this section shall be retained as if the proceeding was disposed as a traffic forfeiture, conservation forfeiture, or ordinance violation.

(24m) Traffic forfeiture, conservation forfeiture, and ordinance violation minute record. A brief statement of in-court proceedings in actions disposed as traffic forfeitures, conservation forfeitures, or ordinance violations, including juvenile ordinance violations, generally maintained in the case file: 5 years after entry of final judgment. If the proceeding results in a dismissal or acquittal of all charges, the record retained under this section shall be retained as if the proceeding was disposed as a traffic forfeiture, conservation forfeiture, or ordinance violation.

(45) Non-criminal case exhibits, paper and non-paper. One year after time for appeal has expired, provided that return of the exhibit has been offered to the proffering party or unless all parties have stipulated to an earlier return of exhibits.

(47) Verbatim record of in-court proceedings. The verbatim record, created as authorized under SCR 71.01 (3): 10 years after the hearing.

Note: On June 9, 1999, the State Historical Society waived the 60 day notice requirement of SCR 72 for all municipal court documents dated 1941 or later.

SCR 72.04 Offer of title to State Historical Society of Wisconsin.

The custodian of the court record, prior to its destruction under this chapter, shall give at least 60 days' notice of such destruction in writing to the State Historical Society of Wisconsin, which may preserve any records it determines to be of historical interest. Notice is not required for any records for which destruction has previously been approved by the State Historical Society of Wisconsin or in which the State Historical Society of Wisconsin has indicated, by blanket waiver, that it has no interest for historical purposes.

________________________MUNICIPAL COURT
PUBLIC RECORDS ACCESS POLICY PROCEDURE

All records of the municipal court, except those that are specifically exempted by law, are open to the public. Records are available for inspection during the normal business hours of _______a.m. to _______ p.m. ______________(day) through ______________(day).

The following defines the policies and procedures for inspection or duplication of these records:

Records Custodian

The municipal court clerk is the records custodian for municipal court.

Request Procedure

Requests may be made orally to any court staff. The request should provide sufficient detail to allow the court to identify the records requested. Direct all requests to the records custodian.

A request form is available at the ___________________ for the public's convenience.

How Records May Be Inspected

1. The requester must review the records under staff supervision.

2. The court will make every effort to fill requests made in person to view or copy records within two hours of the request. If the request cannot be filled within this period, the requester will be provided a date and time when the records may be viewed, or the copies provided.

3. The court will respond in writing within 10 working days from the date it receives a mailed request or any request for records not made in person.

4. Any review of court case records must not disrupt the normal courtroom proceedings on the cases involved.

5. Any copies will be made by court staff.

Exceptions and Limitations

1. Files or records for non-traffic cases that involve juveniles as defendants are open to the defendant, the defendant's parent, guardian, or legal custodian or any person who presents the court with written permission from the defendant (if the defendant is 14 years of age or older), the defendant's parent, guardian, or legal custodian ***unless*** the court finds that the release of the juveniles records would result in imminent danger to anyone.

2. Files or records for non-traffic cases that involve juveniles as defendant's are open to other specific individuals and agencies who are authorized in writing by § 938.396 of the Wisconsin Statutes.

3. Any request for a personnel record is subject to a determination by the record custodian that there is not an overriding public interest in keeping the records confidential.

4. Records that are not normally produced by the court in the form requested may be denied.

PUBLIC RECORD REQUEST FORM
MUNICIPAL COURT

____
Name of Requesting Party

____
Address

____
Phone Date

RECORDS SOUGHT:

1. ____
Name of Defendant

____
Offense

2. ____
Name of Defendant

____
Offense

3. ____
Name of Defendant

____
Offense

FOR OFFICE USE ONLY

Date Filed: ____________________ Fee: ____________________

SCR CHAPTER 61

RULES GOVERNING ELECTRONIC MEDIA AND STILL PHOTOGRAPHY COVERAGE OF JUDICIAL PROCEEDINGS

JUDICIAL COUNCIL COMMITTEE'S NOTE, 1979: The following rules, called rules governing electronic media and still photography coverage of judicial proceedings, were adopted by the supreme court on June 21, 1979, effective July 1, 1979. The rules were originally numbered 1 to 12 and have been clarified and numbered SCR 61.01 to 61.12 for uniformity and convenience.

SCR 61.01 Authority of trial judge.

(1) These rules of conduct in this chapter do not limit or restrict the power, authority or responsibility otherwise vested in the trial judge to control the conduct of proceedings before the judge. The authority of the trial judge over the inclusion or exclusion of the press or the public at particular proceedings or during the testimony of particular witnesses is applicable to any person engaging in any activity authorized by this chapter.

(2) In this chapter, "trial judge" includes any judicial officer who conducts a public proceeding.

SCR 61.02 Media coordinator.

(1) The Wisconsin freedom of information council shall designate for each judicial administrative district a coordinator who shall work with the chief judge of the judicial administrative district and the trial judge in a court proceeding in implementing this chapter. Geographically large judicial administrative districts shall be subdivided by agreement between the council and the chief judge, with a coordinator designated for each subdistrict.

(2) If possible, the trial judge shall be given notice, at least 3 days in advance, of the intention of the media to bring cameras or recording equipment into the courtroom. In the discretion of the trial judge, this notice rule may be waived if cause for the waiver is demonstrated.

SCR 61.03 Equipment and personnel.

(1) Except as otherwise provided in sub. (2), 3 television cameras, each operated by one person, and 3 still photographers, each using not more than 2 cameras, are authorized in any court proceeding.

Priority consideration shall be extended to one of the 3 cameras to televise an entire proceeding from beginning to end.

(2) The trial judge may authorize additional cameras or persons at the request of the media coordinator or may limit the number of cameras if circumstances permit the increase or require the limitation.

(3) One audio system for radio broadcast purposes is authorized in any court proceeding. Audio pickup for all media purposes shall be made through any existing audio system in the court facility, if practical. If no suitable audio system exists in the court facility, microphones and related wiring shall be as unobtrusive as possible.

(4) The media coordinator shall be responsible for receiving requests to engage in the activities authorized by this chapter in a particular court proceeding and shall make the necessary allocations of authorizations among those filing the requests. In the absence of advance media agreement on disputed equipment or personnel issues, the trial judge shall exclude all audio or visual equipment from the proceeding.

SCR 61.04 Sound and light criteria.

Only audio or visual equipment which does not produce distracting light or sound may be used to cover a court proceeding. Artificial lighting devices shall not be used in connection with any audio or visual equipment. Only equipment approved by the trial judge in advance of the court proceeding may be used during the proceeding.

SCR 61.05 Location of equipment and personnel.

(1) The trial judge shall designate the location in the courtroom for the camera equipment and operators. The trial judge shall restrict camera equipment and operators to areas open to the public, but the camera equipment and operators shall not block the view of persons seated in the public area of the courtroom.

(2) Camera operators shall occupy only the area authorized by the trial judge and shall not move about the courtroom for picture taking purposes during the court proceeding. Equipment authorized by these rules shall not be moved during the proceeding.

SCR 61.06 Courtroom light sources.

Modifications in the lighting of a court facility may be made only with the approval of the trial judge. Approval of other authorities may also be required.

SCR 61.07 Conferences.

Audio pickup, broadcast or recording of a conference in a court facility between an attorney and client, co-counsel, or attorneys and the trial judge held at the bench is not permitted.

SCR 61.08 Recesses.

Audio or visual equipment authorized by this chapter shall not be operated during a recess in a court proceeding.

SCR 61.09 Official court record.

Notwithstanding any film, videotape, photography or audio reproduction made in a court proceeding as a result of this chapter, the official court record of the proceeding is the transcript of the verbatim record of the court reporter made in open court or pursuant to an order of the court.

SCR 61.10 Resolution of disputes.

A dispute as to the application of this chapter in a court proceeding may be referred only to the chief judge of the administrative district for resolution as an administrative matter. An appellate court shall not exercise its appellate or supervisory jurisdiction to review at the request of any person or organization seeking to exercise a privilege conferred by this chapter any order or ruling of a trial judge or chief judge under this chapter.

SCR 61.11 Prohibition of photographing at request of participant.

(1) A trial judge may for cause prohibit the audio recording and the photographing of a participant with a film, videotape or still camera on the judge's own motion or on the request of a participant in a court proceeding. In cases involving the victims of crimes, including sex crimes, police informants, undercover agents, relocated witnesses and juveniles, and in evidentiary suppression hearings, divorce proceedings and cases involving trade secrets, a presumption of validity attends the requests; the trial judge shall exercise a broad discretion in deciding whether there is cause for prohibition. This list of requests which enjoy the presumption is not exclusive; the judge may in his or her discretion find cause in comparable situations.

(2) Individual jurors shall not be photographed, except in instances in which a juror or jurors consent. In courtrooms where photography is impossible without including the jury as part of the unavoidable background, the photography is permitted, but close-ups which clearly identify individual jurors are prohibited. Trial judges shall

enforce this subsection for the purpose of providing maximum protection for jury anonymity.

SCR 61.12 Inapplicability to individuals; use of material for advertising prohibited.

The privileges granted by this chapter to photograph, televise and record court proceedings may be exercised only by persons or organizations which are part of the news media. Film, videotape, photography and audio reproductions shall not be used for unrelated advertising purposes.

Amended April 22, 2019.

STATE OF WISCONSIN MUNICIPAL JUDGE PAYMENT INVOICE

INSTRUCTIONS: Upon completion of an assignment in a jurisdiction other than your own, you may use this form to submit a request for payment from the municipality you assisted. Complete and send this form to the municipal court clerk in the other jurisdiction for payment. Keep a copy for your file. NOTE: An assignment order must have been signed by the Chief Judge or Court Administrator to authorize work in another jurisdiction.

Municipal judge name	Municipality
Address where payment is to be sent	Social Security number
	Telephone number, circle: day/evening

Payment Requested for:____________________ hours work (including travel)

In Municipality of: ______________________________________

For Municipal Judge: ______________________________________

On date(s): ____

Assignment Order No.: _____________________________________

Rate of Payment:* __________ ($200 first 2 hrs, then $100/hr) Other:________________

Total Amount Due: $___________________

Date Submitted: __________________ By: ___________________________________
Signature of judge requesting payment

Invoice Submitted to: ______________________________
Municipal court clerk name

____
Address

For Use by Municipal Court Clerk Making Payment

Date Invoice Received: _______________ Paid: __________ Check No.:_____________

* Municipal Judges' Association recommended rate of pay: $200 for first two hours or portion thereof, and $100 per hour thereafter.

3: DEFENDANTS' RIGHTS

1. Rights Before Trial 3-1
2. Trial Rights 3-7
3. Rights After Judgment Entered 3-9

800.035(7)(a)

1. Rights Before Trial

A. Right to be released

800.035(7)(a)

1) A municipal judge may release defendant without requiring a deposit

800.035(7)(b)

2) Defendant must be released upon posting a deposit in the amount established by the Uniform Traffic Bond Deposit Schedule or the deposit scheduled approved by the municipality

800.035(7)(b)

3) If defendant fails to make a deposit and the judge finds that there is a reasonable basis to believe the person will not appear in court, the defendant may be held in jail for not more than 48 hours

Recommendation
County of Riverside v. McLaughlin, 500 U.S. 44 (1991)

4) You should advise your police chief/sheriff that, if a judge is not available, the defendant should be released and given a date to appear before the court, and under no circumstances should the defendant be held beyond 48 hours

B. Right to notice of charge

800.02(2)

1) Defendant is entitled to written notice of the charge either by citation or by a summons and complaint. For proper service and default judgments, *see* Chap. 4 (Court Procedure), Sec. 1.C

800.02(2)
345.11(2)

2) A citation/complaint must include the violation alleged, the time and place of occurrence, a statement that defendant committed the violation, the ordinance violated, a description of the violation in language that can be readily understood, and the name of the law enforcement officer

   a. Traffic citations no longer have to be signed by a law enforcement officer

3) A defective citation/complaint should be dismissed without prejudice, unless amended so as to provide the required notice. If dismissed, defendant should be advised that it may, and probably will, be reissued

800.025

4) The citation/complaint may be amended

   a. By the municipality;

      - Prior to the initial appearance of defendant, and a copy must be served personally or by first class mail

      - After the initial appearance, upon notice and an opportunity to be heard, at the discretion of the court

   b. By the court

      - At trial, the court may amend the charge to conform to the evidence, and

      - The court must allow both parties an opportunity to present evidence with respect to the amended charge

800.035(2)

5) When defendant appears in court, the court must, either orally or in writing, inform defendant of:

   a. Each charge and the range of penalties

   b. The right to request a continuance or enter a plea of not guilty, guilty, or no contest. (*See* Glossary for explanation of no contest plea)

800.035(2)(a)3.

   c. The right to a jury trial if facing an OWI/PAC/OCS charge

800.035(5)(c)

      - Request for a jury trial must be made in writing within 10 days after entering the plea

345.43(1)

      - Request must be accompanied by the fee prescribed in § 814.61(4)

345.43(1)

      - The jury shall consist of 6 persons

800.14(4)(a)

      - Failure to exercise this option waives the right to request a jury upon appeal

d. The right to request time to pay, installment payments, community service, or a stay of judgment if unable to pay due to poverty

e. The requirement to notify the court in writing within 5 days of any change of address

Recommendation
800.093(1)

If the violation involves restitution, the court should inform defendant that restitution may be ordered

Recommendation

It is recommended that you grant a request for continuance, particularly the first one, almost automatically and that such continuance be for 2 weeks or such other length of time as appears reasonable in relation to the reason for the request

800.035(2m)

C. Right to have a social worker or guardian ad litem appointed

1) The court must appoint a social worker certified or licensed under Chapter 457 or a guardian ad litem (GAL) for any defendant the court has reason to believe lacks substantial mental capacity to understand the proceedings or assist in his or her defense

2) The court must suspend the proceedings if it finds that defendant lacks the mental capacity to understand the proceedings or assist in his or her defense

3) The cost of the social worker or GAL must be paid by the municipality that established the court

NOTE:

The municipality may, but is not required to, authorize the municipal court to appoint a GAL for any other matter within the court's jurisdiction

Americans with Disabilities Act (ADA)

D. Right to Interpreter: Disability

1) When an individual needs an interpreter because of a disability (e.g. hearing impaired, inability to speak, speech defect) under the Americans with Disabilities Act (ADA), the municipality must provide interpreting services

NOTE

American Sign Language interpreters frequently work in pairs due to the physical dimension of interpreting a visual language. Team interpreting ensures the accuracy of the translation.

ADA

2) A municipality must pay for the interpreter regardless of indigency

906.04

3) *See* Form O for interpreter oath/affirmation

885.37

E. Right to an Interpreter: Spoken Language

885.37(1)
885.37(4)

1) In a juvenile case under Chapter 938, the **municipality** must provide an interpreter for a defendant, a parent, or a witness who has limited English proficiency. See Chap. 8 (Juveniles), Sec. 11.

2) A municipal court may authorize the use of an interpreter for an adult defendant with limited English proficiency but is not required to do so

Recommendation

If the defendant has limited English proficiency and requests an interpreter, appoint an interpreter or use a service

885.37(4)

3) If defendant is indigent, the municipality pays the expense of the interpreter

800.085

4) A municipal court may authorize the use of an interpreter by telephone or audiovisual means if the parties stipulate or the court makes a finding of good cause to do so. There are companies that provide interpretation services via phone and video. *See* www.wicourts.gov/services/interpreter/search.htm

National Providers	Website
Language Line	https://www.languageline.com
Cyracom (formerly Voiance Language Services)	https://www.cyracom.com/
Certified Languages International	http://certifiedlanguages.com
Cross-Cultural Interpreting Services	https://www.crossculturalinterpretingservices.org/
Local Provider	**Website**
SWITS	http://swits.us

See Wis. Ct. Interpreter Program, Guidelines for Using Telephonic Interpreting in Court, https://www.wicourts.gov/services/interpreter/docs/telephoneinterpet.pdf.

906.04, Form O

5) *See* Form O for interpreter oath/affirmation

F. Right to request substitution of judge

800.05(1), Form N

1) Defendant has the right to request a substitution of a new judge to hear defendant's case

800.05(1)

   a. The request must be in writing and filed within 7 days after the initial appearance

   b. No reasons need to be given for the request

800.05(1)

   c. The request must be in writing and filed within 7 days after the initial appearance

   d. No reasons need to be given for the request

Recommendation

   Inform the defendant at the first appearance of the right to request substitution of judge.

800.07

G. Right to discovery (Limited)

1) Neither party is entitled to pretrial discovery. Except the court may order the defendant be allowed:

a. Inspection of documents, including names and addresses of witnesses

804.09

b. Testing, under conditions as the court prescribes, any devices used by the plaintiff to determine whether a violation has been committed

800.07

2) Defendant may move for pretrial discovery within 30 days of the initial appearance without showing cause, and may move for pretrial discovery at any other time upon a showing of cause

3) *See* Chap. 5 (Pretrial Motions and Procedures) for further information on discovery

19.31

H. Right to Public Records

Defendant may also obtain records through a public records request. *See* Chap. 2 (Court Administration), Sec. 1.G.

SCR ch. 60
See also Chap. 16 (Judicial Ethics)

I. Recusal: Right to an impartial judge

757.19

1) You must disqualify yourself if for any reason you cannot, or it appears you cannot, act in an impartial manner

757.19

2) You must also disqualify yourself if:

SCR 60.03, 990.001(16)
SCR 60.01(16)

a. You are related to any party or attorney or their spouses within the 3rd degree of kinship

- Great-Grandparent
- Grandparent
- Parent
- Uncle/Aunt
- Brother/Sister
- Child
- Grandchild

- Great-Grandchild
- Nephew/Niece

b. You are a party or material witness

c. You previously acted as legal counsel to any party in the same action

d. You acted as legal counsel preparing any legal paper or instrument whose validity or construction is at issue

e. You have a significant personal or financial interest in the matter

SCR 60.04(1)(e) & (2)(b)

3) You must make sure personnel under your control abide by the applicable Supreme Court Rules

2. Trial Rights

A. Right to have prosecution bear burden of proof

800.08(3)

1) A person charged with violation of any municipal ordinance may be convicted only upon a showing of admissible evidence that is clear, is satisfactory, and convinces the judge to a reasonable certainty that he or she is guilty

B. Right to public trial

757.14

1) The sittings of every court shall be public

2) The law provides for certain exceptions, such as non-traffic juvenile cases. See Chap. 8 (Juveniles)

C. Right to hire an attorney or act as own counsel

Wis. Const. art. I, § 21

1) Defendants have the right to retain counsel or represent themselves

967.06(1)

2) An indigent defendant in municipal court is not entitled to a court-appointed attorney

D. Right to subpoena witnesses and documents

885.01(1), 885.04
Form E

1) Both parties have the right to request the court to subpoena witnesses or documents, and you have the power to issue subpoenas to be served anywhere within the state

   a. An unrepresented defendant should be made aware of this right and told that you will sign and issue such subpoenas as lawfully requested

885.03

   b. It is defendant's obligation to effectuate service

885.05–.07
814.67

2) Defendant's witnesses must be paid witness fees and round-trip mileage by defendant at the time of service in order for the subpoena to be enforceable

E. Right to be prosecuted by a licensed attorney

800.08(1)

1) The municipality must provide an attorney to prosecute cases in municipal court

2) The attorney must be authorized to practice law in Wisconsin

F. Right to have sworn testimony and a record kept

800.08(2)(a)

1) Every witness is required to swear or affirm the truth of his/her testimony

800.13

2) Every proceeding in which sworn testimony is taken must be recorded by electronic means

G. Right to cross-examine witnesses

800.08(1)

1) Rules of evidence and some Constitutional provisions apply to defendant's right to cross-examine witnesses in municipal court. *See also*, Chap. 11 (Evidence)

908.02

2) Many rules governing admissibility of evidence are designed to protect defendant's right to challenge evidence presented by the prosecution. For example, the basic objection to hearsay evidence is that the witness is not available in court for confrontation and cross-examination

800.08(1)

H. Right to offer testimony in defense and rebuttal

1) Defendant may offer evidence after the prosecution has rested

2) Defendant may offer rebuttal testimony and, if the court permits, evidence upon his or her original case

I. Limited right to 5th Amendment privilege

Village of Menomonee Falls v. Kunz, 126 Wis. 2d 143 (Ct. App. 1985)

1) The 5th Amendment provides that no person shall be compelled in any *criminal* case to be a witness against him/herself. This privilege extends to all court proceedings, civil and criminal

Village of Bayside v. Bruner, 33 Wis. 2d 533 (1967)

2) Prosecutor has right to call defendant and question the defendant adversely as a witness

3) A defendant and/or a witness may not assert the 5th Amendment privilege and refuse to testify in a municipal court proceeding unless the answer potentially exposes them to criminal liability

905.13(4)

4) The court may draw an adverse inference from defendant's assertion of the right. *See* Chap. 6 (Conducting a Trial)

3. Rights After Judgment Entered

A. Right to be informed of consequences for failure to pay

800.09(1g)

1) Upon judgment of guilty, the court must inform defendant, orally and in writing, of:

   a. Due date for paying the judgment

   b. Possible consequences of failing to pay in a timely fashion, including imprisonment or suspension of driving privileges

   c. Right to pay by installments or request to perform community service

800.09(1g)

   - If defendant is present and the court determines defendant is unable to pay because of poverty, the court shall provide an opportunity to pay by installments, taking into account defendant's income, or to perform community service in lieu of payment

   - If defendant is not present, defendant has right to be notified in writing that defendant can request to pay by installments or request to perform community service

814.29(1)(d)

d. Right to notify the court that he or she is unable to pay the judgment because of poverty as that term is used in § 814.29(1)(d), and that he or she may request community service in lieu of payment of the judgment. Note: § 814.29(1)(d) provides that the court shall make a finding of poverty if defendant demonstrates any of the following:

- That the person is a recipient of means-tested public assistance, including aid to families with dependent children, relief funded by a relief block grant under Chapter 49, relief provided by counties under § 59.53(21), medical assistance, supplemental security income, food stamps or benefits received by veterans under § 45.40(1m) or under 38 U.S.C. §§ 1501–1562

- That the person is represented by an attorney through a legal services program for indigent persons, including, without limitation, those funded by the federal legal services corporation, the state public defender or volunteer attorney programs based on indigency

- That the person is otherwise unable to pay because of poverty. In determining the person's ability under this subdivision to pay or give security for fees and costs, the court shall consider the person's household size, income, expenses, assets and debts, and the federal poverty guidelines under 42 U.S.C. § 9902(2)

B. Right to request relief from judgment. *See* Chap. 13 (Judgment)

4: COURT PROCEDURE

1. Commencement of Action 4-1
2. Court Procedure for Initial Appearance 4-2
3. Defendant Appears/Amendment from the Bench 4-5
4. Defendant Does Not Appear 4-11
5. Contempt in Municipal Court 4-14
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7. Pro Se or Self-Represented Litigants 4-18
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Adjudication of Contempt of Municipal Court 4-A
Adjudication of Contempt & Court Order 4-B
Contempt of Court Procedure 4-C

1. Commencement of Action

800.01

A. A traffic case is commenced when the citation is filed with or transmitted to the court

800.02(2)(b)
345.11

1) The citation must be the uniform traffic citation form

800.01(2m)

2) Citation must indicate method of service

800.01(1)

3) The citation shall be served and filed with or transmitted to the court

B. Cases involving municipal ordinance violations or violations of resolutions or bylaws are commenced by the filing of a citation or complaint with the court

800.01

1) The Wisconsin Uniform Municipal Court Citation and Complaint form should be used

800.01(2)

C. Service—Providing formal notice to a party that a legal action has been filed against them. Must be completed in accordance with statutes to confer personal jurisdiction over defendant

There are several methods to obtain personal jurisdiction of defendant

1) Proof of personal jurisdiction of defendant exists if any of these requirements are met:

800.01(2)(a)

a. Defendant is served with a citation/complaint personally or by substitute service as provided under § 801.11(1)(a) to (c), (5), and (6)

800.01(2)(b)

b. 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

800.01(2)(c)

c. Defendant voluntarily appears before the court

800.01(2)(d)

d. Court finds that the defendant acknowledged receipt of the citation or complaint

800.01(2)(e)

e. Citation/complaint were sent to the defendant by first class mail. However, you **CANNOT** suspend or revoke operating privileges or impose any jail time upon mailed service alone

NOTE:

See Chap. 13, Sec. 2, Default Judgment

D. Mandatory Appearances

66.0113(1)(b)6.
800.02(2)(ag)4.

1) The judge may require that the citation or complaint specify that an appearance is mandatory

2. Court Procedure for Initial Appearance

A. If defendant requests an adjournment of the initial appearance, the judge may authorize the clerk to grant such adjournment

B. Announce Court

1) When the judge enters the courtroom, the bailiff or clerk should make the following announcement:

"Please rise. Municipal Court for the (city, town, village) is now in session, the Honorable (municipal judge) presiding"

C. Opening remarks

Forms W, Wa

1) Opening remarks and/or a handout should outline the court procedure so that persons present understand what will happen

800.035(2)

2) Opening remarks or a handout must include:

a. An explanation of the defendant's options of pleading guilty, not guilty, or no contest, or requesting a continuance

b. Defendant's right to a trial in municipal court

800.035(2)

c. Defendant's right to a 6-person jury trial in circuit court if the charge is OWI/PAC/OCS

Recommendation
800.14(4)(a)

- It is recommended that you inform a defendant that a failure to exercise this right waives the right to a jury trial on appeal

d. Defendant's right to request a continuance

814.29(1)(d)
800.09(1g)
800.035(2)(a)4.

e. An explanation that a defendant who is unable to pay judgment due to poverty may request an alternative to payment, including installment payments, community service, or stay of judgment

800.035(2)(a)5.

f. Requirement that defendant must notify the court in writing within five days of any changes to the defendant's address so long as the case is still pending or payments or other obligations (e.g., community service, counseling, or education) have not been completed

Recommendation

Defendants should be informed that they may ask procedural questions before they enter a plea

Recommendation

Defendants should be informed at initial appearances of the consequences of failure to pay any assessed penalties

D. Convening the first case

1) Defendant is called by judge, clerk, or bailiff

2) Defendant approaches the bench

E. Appearance by telephone or by interactive video/audio transmission

A party, witness, or interpreter will be able to appear by such means at any proceeding if:

800.085(1)

1) The parties stipulate and the court approves, or

800.085(2)

2) The judge finds good cause after considering:

   a. Whether any undue surprise or prejudice would result

   b. Whether the proponent has been unable, after due diligence, to procure the physical presence of the witness

   c. The convenience of the parties and the proposed witness, and the cost of producing the witness in relation to the importance of the offered testimony

   d. Whether the procedure would allow full effective cross-examination, especially where availability to counsel of documents and exhibits available to the witness would affect such cross-examination

   e. The importance of presenting the testimony of witnesses in open court, where the finder of fact may observe the demeanor of the witness, and where the solemnity of the surroundings will impress upon the witness the duty to testify truthfully

   f. Whether the quality of the communication is sufficient to understand the offered testimony

   g. Whether a physical liberty interest is at stake in the proceeding

   h. Financial or physical limitations on the ability of the defendant or counsel for the defendant to be physically present

   i. Any other factors as the court may, in each individual case, determine to be relevant

800.035(1), (5)
345.34(3)
800.02(2)(ag)7.

F. A plea may be entered in writing, except

1) When the judge has required a mandatory appearance and that requirement is provided on the citation, or

2) When a municipal ordinance requires that the defendant appear in person

3. Defendant Appears/Amendment from the Bench

800.035(2)(a)

A. Read the charge as stated in warrant, citation, or complaint and ask defendant if they understand it

B. Prior to taking defendant's plea, make sure that the officer properly completed the citation or complaint

345.11(2), (2m)

1) The uniform traffic citation is required for traffic regulation actions in municipal court, except for parking violations. A properly completed uniform traffic citation shall include substantially the following:

a. Defendant's name, address, and date of birth

b. Defendant's operator's license number

c. Vehicle's license number

d. Offense alleged

e. Time and place of the offense

f. Ordinance violated and section of statute violated

g. Deposit amount

h. Full description of the class and type of vehicle

i. Whether vehicle was transporting hazardous materials

j. Whether operator holds a commercial driver license

k. Whether any specific waiver provision in § 343.055 may apply

l. Name and department of issuing officer

23.50(3)
23.54

2) For violations in forfeiture actions in municipal court involving use or operation of an ATV, UTV, or off-highway motorcycle, the Natural Resources citation form under § 23.54 shall be used

800.02(2)

3) A properly completed non-traffic citation or complaint shall include substantially the following:

a. Defendant's name, address, and date of birth

b. Identification of any permit or license issued to the defendant

c. Name and department of issuing officer

d. Offense alleged

e. Time and place of the offense

f. Ordinance violated and section of statute violated

g. Deposit amount

h. Notice to appear at a date, time, and place for the court appearance and whether the appearance is mandatory

i. Notice that defendant may enter a written plea of not guilty prior to the court appearance

j. Notice that a defendant that makes a deposit and fails to appear in court is deemed to have entered a plea of no contest and submitted to a penalty not to exceed the deposit amount

k. Notice that the court may decide to summon the defendant rather than accept the deposit and plea

l. Notice that if the defendant does not make a deposit and fails to appear in court, the judge may issue a summons or warrant for the defendant's arrest or may enter a default judgment against the defendant

m. In any action against a corporation or LLC, a statement of the corporate or company existence and whether it is a domestic or foreign corporation or LLC

Recommendation
800.025

If the officer has failed substantially to properly complete the citation, dismiss the citation unless both parties consent to amending it. Dismissal should be "without prejudice," so that the municipality may serve defendant with a properly completed citation for the alleged violation. Advise defendant that the municipality may do so

See, Chap. 13 (Judgment)

Defendants not properly advised have additional rights, including reopening the judgment

C. Explain the range of penalties

1) Penalty ranges for traffic violations are in the Revised Uniform State Traffic Deposit Schedule available from the Director of State Courts (608) 266-6984. See https://www.wicourts.gov/publications/fees/index.htm

2) Penalty ranges for municipal ordinance violations are in your municipal Ordinance Bond Deposit Schedule. Schedules are developed by the judge and adopted by the municipality

3) Penalty ranges for conservation, environmental protection, boating, snowmobile, ATV/UTV, and captive wildlife violations are in the State of Wisconsin Revised Uniform Deposit and Bail Schedule available from the State of Wisconsin Document Sales (608) 266-3358. *See* https://www.wicourts.gov/publications/fees/index.htm

4) The Revised Uniform State Traffic Deposit Schedule includes Deposit Schedules for Alcohol (all ages), Harassment and Safety Violations, Trespass to Land, and a Uniform Misdemeanor Bail Schedule

800.035

D. Information you must give every defendant prior to defendant entering a plea

1) The specific charge

2) The maximum forfeiture that could be assessed

3) The penalty for failure to pay the forfeiture

4) The fact, if applicable, that restitution may be ordered

5) If defendant cannot pay the forfeiture due to poverty, he or she may request an installment plan, community service, or a stay

6) The number of points the violation carries (for graduated/probationary license holders the points double on second and subsequent traffic offenses)

7) The fact, if applicable, that conviction on the violation will result in suspension/revocation of the operating privilege

8) If defendant is charged with OWI/PAC/OCS, the right to a jury trial in circuit court

Recommendation

While not required, it is good practice to inform the defendant of the number of points that is cause for driver license suspension. The number of points accumulated under § 343.32(2)(a) within 12 months is determined by the date of violation

E. Ask defendant to make a plea of no contest, guilty, or not guilty

1) If defendant seems uncertain of their plea, once again, in simple language, explain the effects of the various pleas

2) If defendant needs time to consider a plea or consult an attorney, you may postpone (continue) the case

F. Defendant pleads no contest or guilty

800.035(2)(d)

1) If you accept a plea of no contest or guilty, you may find defendant guilty of the offense

Many defendants are under the impression that if they plead "no contest, I just want to tell my story" or "guilty, with extenuating circumstances," that after they tell their story the judge should find them not guilty. In these cases explain that defendants should plead not guilty

2) Review the officers' report to ensure that defendant was properly charged

3) Allow defendant to explain their action in the case

800.035(2)(d)
See, Chap. 13 (Judgment)

4) You may call for defendant's conviction record, review, and impose a suitable penalty

5) If you decide the plea was entered in error, you may refuse to accept it or let defendant withdraw the plea and enter a not guilty plea

Recommendation

Hear defendant's plea and ask defendant if they have anything to say. If you think the plea is incorrect, you should say something such as "You may wish to change your plea"

800.025

G. Amending from the bench prior to trial

800.025

1) The court has no authority to amend from the bench without the verbal or written consent of the municipal attorney

2) The court may obtain blanket consent from the municipal attorney to amend from the bench, or consent may be obtained on a case-by-case basis. Such consent should be in writing

Am. Fed'n of State, Cnty., & Mun. Emps. Loc. 1901 v. Brown Cnty., 146 Wis. 2d 728, 737 (1988)

3) The municipality can amend before initial appearance, **but** a copy must be served on defendant (first class mail or personally). At all other times, amendments are allowed only at the court's discretion upon notice and opportunity to be heard. "A trial court may amend a pleading within its exercise of discretion"

H. Defendant pleads not guilty

1) Not guilty pleas result in a pretrial or a municipal court trial. (Exception - jury trials in circuit court are permitted in OWI/PAC/OCS cases if requested within 10 days of initial appearance)

2) If the municipality and defendant are both prepared, you may hold the trial immediately, if your court calendar so permits

3) If the trial is not held immediately, you may:

Form J

a. Schedule a pretrial

b. Set a trial date or

c. Advise defendant that notice of the trial date will be mailed

See, Chap. 6 (Trial)

d. Give defendant some written material on how trials are conducted

800.035(7)
Forms C, D

4) You may require a deposit as bond to insure defendant's appearance at trial. It may not exceed the maximum forfeiture, including assessments and costs

NOTE:
800.035(8)

The deposit may be forfeited if defendant fails to appear for initial appearance (Default Judgment)

5) If the trial is not held immediately, do not let defendant start telling their story

a. All testimony should be heard at the trial

6) Inform defendant that they may consult with the prosecutor prior to trial

800.14(1)
City of Port Washington v. Koziol,
Nos. 2021AP449-FT, 2021AP450-FT
(Wis. Ct. App. Oct. 6, 2021) (unpublished)
Form K

7) Either party may appeal by giving the municipal court and other party written notice of appeal and paying any required fees within 20 days after municipal court judgment is issued

800.14(4)(intro)

a. Where a trial has been held in municipal court, the appeal must be on the record unless

800.14(4)(intro)

b. Within 20 days after notice of appeal, either party requests that a new trial be held in the circuit court. It is a court trial without a jury unless:

800.14(4)(a)

- It is an OWI/PAC/RCS case, the defendant did not request an initial jury trial under § 800.035(5)(c), and the municipality requests a 6-person jury trial and posts the jury fee within 10 days after the order for a new trial; or

800.14(4)(b)

- It is a non-OWI/PAC/RCS case and either party requests a 6-person jury trial and posts the jury fee within 10 days after the order for a new trial

NOTE:
800.14(1)

Defendant cannot appeal a default judgment

800.035(2)(c)

I. Defendant refuses to enter a plea

1) Enter a not guilty plea on defendant's behalf

2) Set a trial date as with any other not guilty plea

J. Defendant pleads not guilty and requests a jury trial

800.035(5)(c)

1) Defendant entitled to seek immediate transfer for jury trial in circuit court in OWI/PAC/OCS cases only

800.035(5)

2) Demand must be made within 10 days after receipt of plea of not guilty

4. Defendant Does Not Appear

A. Default Judgment, see generally, this Chap., Sec. 1.C., and Chap. 13 (Judgment), Sec. 2

B. Cash deposit has been received

1) Defendant is deemed to have entered a no contest plea

800.035(8)

a. Enter judgment or

Form F

b. Reject the plea and issue a summons. A personally served summons must be signed by the server

800.035(8), 968.09
Form G

c. If you reject the plea and defendant fails to appear in response to the summons, you may issue a warrant for the defendant to be brought before the court without unreasonable delay. The judge shall state on the record at the time of issuance of the bench warrant the reason for the warrant

2) The same procedure is followed if a no contest plea is received with the deposit

Recommendation

The general practice is to accept the no contest plea and deposit

C. **There is a guaranteed traffic arrest bond, such as an auto association or motor club card**

1) You may enter judgment

2) The procedure for collecting the forfeiture is usually to inform the surety company of the action on the forms the company provides

D. **Cash deposit has not been received**

1) You may enter a default judgment but see Chap. 13 (Judgment), Sec. 2

Form H

a. Notify defendant of the default judgment by first-class mail using the address on the citation

- The notice should give defendant a specific date to pay and specify the applicable consequences if defendant does not pay. *See* Sec. F. below

800.09(1g)

- The notice should inform defendant that he or she may request installment plan, community service or stay if unable to pay due to poverty

Recommendation

You cannot suspend a driver license for failure to pay unless the specific date to pay has passed. If you give defendants time to pay, give them all at least 60 days to pay the judgment so you do not have to keep separate records for commitments and driver license suspensions

800.035(9)

2) Upon proof of jurisdiction under § 800.01(2), you may issue a warrant or a summons. If a warrant is issued for a defendant who does not appear at the initial appearance and who has not made a deposit, the defendant may be detained in jail for not more than 48 hours prior to the initial appearance

3) You may dismiss without prejudice

800.01(2)

E. **Defendant was served the citation or summons and complaint by mail**

800.035(9)

1) You may issue a warrant or a summons

800.01(2)
800.095(3)(b)

2) You MAY enter a default judgment, but the court may not enforce payment of a monetary judgment through license suspension or imprisonment without at least one of the following:

   a. Later acknowledgment of service of the citation or complaint on defendant

   b. A subsequent appearance by the defendant, or

   c. Personal service on the defendant of the judgment and of notice of defendant's right to poverty hearing or review of the findings under § 800.095(1)(b)2.

800.095

F. Defendant fails to pay (has not requested alternatives to payment due to poverty)

345.47(1)(b), (2)
800.095(1)(a)

1) If an adult defendant fails to pay a traffic ticket within the court-ordered period (at least 60 days), the court may suspend the driver license for up to one year

800.095

2) If an adult defendant fails to pay a citation, the court after a good cause/poverty hearing may incarcerate defendant or modify, suspend or stay the payment schedule or judgment. No more than 90 days imprisonment (at least $50 per day) concurrent with or consecutive to any other term of imprisonment. In order to incarcerate, the court must make the finding set forth in Sec. H. Penalties and Poverty

3) *See* Chap. 8 (Juveniles) for options for juveniles

755.21
71.935
800.095(6)

4) Court may contract with a collection agency for the collection of unpaid forfeitures, including the State Debt Collection (SDC) program

806.12
893.42
JC Lewis Co v. Adamski
131 Wis. 311 (1907)

5) Any action in circuit court to collect on a municipal court judgment must be commenced within 6 years of the judgment

800.095(7)
806.10
806.12
806.14
814.61(5)(bm)

6) A municipal judgment for more than $10, exclusive of costs, may be placed on the circuit court judgment and lien docket, without charge by the clerk of circuit court

Recommendation

Make sure you have a speedy procedure to cancel warrants and suspensions when payment is made

G. Default judgments at trial

800.08(5)
800.09

1) If defendant, upon proper notice, fails to appear for trial you may enter a judgment. *See*, Chap. 13 (Judgment), Sec. 2, regarding payment plans

H. Penalties and Poverty

800.095(1)(b)2.

1) When a judge orders commitments to jail as a consequence of failure to pay a forfeiture or perform community service, defendant may not be jailed unless the judge makes a finding that defendant has the ability to pay within a reasonable period of time; has failed without good cause to perform ordered community service; has failed to attend an indigency hearing; or has failed without good cause to complete an assessment or treatment program related to alcohol or drugs that was ordered instead of a monetary forfeiture

5. Contempt in Municipal Court

800.12
Form M

A. A municipal judge may punish contempt of court (However, see Caveats at Sec. D. below)

Sample Order at 4-A

1) Contempt of court is defined in § 800.12(1)

2) The procedures to be followed are set forth in § 800.12

NOTE:

Make sure the contempt proceeding is recorded

800.12(2)

3) The municipal judge may impose a forfeiture of up to **$200**, plus fees, costs, and surcharges

800.12(3)

B. Contempt by misconduct in the presence of court

1) For misconduct in the presence of the court that interferes with the court proceeding or with the administration of justice, of that impairs the respect due the court, in addition to a monetary penalty, the individual can be sentenced to confinement in the county jail for not more than seven days

2) Penalties must be imposed immediately and only:

   a. To preserve order in the court and protect authority and dignity of the court, and

   b. After allowing person to address the court

800.12(1)(b)

C. Contempt for subpoenaed witnesses who fail to appear

800.12(4)

1) If a witness refuses, without a reasonable excuse, to appear before the court, the judge can issue a warrant to bring the witness before court to testify

2) Determine if proper personal service

3) Determine whether failure to appear was without reasonable cause

4) Warrant to bring witness to court for contempt and to testify

5) Forfeiture up to $200, plus fees, costs, and surcharges

6) Order to pay for costs of apprehension, plus any forfeiture imposed for contempt

800.12

D. A determination must be made prior to holding any individual in contempt

1) Does the conduct fall within the definition of contempt of court set forth in § 800.12?

   a. Misconduct in the presence of the court which interferes with the court proceeding or with the administration of justice, or which impairs the respect due the court; or

   b. Refusal as a witness to appear, be sworn, or answer a question

E. Caveats

1) Under no circumstances should the municipal judge engage in a shouting match with defendant, attorney, or any other party

2) The dignity of the court must be maintained; this requires that it start with the judge

Recommendation

If you do not ordinarily require that a forfeiture be paid immediately upon a finding of guilt or defendant is committed to jail, allow a contemnor time to pay as well

3) For nonmoving traffic violations, such as parking tickets, no imprisonment may be imposed for failure to respond to a citation, summons or warrant under § 345.28 or any other failure to appear or failure to pay

Sample Outline at 4-C

F. Contempt of Court Script

1) (Summary procedure for contempt occurring in presence of court)

2) I believe your actions show contempt for this court. Before I make that determination, however, I want you to have the opportunity to explain yourself. The conduct/comments that I believe are the basis for contempt
____.
What is your explanation for your actions?

A. **I accept your explanation and apology.** I will not find you in contempt at this time. I advise you to show this court the proper respect it is due or risk being found in contempt in the future.

OR

B. **I cannot accept your explanation.** I hereby find you to be in contempt of this court. As punishment, I hereby impose a forfeiture of $200 plus costs, fees, and surcharges to be paid within 60 days [if witness fails to appear, cost of apprehension can also be ordered]. Upon failure to make timely payment, I order that you serve _______ days [not more than 7] in the county jail.

(Procedure for contempt/witness refusal to appear)

A. I find that the witness failed to appear in court without reasonable excuse.

B. I shall issue a warrant to bring the witness to court for contempt and to testify.

C. (optional) I order the witness to pay a forfeiture, and to pay all cost of apprehension (after apprehension)

6. Unauthorized Practice of Law

The Wisconsin Supreme Court Rules provide that a lawyer shall not assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law

Limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. See Comment to SCR ch. 23 and SCR 10.03

Persons who are without law licenses in the State of Wisconsin are committing a crime when they practice law in Wisconsin. Sec. 757.30 makes it clear a person may engage in the practice of law in or out of court

"Every person who appears as agent, representative, for or on behalf of any other person . . . in any action or proceeding . . . in or out of court . . . for compensation . . . or renders any legal service for any other person . . . shall be deemed to be practicing law . . ." Wis. Stat. § 757.30(2).

In *Seitzinger v. Community Health Network*, 2004 WI 28, 270 Wis. 2d 1, the court stated:

> A person may engage in the practice of law in or out of court. Thus, simply because the peer review hearing takes place outside the confines of a traditional courtroom does not mean that a person, acting in a representative capacity for his or her client, cannot be deemed to be practicing law

SCR 23.01

Definition of Practice of Law

"The practice of law" includes but is not limited to:

1) Giving advice or counsel to others as to their legal rights…for fees or other compensation

2) Selection, drafting, or completion for another entity or person of legal documents or agreements which affect the legal rights of the other entity or person(s)

3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review

4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s)

5) Any other activity determined to be the practice of law by the Wisconsin Supreme Court

7. Pro Se or Self-Represented Litigants

Wis. Const. art. I, § 21(2)
Waushara Cty. v. Graf, 166 Wis. 2d 442 (1992)

A. Defendants can represent themselves in court. Pro se litigants are bound by the same rules that apply to attorneys

SCR 60.04(1)(hm)

B. A judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard

Jadair, Inc. v. U.S. Fire Insurance Co., 209 Wis. 2d 187 (1997)
Carmain v. Affiliated Capital Corp., 2002 WI App 271, 258 Wis. 2d 378

C. Corporations must be represented by an attorney

800.035(1)

D. At the initial appearance, limited liability companies (LLCs) may be represented by a member, an agent or authorized employee of the LLC, or by an agent of a member or an authorized employee of the agent

8. Limited Scope Representation by Attorneys

800.035(1m)
802.045

A. An attorney may provide limited scope representation to a person involved in a municipal court action

801.14(2m)

B. When an attorney has filed notice of limited appearance, anything required to be served by the court shall be served on both the attorney and defendant

801.14(2m)

C. After attorney files Notice of Termination, no further service upon attorney is required

STATE OF WISCONSIN _______________ MUNICIPAL COURT _____________ COUNTY

____
Plaintiff,

v.

____
Defendant.

ADJUDICATION OF CONTEMPT OF MUNICIPAL COURT

Case No.______________________

WHEREAS, the above is pending before me in the __________________________ Municipal Court,
and

WHEREAS, on the ______ day of ______________, 20______, ________________________ (name of person in contempt) acted in a disorderly, contemptuous, and insolent manner toward the Court during judicial proceedings in such case, and such behavior interrupted the Court during judicial proceedings in such case, and such behavior interrupted the proceedings or impaired the respect due my authority as municipal judge in that the person in contempt did:

____
____,

or resisted or disobeyed a lawful order made or process issued by me, as municipal judge, in that the person in contempt did:

____
____
____, and

WHEREAS, the person in contempt has been granted an opportunity to be heard in defense on the charge of contempt, and this defense has been found inadequate,

NOW THEREFORE, under the authority granted me by Section ________ of the ____________ Municipal Code, _______________ (name of person in contempt) is hereby adjudged to be in contempt of this Court and is order to pay the sum of $_____ (amount not to exceed $200.00 plus costs, fees and surcharges) dollars to the municipal court clerk. If the person in contempt fails to pay, that person **SHALL BE INCARCERATED** until such sum is fully paid, not exceeding seven days.

Dated at ________________, Wisconsin, this ____ day of _____________, 20_____ .

BY THE COURT:

____
Hon. (Name of Municipal Judge)
Municipal Judge, (Municipality)

STATE OF WISCONSIN ________________ MUNICIPAL COURT ___________ COUNTY

_____________________________,

Plaintiff

Case or Citation No(s). ______________

vs.

________________________________,

Defendant

ADJUDICATION OF CONTEMPT OF COURT AND COURT ORDER

The above-named defendant on__________________was found in contempt of the municipal court. The Court found that the defendant intentionally engaged in misconduct in the presence of the court that:

_____ Interfered with the Court proceeding or with the administration of justice.

_____ Impaired the respect due the Court.

Specifically the conduct constituting contempt as defined in Wis. Stat. § 800.12(1)(a) consisted of the defendant____.

After affording the defendant an opportunity to be heard in defense on the charge of contempt, and this defense has been found inadequate, IT IS HEREBY ORDERED, and the Court imposes the following sanction(s):

_____ Imprisonment forthwith in the ___________ County Jail for_____days with “Huber” (not exceeding 7 days);

_____ A forfeiture of $__________ (not exceeding $200.00) plus costs, fees and surcharges totaling $__________to be paid to the municipal court clerk within 30 days and in default of payment the defendant shall be committed to the ________ County Jail for _____days with “Huber.”

Dated this ______ day of _____________, 20_____.

BY THE COURT:

____

Hon. ______________________________

Municipal Court Judge

CONTEMPT – MISCONDUCT IN THE PRESENCE OF THE COURT

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.

What is contempt of court (misconduct)?

1. Intentional misconduct in the presence of the court that:
   a. Interferes with the court proceeding; or
   b. Interferes with the administration of justice; or
   c. Impairs the respect due to the court.

What penalties can you impose for misconduct contempt?

Imprisonment in the county jail for not more than seven (7) days and/or a forfeiture not to exceed $200 plus costs.

What should a judge do when a misconduct contempt has occurred or is occurring?

1. If possible, warn the person committing the contempt that their behavior is inappropriate and may lead to a contempt sanction.
2. If the contempt is egregious then proceed to the contempt procedure below.

What is the misconduct contempt procedure?

1. IMMEDIATELY after the contempt occurred (or while it is occurring):
   a. Advise the person that he or she is in contempt of court.
   b. Explain what conduct constituted the contempt.
   c. MANDATORY: The person committing the contempt <u>must</u> be allowed to address the court <u>before</u> a sanction is imposed.

2. AFTER the person has had the opportunity to explain his or her conduct and address the court you may:
   a. Accept the explanation and warn that future misconduct may result in a contempt sanction; <u>or</u>
   b. Impose the sanction (forfeiture and/or imprisonment).

3. AFTER imposing a sanction you should:
   a. Prepare written findings and an order setting forth:
      i. A summary of the conduct that constituted the contempt.
      ii. The sanction imposed.
      iii. The terms of the sanction.
   b. File the original findings and order <u>and</u>:
      i. Give a copy to the person found in contempt.
      ii. If incarcerated, give a copy to the sheriff or other keeper of the jail.

5: PRETRIAL MOTIONS AND PROCEDURES

1. **Pretrial Conference Procedure** 5-1
2. **Pretrial Motions** 5-2
3. **Pretrial Motion Procedure**.. 5-10

1. Pretrial Conference Procedure

A. After defendant has pleaded not guilty, defendant should be afforded the opportunity to have a pretrial conference

800.045(1)

1) Pretrial conferences may be mandatory or optional at judge's discretion

   a. The parties may waive the pretrial conference by mutual agreement

800.045(2)
800.035(8) & (9)

2) If the pretrial conference is mandatory, and not waived by the parties, if defendant does not appear, the court can enter a default judgment as the initial appearance. *See also* Chap. 4 (Court Procedure), Sec. 4, and Chap. 13 (Judgment), Sec. 2.B

Form J

3) At the pretrial conference, defendant and the municipal attorney will attempt to reach a resolution of the case, thus avoiding trial

4) Any plea agreement must be submitted to the municipal judge for approval

5) The pretrial conference may be conducted by telephone or video/audio transmission pursuant to § 800.085. *See* Chap. 4 (Court Procedure), Sec. 2.E

Cautionary Note

In *State v. Williams*, 2003 WI App 116, 265 Wis. 2d 229, the Court of Appeals established a rule barring all judicial participation in plea bargaining before an agreement is reached. The basis for the Court's rule was the concern that any judicial participation in the plea bargaining process could severely compromise the voluntariness of the plea. While the *Williams* rule applies only to criminal cases, the Benchbook Committee believes that it should also be followed by municipal judges.

800.045(3)

B. If the prosecutor and defendant cannot reach an agreement, or the municipal judge rejects the agreement, the case should be set for trial or other further proceedings

2. Pretrial Motions

A. Motions for discovery

800.07

1) Neither party is entitled to pretrial discovery, including for refusal hearings, except the court may grant defendant's motion for discovery within 30 days of the initial appearance or if defendant shows cause for discovery after the 30 days

800.07

2) If defendant meets either of these requirements, the court may allow them to:

   a. Have the investigative reports and other documents including the names and addresses or potential witnesses

   b. Test pursuant to § 804.09 any devices used by the municipality to establish the violation charged. Any testing of radar equipment or other devices shall be under conditions established by the municipal judge

Village of Menomonee Falls v. Meyer, 229 Wis. 2d 811 (CA 1996)

3) If a discovery motion is granted by the court and the municipality fails to comply, the court has 3 options:

   a. Adjourn the trial to allow the municipality to comply

   b. Exclude the evidence not provided

   c. Dismiss the case

City of Sun Prairie v. Davis, 226 Wis. 2d 738 (1999)

NOTE: Municipal courts appear to have the inherent authority to dismiss a case when the municipality fails to comply with a discovery order. Because this is a very severe sanction, it should be used only when absolutely necessary, and the judge must show on the record that he or she made a reasonable determination that the non-complying party's conduct was "egregious" and that there was not "clear and justifiable" excuse for noncompliance.

Recommendation

If your city, town, or village has an open files policy toward defendants seeking police/accident reports and lists of witnesses, there may be no need to hold discovery motion hearings unless defendant is seeking unusual discovery

19.21–.39

4) Defendant may have rights to obtain information with a Wisconsin Public Records Law request independent of Chap. 800. *See* Chap. 2 (Court Administration), Sec. 1.G.

B. Motions to dismiss: prosecutor

1) A motion by a prosecutor to dismiss a case is subject to the independent authority of the court

State v. Kenyon, 85 Wis. 2d 36 (1978)

2) The court must determine whether a dismissal is in the public interest. This interest encompasses concern for defendant and the public as well as making proper allowance for the legitimate discretion of the prosecutor based on his/her experience and training. The court should take care to avoid completely substituting its own discretion for that of the prosecutor. The municipality should not be forced to prosecute a case that it believes it cannot win. If the court denies the motion to dismiss, the case should be set for trial

3) OWI/PAC/OCS/Refusals

967.055(2)
State v. Corvino, 2016 WI App 52 370 Wis. 2d 681

a. A motion by the prosecutor to dismiss or amend an OWI/PAC/OWS must state the reasons for this request, and the court cannot grant approval unless it finds that the motion "is consistent with the public's interest in deterring" the operation of motor vehicles by persons who are under the influence

Recommendation

Because such a determination is mandated, the best practice is to hold a hearing on the record to discuss or amend an OWI/PAC/OCS or a refusal. If such a hearing is not held, the prosecutor should at least be required to file a written explanation in support of the motion to dismiss or amend

967.055(3)

A prosecutor may not place a person in a deferred prosecution program for these violations

C. Motions to dismiss: defendant

1) Possible grounds for dismissal

800.02(2)
800.01

a. Defective Citation: due to missing, incorrect, or abbreviated information. *See also* Chap. 13 (Judgment), Sec. 1.A.2)

800.01(2)
Heaston v. Austin,
47 Wis. 2d 67 (1970)

b. Defective Service: due to a citation being left at a residence with no eligible person to receive it, or use of defendant's name by another person. *See also* Chap. 4 (Court Procedure), Sec. 1.C., on proper methods of service and Chap. 13 (Judgment), Sec. 1.A.

c. Lack of Subject Matter Jurisdiction

- Because the offense charged is criminal, see also Chap. 9 (Traffic Cases), Sec. 1.A.3), or

- The conduct alleged is outside the scope of the municipal ordinances. *But see* § 175.40 regarding divided highways

893.93(2)(b)

d. Failure to meet Statute of Limitation deadline; generally, 2 years after cause of action arises

Cty of Kenosha v. C & S Mgmt., 223 Wis. 2d 373 (1999)

e. Selective or Discriminatory Prosecution. To secure a full evidentiary hearing on such a motion, defendant must make a prima facie showing of both discriminatory effect and purpose. *See also* Chap. 12 (Determining Constitutionality), Sec. 7.A.

Recommendation

A dismissal based on lack of reasonable suspicion or probable cause or selective prosecution will be with prejudice and cannot be reissued. Generally, a dismissal for defective citation or service is without prejudice and can be reissued by the municipality if it chooses to

Dismissals for lack of subject matter jurisdiction or failure to meet the statute of limitation deadline are with prejudice because the municipal court lacks jurisdiction. *See also* Chap. 13 (Judgment), Sec. 1.B.

D. Motions to Suppress Evidence: Defendant

1) Defendant may seek suppression of evidence due to lack of probable cause for arrest or reasonable suspicion for the stop or to suppress evidence because it was illegally found or seized. The prosecution has the burden of proof. If the evidence is suppressed it cannot be introduced at trial

2) For motions challenging warrantless blood draws see Chap. 10 (OWI/PAC/OWC), Sec. 12.F.

3) Motions to dismiss or suppress usually fall into 3 categories:

State v. Harris,
206 Wis. 2d 243
(CA 1996)
Knowles v. Iowa
525 U.S. 113 (1998)

a. The first category of challenges usually arises from a possession type violation such as: marijuana, concealed weapon, or open intoxicant in a motor vehicle. Defendant usually argues that the initial stop or arrest or the search and seizure of the contraband violated the 4th Amendment and that all evidence obtained should therefore be suppressed

State v. Longcore,
226 Wis. 2d 1 (CA 1999)
State v. Betow,
226 Wis. 2d 90
(CA 1999)
State v. Sherry,
2004 WI App 207
277 Wis. 2d 194

- The motion to dismiss and/or suppress based on the initial stop or arrest rests on the presumption that the officer had no legal basis to stop, e.g., no reasonable suspicion for stop or probable cause for the arrest. If there is no legal basis, for the stop, the evidence should be suppressed and not allowed at trial

State v. Bons,
2007 WI App 124
301 Wis. 2d 227
State v. Sherry,
2004 WI App 207
277 Wis. 2d 194

- The motion to dismiss and/or suppress based on the search and seizure rest on the presumption that the officer had no legal basis for the search or seizure of the item, e.g., no warrant, no consent, not a search incident to arrest or a vehicle search on probable cause. If there is no legal basis, the evidence should be suppressed and not allowed at trial

Arizona v. Gant,
129 S. Ct. 1710 (2009)
St v. Dearborn,
2010 WI 84
327 Wis. 2d 252
St v. Buchanan,
2011 WI 49
334 Wis. 2d 379

Note that a search of a vehicle, incident to the arrest of one of its occupants, is only permissible if the arrestee is within reaching distance of the vehicle's passenger compartment at the time of the search or the police have reason to believe that the vehicle contains evidence of the violation.

b. The second category usually involves defendants who have been cited for OWI. The standard contention of defendant or his/her attorney is that the initial stop of the vehicle and subsequent arrest was illegal, and the results of the field sobriety and other tests should be suppressed and not allowed at trial

State v. Busch, 217 Wis. 2d 429 (1998)

c. The third category encompasses all challenges to the devices used to administer breath/blood/urine tests and/or the performance of the operators/technicians

968.24

4) Lack of reasonable suspicion to stop

968.24
St v. Rutzinski 2001 WI 22, ¶ 14 241 Wis. 2d 729

a. A police officer may stop a vehicle if s/he has "specific and articulable facts" which, when filtered through the officer's experience, generate a reasonable suspicion that illegal activity of some kind may be occurring. This must be more than the officer's "inchoate and unparticularized suspicion or 'hunch'"

St v. Popke, 2009 WI 37 317 Wis. 2d 118

b. A police officer may conduct a traffic stop when under the totality of the circumstances they have reasonable grounds to suspect that a crime or traffic violation has or will be committed

c. The "specific and articulable facts" may come from the following driving situations:

St v. Rutzinski, 2001 WI 22 241 Wis. 2d 729

- An anonymous tip that a motorist is operating in an illegal and/or unsafe manner. More detailed information and greater willingness of the caller to be identified are crucial factors in determining whether the tip provides reasonable suspicion to stop

St v. Gammons, 2001 WI App 36 241 Wis. 2d 296

- An officer is unable to determine that a vehicle's registration is valid without pulling the car over for a closer look

St v. Anderson, 155 Wis. 2d 77 (1990)

- If a motorist upon seeing a marked squad car attempts to flee, such a flight upon sight always provides reasonable suspicion to stop

St v. Newer,
2007 WI App 236
306 Wis. 2d 193

- When an officer learns that the registered owner of a motor vehicle does not have a valid license, there is reasonable suspicion to conduct an investigative stop of the vehicle unless the officer can ascertain that the registered owner is not in fact the driver

St v. Flynn
92 Wis. 2d 427 (1979)

- Time of day is a factor to be considered in reviewing the totality of the circumstances. However, it is only one factor, and without more it is insufficient to provide an objective basis for a reasonable suspicion. Further, driving itself is an otherwise innocent activity, so this factor is afforded relatively little weight

St v. Iverson
2015 WI 101
365 Wis. 2d 302

- "[A] driver's actions need not be erratic, unsafe, or illegal to give rise to reasonable suspicion."

800.02(6)
St v. Lange,
2009 WI 49
317 Wis. 2d 383

5) No warrant or probable cause to arrest. An officer must have a warrant or probable cause to arrest defendant

345.22
St v. Paszek,
50 Wis. 2d 619 (1971)

a. "A person may be arrested without a warrant for violation of a traffic regulation if the police officer has reasonable grounds to believe that the person is violating or has violated a traffic regulation." Reasonable grounds are synonymous with probable cause

St v. Koch,
175 Wis. 2d 684, 701 (1993)

b. Probable cause to arrest for the violation of a traffic regulation is "that quantum of evidence which would lead officer to believe that the defendant probably committed a crime"

St v. Baudhuin,
141 Wis. 2d 642 (1987)

c. The vast majority of defendants who appear in municipal court for a traffic violation do so after a warrantless arrest. The stopping of a vehicle and detaining its occupants constitutes a 4th Amendment seizure

800.02(6)
St v. Iverson,
2015 WI 101
365 Wis. 2d 302

d. "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." A police officer may stop a vehicle if, based on the officer's observations, the officer has probable cause to believe that an occupant of the vehicle committed a civil forfeiture violation

6) Standard for a community caretaker stop:

   a. In addition to their crime detection/prevention role, police officers often give assistance to stranded motorists and individuals needing medical attention. In doing so, a police officer sometimes discovers information that provides reasonable suspicion that an ordinance was violated or a crime was committed. If further investigation establishes probable cause, then a warrantless arrest may take place

St v. Pinkard,
2010 WI 81
327 Wis. 2d 346

   b. When probable cause to arrest emerges from a community caretaker stop and the seizure is challenged, courts must determine whether the initial police contact under the guise of community caretaking was justified. In making this determination 3 factors are to be considered:

      - Was there in fact a seizure of the individual?
      - Was the police contact a bona fide community caretaker function?
      - Did the public need for police assistance outweigh the privacy interest of the individual?

St v. Kramer,
2009 WI 14
315 Wis. 2d 414

   c. Checking on a motorist whose vehicle was parked on the shoulder of the roadway with its hazard lights qualified as a bona fide community caretaking function because there was an objective and reasonable basis for the contact even though the officer also had subjective concerns about possible criminal activity

7) Arrest outside officer's jurisdiction—Under certain circumstances, a police officer may make a stop or a warrantless arrest outside the officer's jurisdiction. This can be any of the following:

175.40(2)
349.03(4)
Brookfield v. Collar,
148 Wis. 2d 839 (1989)
St v. Haynes,
2001 WI App 266
248 Wis. 2d 724

   a. Fresh pursuit. Continuous pursuit from the officer's municipality to another municipality based on a violation within the officer's municipality

66.0313(2)

b. Mutual aid: Observation of violation in another municipality may result in a stop and hold by an officer based on a mutual aid request (explicit or implicit) by law enforcement in that municipality. The issuance of citation must be by an officer from the jurisdiction in which the violation occurred

175.40(6)(a)

c. Emergency: Upon an emergency situation posing a significant threat to life or bodily harm, or upon a reasonable belief that a felony was committed. The issuance of citation must be by an officer from the jurisdiction in which the violation occurred

175.40(4)
340.01(25)

d. Common boundary: When a violation occurs on a highway that shares a common boundary between two jurisdictions, or on the entire intersection of such a highway and a highway located in an adjacent jurisdiction, a police officer from either jurisdiction may issue a citation for their own jurisdiction. An intersection is a place where two roads come together, and motorists either cross one or leave one to join the other. This does not extend an officer's jurisdiction outside the boundaries of the state

59.26(5)

e. Deputization: When a municipal officer has been deputized by the county sheriff, the officer can act anywhere in the county

City of Waukesha v. Gorz
166 Wis. 2d 243 (1991)
St v. Slawek
114 Wis. 2d 332 (1983)

f. Citizen's arrest: Any person, including a law enforcement officer, may make a citizen's arrest for a felony or breach of peace, including OWI, committed in their presence

E. Motions for Summary Judgment

State v. Schneck,
2002 WI App 239
257 Wis. 2d 704
State v. Ryan,
2012 WI 16
338 Wis. 2d 695

1) Such a motion is often filed in civil actions but is not available for forfeiture cases in municipal court

F. Motion for a Continuance at Trial

State v. Anastas,
107 Wis. 2d 270
(CA 1982)

1) Granting or denying such a motion is within the "sound discretion" of the trial judge

2) Such a motion can be made by either the prosecutor or defendant. The most common grounds are:

a. Unavailability of a witness

b. Defendant requests time to secure an attorney

c. Defendant or prosecutor is too ill to proceed

3) Factors to consider in the decision to grant or deny such a motion

a. Whether one or more continuances of the case have been previously granted to the requesting party

b. Whether the party claiming a witness is unavailable made a reasonable effort to secure their presence at trial

c. The convenience or inconvenience to the parties, witnesses, and the court

d. Whether the request is legitimate or dilatory

3. Pretrial Motion Procedure

A. Whenever you receive either a motion to dismiss or suppress, first make sure that the opposing party has been served

B. Although you can schedule a separate hearing to rule on the motion if circumstances warrant, most judges, in the interest of judicial economy, calendar a motion to dismiss or suppression to be heard during the trial

C. The motion is then heard prior to or at the trial

1) If the motion is granted and evidence is excluded, the prosecutor will need to evaluate whether the violation can be proved without evidence that has been suppressed

2) If the motion to dismiss or suppress is denied, then the case proceeds

6: CONDUCTING A TRIAL

1. Opening Procedure 6-1
2. Conducting the Trial 6-2
3. Trial Procedure 6-3
4. Presentation of Case: Prosecution and Defense 6-6
5. Amendments from the Bench 6-8
6. Rendering Judgment 6-8
7. Appeals 6-9
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Trial Tips Handout 6-A

1. Opening Procedure

A. Verify that your audio recording device is operating

B. Identify each case by name and/or case number, charge, date and appearances

For example, "We now call the case of the Town of _____ v. John Doe (citation number 5567). John Doe is charged with shoplifting in violation of Section 234 of the Town of ______ Ordinances. The defendant in person (or represented by counsel, Atty. Jones). The Town is represented by Atty. Smith."

SCR 60.04(1)(hm)
See Chap. 4 (Court Procedure), Sec. 7

C. If a defendant appears pro se, you should provide a thorough explanation of how the trial will be conducted

1) The explanation should cover direct, cross-examination and rebuttal testimony as well as the prosecution's burden of proof

800.08(3)
345.45

   a. The standard of proof for any person charged with any municipal ordinance violation is evidence that is clear, is satisfactory, and convinces the judge to a reasonable certainty. The standard of proof for conviction of any person charged with violation of any traffic regulation is evidence that is clear, satisfactory, and convincing. The Benchbook Committee interprets these standards as being identical

Sister Bay v. Hockers, 106 Wis. 2d 474 (1982)

b. There is no presumption of innocence in municipal court

2) Read the statute or ordinance under which the defendant was cited before the prosecution calls its first witness. You may also wish to identify the specific elements that must be proven for a conviction

D. Ask both parties if they are ready for trial

1) Although this may appear to be a mere formality, a pro se defendant may decide at the last minute that he or she really does not want to go to trial

2) If the defendant indicates that he or she is not ready, declare a short recess so that the defendant and prosecutor can discuss a plea agreement

3) Any agreement or amended charge the defendant and prosecutor propose is still subject to your approval

Recommendation

Put the agreement or amendment on the record or in writing

2. Conducting the Trial

A. Maintain a visibly independent posture at trial to underscore the impartiality of the judiciary and to avoid the appearance of impropriety

1) Although the prosecutor, police officers and/or witnesses may be well known to you, informal greetings and chit chat compromise your independence and must be avoided within view of litigants and witnesses

2) Defendant needs to see that you are truly independent and not a mere extension of the police department or prosecutor

3) *See also* Chap. 1 (Overview) and Chap. 16 (Judicial Ethics)

906.11(1)

B. Exercise reasonable control over all proceedings at trial

1) Make the interrogation and presentation effective for ascertainment of the truth

2) Avoid needless wastes of time

3) Protect witnesses from being harassed and/or embarrassed

C. Keep control of the case and the courtroom

1) Do not allow the prosecutor, defendant, or defense counsel to control the trial

2) Take notes on the testimony to ensure that you remember the facts when making your decision. Note-taking also helps to keep one's thoughts focused during the course of the trial

D. Have the current state statutes and municipal ordinances available during the trial

1) Refer to the statutes and ordinances as necessary

Resource 1

2) A handbook on the rules of evidence is a useful resource to have available on the bench

3. Trial Procedure

800.08(3)

A. The prosecution bears the burden of proof in all cases

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

800.08(1)

2) At trial the municipality MUST provide a prosecutor who is a licensed attorney in Wisconsin

B. Witnesses are to be sworn in by you or your designee

800.08(2)

1) Witnesses may be sworn in as a group or individually before taking the stand

2) It is preferable to swear witnesses individually because it places greater emphasis on the individual oath

Oath

800.08(2)(b)

Administered by the judge or designee in substantially 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?"

Affirmation

800.08(2)(c)

Administered by the judge or designee in substantially 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?"

C. Have witnesses state and spell their names for the record

D. Have a flipchart or whiteboard available in the courtroom

1) To ensure that the audio recording of the proceedings accurately reflects the testimony relative to any diagram, instruct witnesses to be as precise as possible in their reference to the diagram

2) Clearly identify all exhibits and drawings for the record

906.15

E. You may order that witnesses be sequestered

1) Either side may bring a motion to sequester witnesses or the court may, on its own, order it

2) Such an order directs witnesses to wait outside the courtroom and not communicate with each other

3) The purpose of sequestering witnesses is to prevent a witness from shaping his or her testimony based on the testimony of other witnesses

4) The court may not exclude:

   a. A party who is a natural person

   b. An officer or employee of a party which is not a natural person designated as its representative by its attorney

c. A person whose presence is shown by a party to be essential to the presentation of the party's cause

906.11

5) The court has the authority to determine the order in which witnesses will testify

St v. Copeland, 2011 WI App 28 332 Wis. 2d 283

6) The court has the authority to prohibit an attorney from sharing the testimony of a prior witness with a nonparty witness who has yet to testify

906.14

F. You may ask questions of a witness to help clarify his or her testimony

1) Any examination you conduct should come AFTER the parties have completed <u>all</u> the examination of the witness

2) Give both sides the chance to follow up on your questions

906.14(1)

3) The judge may, on the judge's own motion or at the suggestion of a party, call witnesses. Both sides are entitled to cross-examine witnesses thus called

NOTE: As the Supreme Court noted in *State v. Carprue*, 2004 WI 111, 274 Wis. 2d 656, there is a fine line between a judge's proper role in calling an interrogation of a witness, an interrogation that may be perceived as aiding the prosecution, that judges should exercise this authority with great caution.

800.085

G. The court may permit oral testimony communicated via telephone or live audiovisual means if

800.085(1)

1) Stipulated to by the parties, or

800.085(2)

2) The court finds good cause after considering:

a. Whether any undue surprise or prejudice would result;

b. Whether the proponent has been unable, after due diligence, to procure the physical presence of the witness;

c. The convenience of the parties and the proposed witness, and the cost of producing the witness in relation to the importance of the offered testimony;

d. Whether the procedure would allow full effective cross-examination, especially where availability to counsel of documents and exhibits available to the witness would affect such cross-examination;

e. The importance of presenting the testimony of witnesses in open court, where the finder of fact may observe the demeanor of the witness, and where the solemnity of the surroundings will impress upon the witness the duty to testify truthfully;

f. Whether the quality of the communication is sufficient to understand the offered testimony;

g. Whether a physical liberty interest is at stake in the proceeding;

h. Financial and physical limitation on the ability of the defendant or the counsel of the defendant to be physically present; and

i. Such other factors as the court may, in each individual case, determine to be relevant

800.08(4)
See Chap. 11 (Evidence)

H. All evidentiary rulings in a municipal court trial must be based on the Wis. Rules of Evidence, Chaps. 901–911. It is the judge's job to determine what weight should be given to each piece of admissible evidence

4. Presentation of Case: Prosecution and Defense

800.08(1)

A. The prosecutor calls and questions the municipality's witnesses

1) In order to prevent intimidation of witnesses, the prosecutor should be seated and maintain a reasonable distance from witnesses except when exhibits require closer contact

906.11(3)
See Chap. 11 (Evidence), Sec. 5.B.

2) The prosecutor may call the defendant as an adverse witness and interrogate him or her through leading questions

Village of Bayside v. Bruner, 33 Wis. 2d 533, (1967)

3) A defendant who is called adversely may only "take the Fifth" to avoid testifying in regard to matters that could expose him or her to criminal liability

905.13(4)
Grognet v. Fox Valley Trucking Service, 45 Wis. 2d 235 (1969)

4) If the defendant refuses to testify or asserts his or her Fifth Amendment privilege, the court may draw an adverse inference from the defendant's actions

B. The defense is entitled to cross-examine the municipality's witnesses

906.11(2)

1) Cross-examination may be conducted on "any matter relevant to any issue in the case, including credibility." The court may limit testimony on "matters not testified to on direct examination"

2) In order to prevent intimidation of witnesses, the defendant or defense counsel should be seated and should maintain a reasonable distance from witnesses except when exhibits require closer contact

906.14

3) You may ask questions of the municipality's witnesses after cross-examination or, if none, after direct examination by the prosecutor

C. After cross-examination, you should allow an opportunity for redirect, recross, or rebuttal testimony

D. At the conclusion of the municipality's case, you may dismiss the case either on your own motion or on motion of the defendant if the municipality failed to prove any of the elements of the violation upon the facts and the law

800.08(1)

E. If the case is not dismissed, the defense then calls and questions its witnesses

1) The defendants may choose not to testify on their own behalf. *But see* Sec. 4.A.2)–4)

2) If the defendant testifies and does not have an attorney, instruct him or her to relax and say what he or she wish to about the case

F. The prosecutor cross-examines defense witnesses

1) To prevent intimidation, the prosecutor should be seated, maintaining a reasonable distance from witnesses except when exhibits require closer contact

906.14

2) You may ask questions of defendant and/or witnesses after cross-examination

3) If there is no cross-examination by the prosecutor, you may ask questions after direct examination by the defense

G. After cross-examination, you should allow an opportunity for redirect, recross, or rebuttal testimony

H. At the close of the defense testimony, the municipality, if it wishes, can call or recall witnesses to rebut evidence offered by the defendant

I. At the close of the evidence, give the defense and the prosecution the opportunity to present closing arguments or to summarize their cases

5. Amendments from the Bench

800.025

A. At trial, the court may amend a citation or complaint to conform to the evidence

1) Both parties must be given an opportunity to present evidence on the amended charge

800.09

6. Rendering Judgment

A. After closing arguments (if closing arguments are permitted by the court), you may

1) Render your decision immediately

2) Call a short recess so you can formulate your decision

3) Take the case under advisement and:

Recommendation

a. Issue a written decision within 30 days or

b. Issue a decision after the parties have submitted written briefs upon any unresolved issue or issues

B. Relate your findings of fact to the ordinance or statute under which the defendant was cited

1) Applies to oral decisions

2) Applies to written decisions

C. If you find the defendant not guilty, immediately dismiss the case

D. **If you find the defendant guilty, you may pass sentence immediately or invite the parties to make a sentencing recommendation**

   1) If the prosecuting attorney makes a recommendation, be sure to give the defendant an opportunity to respond before you actually pass sentence

800.14

7. Appeals

A. **There is no statutorily mandated obligation to inform an unrepresented defendant of the right to appeal an unfavorable decision in municipal court**

   1) Good practice is to orally inform all pro se defendants of their right to appeal

Form K, Kb

   2) Better practice is to provide each defendant found guilty at trial with a written explanation of his or her appeal rights

   3) An appeal must be in writing and must be filed with the municipal court, along with any required fees, within 20 days of the judgment or decision

B. **You may wish to inform defendants who are found NOT guilty that the municipality has the right to appeal your decision**

C. **See Chap. 13 (Judgment), Sec. 10, for discussion of appeals**

8. Requests for a Transcript or Recording

800.14(5)

A. **If neither party requests a new trial, the statute states that "an appeal shall be based upon a review of the proceedings." It then becomes the responsibility of the circuit court judge to determine whether to order the preparation of a transcript by any qualified court reporter**

19.35(3)

B. **Anyone may request a copy of a recording or a copy of a preexisting transcript. Because this is a public record, except for non-traffic ordinance cases involving juveniles, a court must fulfill such requests**

TRIAL TIPS
MILWAUKEE MUNICIPAL COURT

Do I Need An Attorney?

If you decide to take your case to trial, an attorney will not be provided for you by the court. You may, of course, choose to hire an attorney or represent yourself. If you choose to represent yourself, please read the following information carefully.

What Happens At A Trial?

This is a formal hearing where an Assistant City Attorney (the "City") must prove its case against you by ***clear, satisfactory and convincing evidence.*** (This is not the same as having to prove the case beyond a reasonable doubt.)

As part of its case, the City will likely call witnesses. After each testifies, you will have the right to cross-examine them.

After the City finishes presenting its case, you will then have the chance to testify for yourself, call your own witnesses and introduce evidence. Like you did, the City then has the right to cross-examine your witnesses.

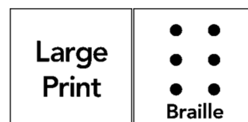
After both the City and you have finished, you will each have a chance to make a closing argument. The Judge will then consider the cases that have been made, assess the evidence and determine whether you are guilty or not guilty.

What Should You Do To Prepare For A Trial?

1. *How Will You Appear for Trial?* – You may choose to appear for trial by video or in person. If you choose to appear by video, you will need a tablet, laptop or computer with a webcam – you will not be able to use a smartphone because it will not allow you to see all of the participants (Judge, City, witness) at once and will not allow you to use the whiteboard feature on such a small screen.

2. *Are There Witnesses You Want to Testify?* – A witness is someone who saw or heard the incident when it occurred. If you have a witness, you need to make sure they will be available on the trial date. Do not bring in letters or statements written by the witness. They may be "hearsay" and prevent the City from cross-examining that person, and more than likely will not be admitted as evidence. If you aren't sure a witness will appear voluntarily, you have the right to subpoena them. If you decide to subpoena a witness, the Court will provide a Subpoena form – it is available on our website or at Window 1. Be sure to get the form at least two (2) weeks before your trial date to allow enough time for proper service.

This material is available in alternative formats for individuals with disabilities upon request. Please contact the ADA Coordinator at ADAcoordinator@milwaukee.gov, (414) 286-5948, TTY: 711. Provide a 72-hour advance notice, 7 days for Braille, to ensure accommodation of request.



3. *How Will Your Witnesses Appear for Trial?* – You are responsible for making sure your witnesses know the trial date and time. You are also responsible for making sure they have the necessary information to appear either by video or in person. Once you let the Court know that you will be calling witnesses, we can provide you with a form called Information for Witnesses, which you must then get to them.

4. *Photos, Maps and Drawings* – If you think such evidence will help the Judge understand your case, bring them to court. However, you or whoever took, printed or drew the materials should be present at the trial and prepared to testify about how they were created.

5. *Your Own Testimony* – If you plan to testify for yourself, think about what you are going to say beforehand. If you do testify, the City will have the right to cross-examine you. If you made a statement to the police or others, those statements can be used against you at trial.

6. *Police Reports and Witness Statements* – If you want to have copies of any statements you made, other witness statements or the police reports to help you prepare for trial, you should file a Motion for Discovery in person with the court no later than thirty (30) calendar days after your initial appearance. Motion for Discovery forms are available on the Court's website or at Window 1.

Will I Have To Pay More Than The Amount On The Citation If I Am Found Guilty?

Possibly. First, the Assistant City Attorney may request payment for such things as witness fees ($7.00 per citizen witness). The fine amount on your citation is not the maximum fine in most cases. The Judge has the authority to impose a higher fine if he or she deems it appropriate. The fine can also be lower. Finally, if you do subpoena witnesses, you will not be reimbursed for these expenses even if you are found not guilty.

What If I Need A Postponement?

If you have good cause to delay your trial date, you may ask the Judge for an adjournment. You must do so at least ten (10) business days before the trial date. The Judge will then decide whether or not to grant your request.

If I Am Found Guilty, Can I Appeal?

If you are found guilty after a trial, the Judge will notify you of your appeal rights. The appeal must be filed within twenty (20) calendar days after the Judge's decision and will be heard in the Milwaukee County Circuit Court either before a jury or a judge. You must file a written notice of appeal (the court has forms) and pay an appeal fee.

If I Change My Mind, Can I Change My Plea Before The Trial?

You may change your plea to guilty or no contest by contacting the court at least ten (10) business days in advance of your trial date. You may do so by mail at Milwaukee Municipal Court, 951 N James Lovell St, Milwaukee, WI 53233; by fax at (414) 286-3615; or in person.

Para recibir una versión de este
documento, en español llame
(414) 286-3800

7: NON-TRAFFIC ORDINANCE CASES

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2. Zoning and Building Code Violations 7-3
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7. Other Authorized Non-Traffic Ordinances 7-8

1. Creating Municipal Ordinances

Municipal courts have jurisdiction only over non-criminal, municipal ordinance violations. This includes all non-criminal traffic offenses, including first offense drunk driving, and many "quasi-criminal" violations that could be charged as either a criminal or municipal offense, such as disorderly conduct, retail theft, vandalism, etc. Offenses committed by juveniles and young adults, such as underage drinking, curfew violations, and truancy, may make up a significant portion of the typical municipal court caseload.

66.0103(1)

A. The governing body of any city, town, or village may enact ordinances and authorize the preparation of a code or part thereof as general code of ordinances of such municipality

66.0107(2) & (3)
City of Janesville v. Walker,
50 Wis. 2d 35 (1971)
County of Fond du Lac v. Muche
2016 WI App 84
372 Wis. 2d 403

1) **A strictly conforming ordinance** is one that prohibits conduct that is exactly the same as conduct prohibited by a state statute. Ordinances required to be in strict conformity with state statutes are those where regulation of conduct must be uniform throughout the state. Strictly conforming ordinances may not have penalties in excess of state penalties

Examples: traffic and juvenile alcohol ordinances

2) **A general statutory counterpart ordinance** means an ordinance that prohibits conduct that is the same as or similar to conduct prohibited by state statute but **does not include** motor vehicle code statutes

Example: disorderly conduct ordinances

3) **A non-statutory counterpart ordinance** means an ordinance that prohibits conduct that is different from and not similar to conduct prohibited by state statute

Examples: noise ordinances; squealing tires ordinances; regulatory ordinances

B. A municipality's power to enact ordinances flows from several sources

Wis. Const. art. XI, § 3

1) Cities and villages have "home rule" power to enact legislation in areas of paramount local concern where no legislative enactment of statewide concern and uniform application exists

Example: enacting a local curfew ordinance is permissible under home rule power, because curfew has historically been treated as a local rather than a state matter

62.11(5)
61.34(1)
60.10(2)
60.22(3)
Zwiefelhofer v. Town of Cooks Valley, 2012 WI 7, ¶ 25, 338 Wis. 2d 488

2) Municipalities may legislate for the government and good order of the municipality for its commercial benefit, or for the health, safety, welfare, and convenience of the public, subject to the following conditions:

Wis Env't Decade v. DNR,
85 Wis. 2d 518 (1978)

a. The legislature has not expressly withdrawn power from the municipality to legislate in that area

b. The ordinance does not conflict with existing legislation

Volunteers of America v. Brown Deer, 97 Wis. 2d 619 (1980)

c. The ordinance does not defeat the purpose or go against the spirit of state legislation. For example, local ordinances governing running away and uncontrollable behavior are not lawful because they conflict with and defeat the purpose of existing statutes which provide for treatment and services for these behaviors in lieu of punitive sanctions

NOTE:

Whether an ordinance is valid and meets the three conditions above is a matter for judicial interpretation. *See*, Chap. 12, Constitutionality, for a full discussion

800.093
799.01(1)(d)

C. A municipal court may order restitution up to the small claims limit (currently $10,000) for non-traffic municipal ordinances or an ordinance authorizing restitution under § 346.65(2r) (OWI related)

See Juvenile Chapter for Restitution, Chapter 8, Sec. 4; *see also* Chapter 13, Sec. 5

66.0113
800.01(1)

D. In those cases involving a municipal ordinance, jurisdiction to proceed is initiated by the use of a citation, or summons and complaint

You should have a copy of the Revised Uniform Deposit and Bail Schedule for Conservation, Environmental Protection, Boating, Snowmobile, ATV/UTV, and Captive Wildlife Violations available online here: https://www.wicourts.gov/publications/fees/index.htm

755.045

E. Enforcement

1) No authority to issue an injunction

2) No authority to euthanize animals

3) No authority to confine or order removal of animals

4) No authority to order blood inspections in OWI/OCS matters

5) No authority to grant equitable relief

66.0119

6) Authority to issue special inspection warrants

7) Authority to issue civil warrants to enforce under ch. 800

2. Zoning and Building Code Violations

62.23(7)(am), 60.61, 61.35

A. Municipalities may adopt zoning ordinances

755.045(1)

1) Municipal courts have jurisdiction over violations

62.23(7)(f)
60.61(6)
60.62(3), 61.35(1)

2) The punishment for a violation of these ordinances is a forfeiture

Town of Wayne v. Bishop
210 Wis. 2d 218
(CA 1997)

3) Attorney fees are not costs of prosecution

62.17

B. Municipalities may adopt ordinances to enforce building codes

1) Municipal courts have jurisdiction over violations

2) Forfeitures may be imposed for violations

3) Municipalities may adopt ordinances to comply with the state uniform dwelling code (§ 101.65), the manufactured building code (§ 101.76), and inspection of electrical construction code (§ 101.86)

66.0119
Form A

4) You may issue special inspection warrants to persons authorized under by statute or your ordinance with powers or duties re: inspection of property, including buildings, and their premises and contents

66.0119(2)

a. Special inspection warrants must be issued for inspection of personal or real properties that are not public buildings or are part of a public building that is not open to the public

66.0119(2)
State v. Jackowski, 2001 WI App 187
247 Wis. 2d 430

b. Before you may issue the warrant, the authorized inspector must show by sworn affidavit that consent to enter for inspection purposes has been refused or why consent cannot be obtained

c. The warrant should state the specific areas to be inspected and that consent to enter was refused or why consent could not be obtained

Redevelopment Authority v. Uptown Arts & Ed., 229 Wis. 2d 458 (1999)

d. You must indicate a reasonable time period within which the warrant should be executed

5) The issuing courts should require a certified written report from the peace officer regarding the service of the warrant and findings made

3. Boating

30.77(2)

A. Municipalities must adopt ordinances which are in strict conformity with §§ 30.50–30.71 or rules of the DNR in order to have jurisdiction

800.02(2)(b)

B. The citation form in § 23.54 must be used for boating

30.77(3)

C. Municipalities may adopt regulations not contrary to or inconsistent with Chap. 30 governing the equipment, use, or operation of boats or other activity regulated by §§ 30.60–30.71

1) Proposed regulations must be submitted to DNR at least 60 days prior to final action by municipality governing body

30.77(4)

2) All local regulations adopted must be prominently posted at all public access points within the municipality's jurisdiction and also filed with the DNR

D. You should consider the following in determining excessive speed by boat violators:

1) Defendant's type of craft

2) Amount of wake or potential wake damage that the officer used to determine the violation

3) Reliability of the boat speedometer and

4) Officer's radar reading or estimation of speed

30.66

5) Whether the speed also violates the slow no-wake restrictions

30.681

E. Intoxicated boating

1) Elements of this offense are:

a. No person may operate a motorboat under the influence of an intoxicant

b. No person may operate a motorboat with a PAC of 0.08% or more by weight of alcohol in his/her blood, or 0.08 grams or more of alcohol in 210 liters of his/her breath

30.80(6)(a)

2) Penalties for conviction of first offense intoxicated boating are:

a. Forfeiture, and

b. Mandatory alcohol assessment, and

c. Mandatory completion of a boating safety course

NOTE: If defendant has a valid certificate indicating satisfactory completion of a boating safety course, the judge must revoke that certificate and require defendant to complete a new boating safety course

F. Absolute sobriety—Boating

1) Absolute sobriety is required of any person under the legal drinking age who is operating a motorboat

30.80(6)(a)6. 2) Penalties—forfeiture of not more than $50.00

938.343 **G. *See*, Juvenile Chap. 8, Section 3, Dispositions**

350.101
23.33

4. Snowmobiling and ATV/UTV Offenses

A. Your municipality must adopt ordinance pertaining to snowmobiling and ATV/UTV offenses in order to have jurisdiction. You should become familiar with the state laws, DNR rules, and local ordinances

350.10(1)(c) **B. Snowmobile operators must comply with all stop, yield, and other regulatory signs along snowmobile routes and trails**

350.10(1)(gm) **C. Speed limit during hours of darkness shall not exceed 55 mph (except when competing in a sanctioned race)**

D. Intoxicated snowmobiling and ATV/UTV operation are prohibited (.08% PAC)

350.11(3) 1) First offense punishable by forfeiture

23.33(13)(e) 2) Mandatory alcohol assessment

3) Absolute sobriety required for drivers under 19

4) Intoxicated snowmobiling law, generally, applicable to all property, whether public or private, EXCEPT, on private property, the intoxicated snowmobiling law only applies if there is an accident with personal injury and the person operating the snowmobile is doing so without the landowner's permission

938.343(8) **E. See, Juvenile Chap. 8, Section 3, Dispositions**

5. Animal Offenses

A. Municipalities can adopt ordinances regulating animals

173.23(3)(a)
755.045(1)(b)

B. Municipal courts have jurisdiction over violations of these ordinances, the penalties for which must be only forfeitures. The municipality may file a petition in circuit court to order killing, removal, or confinement of the animal. These remedies are not available in municipal court

6. Smoking Violations

101.123

A. Smoking is prohibited in all workplaces and other prohibited places

1) Municipal courts have jurisdiction over violations

2) The punishment for a violation of this statute is a forfeiture

B. Workplaces include bars, hotels, bowling alleys, and restaurants, but not private residences, cigar shops existing prior to 6/3/2009, and tribal casinos

101.123(4m)

1) Municipality may adopt ordinances that are stricter than the state statute, only for property under municipality's own control (parks and public property)

101.123(1)

2) Businesses can set up "outdoor" areas where smoking can be allowed. Look at definitions of "enclosed place" and "substantial wall"

C. Penalties for violation of smoking ban

101.123(8)

1) Persons who smoke in prohibited places pay forfeiture of not less than $100 nor more than $250 for each violation

101.123

2) Businesses who allow violation of smoking ban issued a warning for first offense, but each subsequent violation is a forfeiture of $100, but no more than one penalty per day

125.12(1)(c)

3) Arrest or conviction for violation of smoking laws may not be considered in action to revoke, suspend, or refuse to renew alcohol beverage license or permit

7. Other Authorized Non-Traffic Ordinances

66.0431

A. An ordinance prohibiting an operator from leaving keys in a parked motor vehicle

66.0107(2)

B. An ordinance providing a forfeiture for disorderly conduct or disturbing the peace

1) This ordinance should be in strict conformity with the language of § 947.01

947.01

2) Elements of the offense are:

a. In a public or private place

b. Violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct and

c. Under circumstances in which such conduct tends to cause or provoke a disturbance

C. An ordinance for disorderly conduct with a motor vehicle

1) Means engaging in violent, abusive, unreasonably loud, or otherwise disorderly conduct with a motor vehicle

2) Examples are unnecessary, deliberate, or intentional spinning of wheels, squealing tires, revving engine, blowing the horn, causing a backfire, or causing the vehicle, while beginning to move or in motion, to raise one or more wheels off the ground

D. An ordinance against issuance of worthless check

1) Should be in strict conformity with the language of § 943.24 entitled, "Issue of Worthless Check"

2) Elements of this offense are:

a. Proof that, at the time of issuance, the person did not have an account with the drawee; or

b. Proof that, at the time of issuance, the person did not have sufficient funds or credit and that the person failed within 5 days after receiving notice of nonpayment or dishonor to pay the check or other order; or

c. Proof that, when presentment was made within a reasonable time, the person did not have sufficient funds or credit with the drawee and the person failed within 5 days after receiving notice of nonpayment or dishonor to pay the check or other order

NOTE:

This section does not apply to a check that is post-dated or given as payment for a past debt, except a payroll check

E. Ordinance prohibiting the possession of marijuana

1) There is no longer a restriction on the quantity of marijuana that may be regulated

2) If there is more than 25 grams or if the defendant has a prior criminal conviction for possession of THC, the court only has jurisdiction if the charges were first submitted to district attorney and district attorney dismissed the case or declined to prosecute

66.0107(1)(bp)
961.573(1) & (2)

F. An ordinance prohibiting the possession of drug paraphernalia

1) For those under 17 years of age, they are subject to disposition under § 938.344(2e)

G. An ordinance regulating junk vehicles

60.22
61.34
62.11

1) Adopted under power to regulate for the health, safety, and welfare of the public

City of Janesville v. Garthwaite,
82 Wis. 2d 866, 869 (1978)

2) Regulates the upkeep of private property, not motor vehicle operation

8: JUVENILES

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1. Jurisdiction

938.17(2)(cm)

YOUR MUNICIPALITY MUST PASS AN ORDINANCE ADOPTING THE RELEVANT PARTS OF CHAPTER 938 (§§ 938.343; 938.344; AND 938.355(6)(d)2. to 5.) THAT GRANT THE AUTHORITY TO ENTER ORDERS AND SANCTIONS AGAINST JUVENILES.

A. Definitions

938.02(1)

1) "Adult" for municipal ordinance cases, age 17 and older

938.02(2m)
938.17(2)

2) "Court" when used without further qualification in Ch. 938, means circuit court, except when used in reference to a juvenile subject to § 938.17(2), means a municipal court

938.02(10m)

3) "Juvenile" for municipal ordinance cases, age 16 and younger

938.02(13)
891.40
767.803

4) "Parent" a biological, adjudicated, or adoptive parent, or a husband who consented to the artificial insemination of his wife. If the juvenile is a nonmarital child who is not adopted or whose parents do not intermarry, a parent includes a person acknowledged under § 767.805 or similar law of another state

NOTE:

This is important for notice requirements stated in this chapter.

938.17(2)

B. Municipal courts have jurisdiction in juvenile cases as follows

1) Traffic cases: ages 12 through 16; exclusive jurisdiction

938.17(2)(a)1.
118.163(1m) & (2)
118.15
938.13(6)

2) Truancy: ages 6 through 17; jurisdiction is concurrent with circuit court. Habitual truancy: ages 6 through 17; jurisdiction is concurrent with circuit court even if a juvenile in need of protection and services based on habitual truancy case is also filed in circuit court. Municipal court should only see juveniles who are 12 and older; younger offenders are in circuit court. However, 17 year old should be seen in an adult court

938.17(2)(a)1.
125.02(8m) & (20m)

3) Underage alcohol/Chapter 125 cases: ages 12 through 20; jurisdiction. However, 17 to 20 year olds should be seen in adult court and do not require confidentiality or a closed hearing

938.17(2)(a)1.
254.92

4) Other cases: ages 12 through 16, except age 17 for a few offenses such as possession of tobacco products. But if age 17 or older, you do not need a closed hearing and should be in adult court

938.13, 48.13

5) Municipal courts do not have jurisdiction over runaways, uncontrollable children, abused or neglected children or children who commit criminal law violations. Such cases may be referred to circuit court, social services, the district attorney, or corporation counsel for the county

State v. Annala
168 Wis. 2d 453, 463 (1991)

6) The jurisdiction of the juvenile court is determined by the individual's age at the time charged, not the individual's age at the time of the alleged offense. So if the juvenile is charged with an ordinance violation while 16 and younger—juvenile court. If charged when 17 and older—adult court—regardless if he or she was 16 or younger at the time of the committing the ordinance violation

2. Procedure

938.17(2)(c)
800.02

A. Citation

1) Form is the same as adults

   a. Report alcohol and traffic violations to DOT

2) Providing notice to parents is the issuing agency's (usually the police department) obligation, not the court's

   a. For Chapter 125 (underage alcohol cases) and Chapter 961 (drug possession and paraphernalia cases) where the juvenile is between 12 to 15 years old. the issuing agency must notify the juvenile court intake worker (your court clerk) by giving your clerk a copy of the citation. The issuing agency must notify parent(s) by mailing or delivering a copy of the citation within 7 days of any violation

b. In all other cases, the issuing agency must notify the parents or legal guardian, but it does not need to be a copy of the citation. Usually a letter informing the parents of the charge(s) will be the method used, though the statute is not specific

938.17(2)(a)3.

3) The citation should require the juvenile to appear in court or to make a deposit (or stipulation and deposit) instead of an appearance

B. Mandatory Appearance

938.17(2)(cg)

1) After a citation is issued, if the juvenile and his or her parent, guardian, or legal custodian do not voluntarily appear, the municipal court may issue a summons requiring them to appear at any hearing

   a. Must use summons procedure in § 938.273 and the municipality pays expenses, including Chapter 885 fees. The procedure includes service by certified mail of the summons 7 days before the hearing if it is impracticable to serve the summons personally

938.28

   b. If any person summoned fails without reasonable cause to appear, you may use contempt procedure in § 785.06 (*See* Chap. 4 Court Procedure)

938.28

   c. If a summons cannot be served or if the person served fails to obey the summons or if it appears service would be ineffectual, you may issue a capias (warrant) for the juvenile and parent/legal custodian/guardian to appear

NOTE:
938.20

If you use a capias (warrant), the juvenile will be detained briefly in juvenile reception center and likely released. Better to order the capias returnable only during court sessions, so the juvenile is brought to court for further proceedings

938.344(2g)

2) For Chapter 125 (alcohol cases) and Chapter 961 (drug paraphernalia cases) violations, you cannot order a juvenile to attend an alcohol or drug program unless the juvenile agrees. Therefore, some type of appearance or written agreement is required. Possible to do by telephone (*See* Sec. 4, below)

938.342(1m)(b)

3) For habitual truancy hearing, you cannot order parent/guardian or legal custodian into counseling unless he or she has had an *opportunity* to be heard. The notice shall be personally served at least 10 days prior to the hearing. If parent is notified of hearing but fails to appear, you may order counseling

Recommendation

Do not order counseling or AODA treatment unless the person subject to the counseling or treatment has actually appeared, as compliance is not likely without actual appearance

800.085

4) If the parties consent to an appearance by telephone or interactive video with audio, any hearing under Ch 800 may be conducted in that manner. A party, witness, or interpreter may appear by telephone or audiovisual means if the parties agree, or if the court finds good cause after considering the factors under § 807.13(2)(c)

C. Failure to Appear

See also B. above

938.237(3)
345.18
938.237
938.30

1) You may default if a deposit has been made. Otherwise a summons shall be issued requiring the juvenile to appear for a plea hearing at a later date and time. For the summons procedure, see Sec. B.1)a. above

938.237

2) You may reject a stipulation and/or deposit and issue a summons requiring the juvenile and his or her parents, guardian or custodian to appear

938.28

3) You may issue a capias (warrant)—*See* B.1)c. above

938.343(2)

4) In all cases where you impose a forfeiture, you must find that juvenile has the ability to pay within 12 months

5) If the juvenile did not appear, it may be reasonable to assume a juvenile can pay a reasonable amount. Be careful with high forfeitures

938.30(1)

D. Juvenile's Plea

1) Plea must occur within 30 days of issuing citation (or 45 days if joint court or 10 days if juvenile is in custody)

938.30(2)
938.243

2) Court *must* advise juvenile of rights *prior* to the plea hearing. *See* Form L

938.30(8)

3) <u>If plea is no contest/guilty/admission</u>, court must address the juvenile and parties present personally to determine:

   a. Voluntariness of plea and factual basis for the charge

   b. That no promises or threats were made

   c. That juvenile understands that a lawyer may discover defenses or mitigating factors

   d. That the juvenile understands the nature of the alleged act and possible dispositions

938.30(7)

4) If the plea is not guilty and it is not resolved that day with a plea agreement that is approved by the court then the court must set a date for the trial ("hearing") within 30 days of the plea (20 days if juvenile is in secure custody)

938.315(1),(2)

You may find good cause to extend the time frame for statutory reasons. Use this sparingly because speedy resolution is important in juvenile cases, as evidenced by the statutory time restrictions

E. Trial and Other Hearings

938.299

1) Follow § 800.08 procedures, except maintain confidentiality for defendants who are under 17 years of age. The trial is closed to general public and only persons that have a legitimate right to be present are allowed

F. Multiple Juveniles

1) Initial appearances and dispositional hearings

Recommendation

Hold separate hearings for juveniles to avoid disclosure of sensitive information or a valid safety concern

2) Trials and restitution hearings

   a. May be heard together

Recommendation

b. Allow each juvenile the opportunity to provide reasons for separate hearings, such as a valid safety concern or disclosure of sensitive information

3. Dispositions/Sentencing

938.37(3)
814.65, 346.655(1)

A. Fees and Costs

938.37(3)

You may assess the same costs, fees, and surcharges against juveniles ages 12–16 as you would against adults, except for witness fees and the driver improvement surcharge in absolute sobriety cases

B. Ability to Pay

938.343(2)
938.342
938.344

If you order a forfeiture to be paid, you shall make a finding that the juvenile has the ability to pay it within 1 year, except for truancy, underage alcohol violations, and drug paraphernalia cases

938.17

C. Traffic Violations

938.343

1) Same penalties as adults, plus you can order the additional sanctions listed under 3.D for nontraffic violations if your municipality has an ordinance that has adopted the sanctions listed under Ch. 938. The sanctions for OWI/PAC/OCS and refusals are the same as they would be for adults. (*See* Chap. 10 (OWI) for those sanctions)

346.93
343.30(6)(b)

2) Open intoxicants in a motor vehicle:

a. An underage person convicted of having open intoxicants in a motor vehicle may have their driver license suspended for 30 to 90 days and shall have their license suspended for not more than one year for a second conviction within the same year and not more than 2 years for a 3rd conviction within the same year

346.63(2m)

3) Absolute sobriety violations:

a. Persons under 21 years of age cannot drive or operate a motor vehicle with any alcohol in their system. If they are operating a motor vehicle while impaired by drugs or alcohol or with a PAC of .08% or higher, then it is an OWI case

343.30(1p)
346.655(1)

b. Mandatory penalty of $200 forfeiture and mandatory 3-month suspension. DOT will **not** automatically suspend so you must notify them. You cannot order a driver improvement surcharge. If there is a passenger under the age of 16 in the vehicle it is a criminal case and should not be in municipal court

346.63(2m)
343.305(10)(em)

c. Refusal to take a breath or blood test is a separate charge that can result in a revocation for 6 months, but does not require the underage person to do a drug and alcohol assessment or a driver safety plan

346.63(2m)
343.10(1)

d. Immediately eligible for occupational license

343.23(3)

e. DOT must keep records for at least 24 months

- Do NOT count an absolute sobriety violation as a prior offense for other Chapter 125 alcohol violations

4) For **Graduated Licenses**, *see* Chap. 9 (Traffic Cases)

938.17(2)(d)

D. Non-traffic and Other Cases

—including those "related to the use or abuse of alcohol or drugs" (Not including alcohol violations under Chapter 125, truancy and habitual truancy cases, and boating/fishing/hunting violations)

938.343(2)

1) Impose a forfeiture:

a. Maximum amount is the same as it would be for an adult charged with the violation unless your ordinance sets a lower amount for a juvenile offender. But the maximum is $50 plus allowable costs if the violation applies to juveniles only (e.g., curfew, tobacco)

938.343(2)

b. Where a forfeiture is ordered, you must find that the juvenile has the ability to pay within 12 months

938.343(1)

2) Counsel juvenile, parent/guardian from the bench

938.343(3)
938.34(5g)

3) Supervised work program or other authorized community service hours

938.343(10)
938.547(4)

4) If the violation is related to alcohol or drug use (i.e., disorderly conduct where person was impaired by alcohol), you may order an alcohol assessment and any outpatient treatment recommended by the assessment; or a court-approved alcohol or drug abuse education program, the court must specify and approve the treatment facility and completion date for assessment

938.343(2m)

5) Teen court—the teen court must meet certain statutory conditions

938.343(4)

6) Restitution and/or order the juvenile to make repairs or perform services for the victim for any damages or injuries caused by the juveniles

a. The victim must agree to allow the juvenile to make repairs or perform services. If the juvenile objects to the amount of damages claimed, the juvenile is entitled to a hearing on the question of damages before the amount of restitution is ordered. The victim must be notified about the restitution hearing date

b. An order requiring payment for repairs or restitution shall include a finding that the juvenile alone is financially able to pay or physically able to perform the services

E. Alcohol, ID, and Chapter 125 Violations

***See* chart at 8-A for details of sanctions that can be ordered**

938.344(2), (2b) & (2d)
343.30(6)
125.07(4)
125.09(2)

1) Underage alcohol sanctions

a. Forfeiture

343.30(6)
343.30(4)

b. License suspension (Optional UNLESS a second or more offense within a 12-month period AND a motor vehicle was involved. Then, mandatory for not more than 2 years). If the court suspends a license, the court may take the license and, if the court takes it, must destroy it. If the license is suspended or revoked prior to this suspension or if the juvenile does not currently have a valid license, the suspension is effective when the juvenile is first eligible for issuance or reinstatement

c. Supervised work program or other authorized community service hours

d. If defendant agrees, court can stay, modify, or suspend the sentence and order attendance at an alcohol education program, AODA outpatient program, or teen court. The court MAY NOT modify or suspend a mandatory license suspension

   - If assessment recommends that the juvenile does not need treatment or education, and the court is informed of these facts, the court shall notify the juvenile whether or not the original penalty will be reinstated

   - If the court is notified of juvenile's failure to complete the alcohol program, the court shall hold a hearing on whether or not the forfeiture and license suspension should be imposed

938.361 **NOTE:**

You can require the parent to pay for the AODA services. See statute for procedure

961.577
938.17(2)(e)

F. Drug Violations—Ch. 961

938.344(2e)
938.344(2g)

1) Drug paraphernalia/manufacture/intent to deliver/ delivery to minor—The court shall order a 6-month to 5-year driver license suspension. However, the court may stay the suspension if the juvenile agrees and the court requires the juvenile to do any of the following: submit to an alcohol and drug abuse assessment and follow the recommendations; participate in a court-approved alcohol or other drug abuse education program; participate in a teen court program; or report to a youth report center after school. If court suspends driver license it may take license and destroy it. If the license is suspended or revoked prior to this suspension or if the juvenile does not currently have a valid license, the suspension is effective when the juvenile is first eligible for issuance or reinstatement

938.17(2)
66.0107(1)(bm)

2) Possession of 25 grams or less of marijuana can be an ordinance violation if the municipality has an ordinance that was passed in conformity with State law. A second offense marijuana case or a case involving more than 25 grams of marijuana may be brought in municipal court if the case in circuit court has been dismissed or the district attorney declines to prosecute the case in circuit court. You may not suspend a driver license for a marijuana conviction

3) Other penalties are the same as those listed in Sec. 3.E. of this Chapter

G. Habitual Truancy

118.163
118.16(1)(a)
938.342

"Habitual truants" are pupils absent from school without an acceptable excuse for part or all of 5 or more days on which school is held during a school semester. Applies to ages 6 through 17—But see NOTE in this section

118.16(5) and (5m)
938.17(2)(a)1.
In re Brandon L.Y.
2008 WI App 73
312 Wis. 2d 406

WARNING: You may ***not*** find a juvenile habitually truant if the school attendance officer has not complied with the prerequisites under § 118.16(5) unless § 118.16(5m) applies. Such proof should be attached to the citation. See § 938.17(2)(a)1.

NOTE:

Compulsory school attendance defined in § 118.15(1)(a) requires any person having control over a child who is between the ages of 6 and 18 years to make sure they attend school regularly until the end of the school term, quarter, or semester of the school year in which the child becomes 18 years of age

H. Habitual Truancy Dispositions

118.163(2)
938.343
938.17(2)(g)

The court may order one or more of the following if your municipality has adopted habitual truancy disposition ordinances

938.342(1g)(d), (g), (1r)
938.34(7d)

1) Order the juvenile to attend school or an educational program. If school attendance is ordered, court clerks must notify the school board or its designee (e.g., school principals) about the court order requiring the student to attend school and the order must specify what constitutes a violation of an attendance requirement. The order shall direct the school or the agency responsible for supervising the student (e.g., social services or dept. of corrections in delinquency cases and social service in child protection cases) to notify the court within 5 days of any violation

938.342(1g)(b)

2) Order the juvenile and/or parent(s) to attend counseling. Costs can be assessed against the juvenile or the parents/guardians

   a. Failure to comply may result in contempt or sanction stated in Section 7 of this chapter

   b. Must give the parents and the juvenile an opportunity to be heard before imposing any counseling requirement

938.342(1g)(a)
938.17(2)(g)

3) Suspend driver license from 30 days to one year. If court suspends a license, the court may take the license and destroy it. If the license is suspended or revoked prior to this suspension or if the juvenile does not currently have a valid license, the suspension is effective when the juvenile is first eligible for issuance or reinstatement

938.342(1g)(e)
103.70

4) Revoke a work permit (for juveniles under 16)

   a. Notify Department of Workforce Development, Equal Rights Division, P.O. Box 8928, Madison WI 53708-8928.

NOTE:

DWD does not have a mechanism for notifying employers

938.342(1g)(c)

5) Home detention—although juvenile may attend school or religious worship or leave home accompanied by parent/guardian. This is enforced by the parent(s) or guardian and not by detention with electronic monitoring

938.342(1g)(b)
938.34(5g)

6) Participate in a supervised work program

   a. Costs of the program may be assessed against the juvenile/parents/guardians

938.342(1g)(b)
938.34(5g)

7) Order juvenile to participate in a community service program

   a. Costs of the program may be assessed against the juvenile/parents/guardians

118.163(2)(b)

   b. Liability of certain agencies providing supervised work programs or community service is limited by law

938.342(1g)(f)

8) Order to attend a teen court program

938.342(1g)(h)
938.37(3)

9) Impose forfeiture up to $500 plus costs, all or part of which may be assessed against the juvenile and/or the parents/ guardians. No witness fees may be assessed against the juvenile

NOTE:

There is no provision requiring showing the juvenile has the ability to pay within 12 months. However, be mindful of ability to pay in determining amount of forfeiture, just as you would with adults

938.342(1g)(i)

10) Impose any other reasonable conditions such as curfew, restrictions on going to certain places or associating with certain persons

938.342(1m)

11) Order parents or guardians to attend school. See "Parents" section in Sec. 8 of this Chapter on the procedures to follow if you order this

I. Truancy

118.16(4)
118.15
118.163(1)
938.342
938.17(2)(g)

1) "Truant" means a pupil who is absent from school without an acceptable excuse for part or all of any day on which school is held during a school semester. The law allows a municipality to create an ordinance offense for truancy, for ages 6 through 17

118.163(1m)

2) Truancy Dispositions—The court may order one or more of the following if your municipality has adopted a truancy ordinance

938.342(1d)

3) Forfeiture (plus costs and surcharges) up to $50 for a first offense and $100 for a second offense within 12 months subject to a maximum cumulative forfeiture of $500 for all violations committed within a school semester. The forfeiture, costs, and assessments may be imposed on the juvenile, his/her parents or guardians, or both

938.342(1d)(a) & (1r)

4) Attend school. If school attendance is ordered, court clerks must notify the school board or its designee (e.g., school principals) about the court order requiring the student to attend school and the order must specify what constitutes a violation of an attendance requirement. The order shall direct the school or the agency responsible for supervising the student (e.g., social services or dept. of corrections in delinquency cases and social services in child protection cases) to notify the court within 5 days of any violation

938.342(1d)
938.34(5g)

5) Order the person to report to a youth report center after school, in the evening, on weekends, on other nonschool days, or at any other time that the person is not under immediate adult supervision, for participation in the social, behavioral, academic, community service, and other programming of the center. In addition you may order community service hours at an authorized site

118.16(5m)

6) The prerequisites to filing habitual truancy cases do not apply to truancy cases

938.17(2)(i)
938.355(6)(d)3.
938.342(1g)

7) License suspension is not available as part of the original disposition, nor is counseling or other dispositions that are available for habitual truancy. However, if a juvenile does not comply with any of the truancy orders, the court may impose any of the sanctions that are allowed under the Habitual Truancy section of this chapter (3.G.) provided you informed the juvenile of the possible sanctions for a violation of your truancy order(s)

938.343

J. Boating, Firearms, Snowmobiles, ATV/UTV, Hunting and Fishing Violations

938.343(5)
30.74(1)

1) If the violation relates to unsafe use of a boat, order attendance in boating safety course. If the juvenile has a valid boating safety certificate at the time that the court imposes the disposition, the court shall revoke the certificate and order the person to obtain another boating safety certificate

938.343(6)
Ch. 29

2) If the violation is hunting, trapping, or fishing violation, suspend the license or licenses issued under Ch. 29 for not more than one year or until the juvenile is 18 years of age, whichever occurs first. Notify the DNR to order the suspension(s)

938.343(7)
29.591

3) If the violation relates to unsafe use of firearms, order attendance at the hunter education program

938.343(8)
350.055

4) If the violation involves the use of snowmobiles, order attendance at a snowmobile safety course

938.343(9)
23.33

5) If the violation involves the use of an ATV or utility terrain vehicle, order attendance at an ATV or utility terrain vehicle safety course

4. Restitution, Supervised Work, and Community Service

A. Restitution

938.17(2)(cm)
938.343(4)
938.344(2)(b)

1) For violations of ordinances for conduct similar to criminal law violations (non-traffic ordinances), restitution may be ordered but only if you find the violation resulted in damage or injury (not including pain and suffering) and that it is beneficial to the well-being of the juvenile. The court may order the juvenile to repair the damage to property or make reasonable restitution for the damage or injury, either in the form of cash payments or, if the victim agrees, the performance of services for the victim or both

2) An order requiring payment for repairs or restitution shall include a finding that the juvenile alone is financially able to pay or physically able to perform the services, may allow up to the date of the expiration of the order for the payment or for the completion of the services, and may include a schedule for the performance and completion of the services

938.343(4)

3) If the juvenile objects to the amount of restitution, you must hold a hearing to determine the proper amount of damages

   a. Victim(s) should be notified of restitution hearing and have an opportunity to be heard

800.093(8)(a)

   b. The court, in determining whether to order restitution and the amount thereof, shall consider all of the following:

      - Amount of loss suffered by any victim as a result of the violation
      - Financial resources of defendant
      - Present and future earning ability of defendant
      - Needs and earning ability of defendant's dependents, if they have any
      - Any other factors that the court deems appropriate

800.093(8)(b)

c. When hearing evidence in a restitution hearing, 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

938.343(3)
938.342(1g)(b)

B. Supervised Work Program or Community Service

1) Municipal court may order a juvenile to participate in a supervised work program or community service, except as an initial order in a truancy case, but the program must conform to the following requirements:

938.34(5g)

a. A supervised work program administered by the county;

b. A community agency approved by the court or;

c. Other community service work administered by a public agency or nonprofit charitable organization approved by the court

5. Sanctions for Nonpayment of Forfeitures: Traffic Cases

See Chap. 9 (Traffic Cases)

6. Sanctions for Nonpayment of Forfeitures: Non-traffic Cases

938.17(2)(d)

A. Suspend any hunting, trapping, or fishing license for not less than 30 days nor more than 5 years or suspend the driver license for up to 2 years

1) The court shall immediately take possession of the hunting, fishing, or trapping license(s). The court may take possession of the driver license, and if possession is taken, shall destroy, the driver license. The court shall forward to the department(s) which issued the license the notice of suspension stating that the suspension is for failure to pay a forfeiture imposed by the court, together with any hunting, fishing, or trapping license of which the court takes possession. If the forfeiture is paid during the period of suspension, the court shall immediately notify the department(s), which issued the license(s)

2) If the license is suspended or revoked prior to this suspension or if the juvenile does not currently have a valid license, the suspension is effective when the juvenile is first eligible for issuance or reinstatement

938.355(6)(c)

B. Court must hold hearing before imposing sanctions

1) Set a good cause hearing for the juvenile to explain why they have not made the payment

938.355(6)

7. Sanctions for Violating Other Municipal Court Orders

938.17(2)(cm)

A. Municipality must specifically adopt the dispositions and sanctions before you have authority to impose sanctions

938.355(6)(c)

B. Court must hold hearing before imposing sanctions

938.17(2)(h)1.

C. Court must at the time of disposition/sentencing:

1) Explain the conditions of the order unless, before any violation of the order, the juvenile acknowledged in writing that he or she read or had read to them those conditions

2) Explain the possible sanctions for violating the court order

Recommendation

Give juveniles a form explaining the possible sanctions at the time of each disposition. See Form 8-B at end of this chapter

938.17(2)(i)1.

D. Sanctions for violating truancy orders

938.355(6m)(ag)

1) Juveniles under age 17 who violate a truancy order can be ordered to do any of the habitual truancy dispositions (sanctions) listed under Section 3.G. of this chapter. The court may also suspend any hunting, fishing, or trapping license for not more than one year. If the court suspends those types of licenses the court shall take the license(s) and notify the DNR. If the court suspends a driver license for not more than one year, the court may take possession of the driver license, and if possession is taken, shall destroy the driver license. If the court orders the driver license suspension and the juvenile does not have a valid driver license or instruction permit, court may order suspension to begin upon reinstatement or license issuance

2) If age 17, see contempt procedures at Chap. 4 (Court Procedure), Sec. 5

938.17(2)(i)2m.
938.355(6m)(a)
938.06(5)

E. Sanctions for Violating Habitual Truancy Orders

1) Sanctions are the same as habitual truancy dispositions (sanctions) listed under Section 3.G. of this chapter. You may not order the placement of the juvenile in a juvenile detention facility for up to 10 days unless there has been a resolution by the county board of supervisors authorizing it as a sanction. The court may also suspend any hunting, fishing, or trapping license for not more than 1 year. If the court suspends those types of licenses the court shall take the license(s) and notify the DNR. If the court suspends a driver license the court may take possession of the driver license, and if possession is taken, shall destroy the driver license. If the court orders the driver license suspension for not more than one year, and the juvenile does not have a valid driver license or instruction permit, court may order suspension to begin upon reinstatement or license issuance

2) If age 17, see contempt procedure at Chap. 4 (Court Procedure), Sec. 5

938.17(2)(h)
938.355(6)(d)2. to 5.

F. Sanctions for Violating Non-Truancy Orders in Other Types of Juvenile Cases

1) Suspend driver license up to 3 years

   a. Juvenile must pay reinstatement fee to DOT

2) Suspend Chapter 29 hunting/gaming license up to 3 years

   a. No reinstatement fee

   b. Send notice to:

      Department of Natural Resources
      P. O. Box 7921
      101 S. Webster St.
      Madison, WI 53707
      Phone: 608-266-2621

3) Home detention—for not more than 30 days. Attending school, religious worship, or medical appointments are allowable exceptions. This is enforced by the parents or guardian and not some formal detention with electronic monitoring

938.355(6)(d)(4)

938.34(5g)

4) Not more than 25 hours in a supervised work program or other authorized community service hours

Recommendation

Order proof of community service and set a deadline for proof of community service hours

Form 8-C at end of Chapter

a. Provide the defendant with a form to send to the court to prove community service. Schedule a sanction hearing for that same deadline and provide defendant with notice that if proof of community service is received at or prior to the sanction hearing, the defendant need not appear and no sanction is imposed. If the defendant fails to appear for the sanction hearing and has not complied with the order for community service you may still impose 3-year driver license suspension. However, the sanction is for failure to perform community service and you are suspending for that rather than for failure to pay. DOT must be informed what the reason is for the suspension and of the correct cite to the statutes

938.355(6)(an), (b) & (6g)

5) Circuit Court Sanctions

a. If a juvenile continues to violate your court orders, an extreme option is to request circuit court action

b. The municipal court can petition the circuit court to impose additional sanctions such as juvenile detention or electronic home monitoring. This does not apply to habitual truancy or truancy cases. This can only be done if, at the time of the judgment, the municipal court explained the conditions to the juvenile and informed the juvenile of those possible sanctions for a violation or if before the violation the juvenile acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions

c. A motion for sanctions may also be brought by the person or agency primarily responsible for the provision of dispositional services, the district attorney or corporation counsel, or the court that entered the dispositional order. If the court initiates that type of motion, that court is disqualified from holding a hearing on the motion

938.355(6)(an)

d. Circuit Court Sanctions: The sanctions below are not imposed by municipal court

- Secure detention for up to 10 days
- Electronic monitoring

938.17(2)(i)4m.

- Municipality may be liable for costs of the sanction imposed by the county
- Non-payment of restitution—docketing a judgment in circuit court. See "Parents" section below for details

8. Parents

938.45(1r), (2)
938.342(1d)(b)
938.342(1g)(h)

A. You may order the parent to pay the forfeiture in truancy, habitual truancy, or non-traffic cases where there was damage to property or physical injury, other than pain and suffering, if all the following conditions are met:

1) Parent has notice and an opportunity to be heard on the issue, and;

2) Find that it is in the juvenile's best interests and in aid of rehabilitation to impose forfeiture. This is not a finding that it is in the best interest of the juvenile to have the parent pay, but that the requirement of a forfeiture is in the juvenile's best interest and aids rehabilitation of the juvenile and;

3) Parent has the ability to pay the forfeiture and;

4) Payment by parent(s) is due by the same date as the order for payment by the juvenile

B. Mandatory Appearances

938.17(2)
938.237(3)
938.125
938.273
785.06
800.12
In Interest of Jermaine T.J. , 181 Wis. 2d 82 (Ct. App. 1993)

1) In some circumstances you can require the juvenile and the parent/guardian/legal custodian to attend any ordinance violation hearing using a summons. The municipality pays for the cost of the summons. Failure to appear may result in contempt or a capias (warrant). A capias (warrant) may only be used if service of a summons is properly attempted and cannot be done

OAG 4-2000
938.45(1r)
943.51

C. Restitution

895.035(1)

1) Municipal court has the authority to order the parent(s) who have custody to pay the restitution. For retail theft, the amount of restitution is limited by § 943.51. The restitution paid by the parent is limited to $5,000 except for retail theft. You must find all of the following before ordering the parent(s) to pay:

   a. Violation has resulted in property damage and/or personal injury of another, excluding pain and suffering; and

   b. Parent with custody has the ability to pay;

   c. Payments can be completed before the expiration of juvenile's court order; and

   d. Parent(s) with custody had notice and an opportunity to be heard

9. Confidentiality

938.299(1)

A. Juvenile proceedings in municipal court for defendants under 17 years old in non-traffic matters must be closed to the public. However:

1) A juvenile may demand an open fact-finding hearing but the parent or guardian may overrule this request

938.299(1)(a) and (1)(av)

   a. If a public hearing is held, disclosure is allowed

938.299(1)(a)

2) The media must be admitted, but cannot release the juvenile's identity

938.299(1)(ag)

3) The court may exclude foster parents and other physical custodians under some conditions

938.299(1)(ag), (am) & (ar)2.

4) Victims, their family members, or a representative of a victim's support agency, at the victim's request, may attend

938.299(1)(a)

5) The court may admit any person having a proper interest in the work of the court or the case

938.17(1)
938.17(2)(a)1m.
938.299
345.20(2)
345.21 to 345.53

B. Traffic Cases

1) The juvenile justice chapter of the WI Statutes requires confidential hearings for all types of juvenile cases, except it requires 16 year olds charged with traffic offenses to have their case in adult court

C. Records—mental health, medical, alcohol/drug treatment or assessment

See State ex rel. Richards v. Foust, 165 Wis. 2d 276 (Ct. App. 1991), and federal HIPAA regulations at https://www.hhs.gov/hipaa/index.html

1) These are highly sensitive records that may be in municipal court files. They are often not appropriate for release, even though they are in municipal court files

19.32, 19.33, 19.36(2) & (8)

D. Police Reports in the Court Records

1) Police reports and records for juveniles may be in the court file. Two problems arise in releasing them:

   a. The reports may contain:

      - Confidential information about another juvenile
      - Information that poses imminent danger to a juvenile or
      - Otherwise confidential information

   b. The court is not necessarily the legal custodian of police records, even though there may be copies in the court file

Nichols v. Bennett, 199 Wis. 2d 268 (1996)

2) The location of the document does not determine status under the public records law and disclosure, rather the nature of the document, determines status

3) If a public records request is made to the court and the police report is in the court file, disclose only those records for which the court is the legal custodian and direct the requester to the police department for the police reports and records

938.299(1)
938.396(1j)

4) Best practice is to inform the requester that if the police will not release the records, the statutes may allow the circuit court to review the refusal to release the records. Such a review has detailed requirements for petitioning, notifying, and releasing the records

E. Court Records of juvenile (age 12 through 16) non-traffic and non-alcohol violations

938.396(2)

1) Court records of juvenile proceedings in municipal courts must be maintained separately and are not open to inspection except as follows:

938.396(2g)(ag) & (am)

a. Upon request or written permission of a parent, guardian or juvenile's legal custodian, or a juvenile age 14 or older, municipal court shall open their records for inspection. Inspection may be done by the juvenile, parent, guardian or juvenile's legal custodian. If you find, after due notice and a hearing, that inspection will cause imminent danger to anyone, then you shall not allow inspection

NOTE:

Inspection does not include copying.

938.396(2g)(gm) & (h)

b. Upon request of a family or juvenile court, municipal court, DA, corporation counsel, municipal prosecutor, or a juvenile's attorney or guardian ad litem, provided such persons have an action pending in a municipal, juvenile, or family court and the request is for purposes of that proceeding

Courtney F. v. Caleb J.F., 2004 WI App 36 269 Wis. 2d 709

CAUTION: A request to disclose municipal court records for use in another court's pending case, might need to be reviewed by you to determine if the record is relevant to the other court's action. Review for relevance on your own or consult with another municipal judge that is not involved with the case

938.396(1)
938.396(2)
938.396(2g)
938.396(4)

c. Additional requests for disclosure may be made directly to the circuit court that handles juvenile matters, and in some cases, to the law enforcement agency. DOT may not disclose information relating to suspensions, revocations, or restrictions of a juvenile's operating privilege to any person other than municipal courts exercising jurisdiction in juvenile cases, a DA, juvenile circuit courts, corporation counsel, municipal attorneys, a law enforcement agency, the juvenile, or the juveniles' parent or guardian. Those who can access this information may not disclose it to any persons or agencies

938.396(3)

F. Court Records of juvenile traffic violations

1) There is no confidentiality of juvenile traffic case records

938.396(4)

G. Court Records of juvenile alcohol violations—persons 12 through 16

938.396(2)

1) Court records of these violations by juveniles appear to fall within the confidentiality requirements.

938.396(4)

2) Court records of revocations or suspensions for such violations cannot be disclosed by the Division of Motor Vehicles except to the designated parties

938.396(1)(c)3.

3) If requested by a school district administrator of a public school district, a law enforcement agency (not the court) may provide to the administrator any information in its records relating to the use, possession, or distribution of alcohol or a controlled substance by a pupil enrolled in the public school district

a. School cannot use the information obtained as the sole basis for expelling or suspending the student

10. Victim's Rights

938.299(1)(am)

A. A victim of a juvenile's alleged act, a member of the victim's family, and at the victim's request, a representative of a support organization, may be present even at a closed trial

1) A judge has the discretion to exclude the above people from any parts of the hearing that deals with sensitive personal matters of the juvenile or juvenile's family and that do not directly relate to the alleged act committed against the victim

B. Notice to victims

938.17(2)(f)
938.346

If the act committed by a juvenile resulted in personal injury or damage to or loss of the property of another, the municipal court shall, to the extent possible, provide each known victim with the following:

1) Procedure under § 938.396(1)(c)5. & 6. for obtaining the identity of the juvenile and the juvenile's parents

2) Procedure under § 938.396(1)(c)5. for obtaining juvenile's police records

3) The potential liability of the juvenile's parents under § 895.035

4) The right to request and receive notice of time and place of any hearing victim may attend under § 938.299(1)(am)

938.346

5) The notice must include an explanation of restrictions on divulging information obtained under the statute and the penalties for violation. If the proceeding is closed, dismissed, or does not result in a resolution in court, the victim must be informed that the proceeding has been terminated. Rules for implementation of this procedure must be established by the chief judge and/or circuit judges of the district. Check with the chief judge of your judicial administrative district if there are any forms for notifying victims

11. Interpreters

Americans with Disabilities Act (ADA)

A. If an individual has language difficulty because of:

1) Hearing impairment

2) Inability to speak

3) Speech defect

4) Any other disability under the ADA

Then, the court must provide an interpreter.

885.37(1)

B. If the court has notice that a juvenile, parent, or witness in a juvenile proceeding has language difficulty because of the inability to speak or understand English, has a hearing impairment, or is unable to speak or has a speech defect, the court must make a factual determination of whether that is sufficient to:

1) Prevent the individual from communicating with his/her attorney

2) Reasonably understand the English testimony

3) Reasonably being understood in English

885.37(1), (2) & (4)

C. If the court rules an interpreter should be appointed, then the court shall inform the defendant of the right to a qualified interpreter, at the municipality's expense, if the defendant cannot afford one (for interpreters needed because of a disability, see G. below)

D. The defendant may waive the right to an interpreter if the waiver is voluntary, on the record and in open court

885.37(5)(c)

E. The procedure for appointing interpreters allows the court to appoint any person the court decides is qualified (except for interpreters needed because of a disability, see G. below)

RESOURCES: A link that allows you to search for certified interpreters is available from the Director of State Courts at:
www.wicourts.gov/services/interpreter/search.htm

Guidance in using interpreters at:

www.wicourts.gov/services/judge/interpret2.htm

Certified Wisconsin interpreter services available:
swits.us/ 1-866-737-9487

LanguageLine has 170 interpreters, not necessarily certified by Wisconsin:

www.languageline.com Call 1-800-752-6096 to open an account

State v. Santiago
206 Wis. 2d 3
(1996)

F. If the defendant and a witness require an interpreter, the better practice is to appoint one interpreter for the court and one for defendant

G. Specific requirements for interpreters needed for individuals with disabilities:

1) Appointment of an interpreter for an individual with a disability is mandatory in any matter before a municipal court

2) DHS maintains a list of American Sign Language (ASL) interpreters, which can be found at: **dhs.wisconsin.gov/odhh/Interpreting/Interpreter-Directory.htm**

883.37(5)(a) & (b)

3) The municipal court must appoint from that list, unless no listed interpreter is available. The municipal court shall then appoint another person who is able to accurately communicate with and convey information to and receive information from the person with a disability

440.032(2)(a)

4) Sign language interpreters who provide services for compensation to the courts must be licensed by the Department of Safety and Professional Services or must be certified by the Wisconsin Supreme Court. The court should make a careful inquiry into the credentials of interpreters listed on the DHS listing

ADA

5) The municipal court is responsible for paying the expense of an interpreter for a person with a disability regardless of indigency

H. Translated Documents

Federal Register
Enforcement of
Title VI,
Civil Rights Act

1) You should post notice for free language assistance. See above resources at Director of State Courts

JUVENILE/UNDERAGE SENTENCING IN MUNICIPAL COURT

Offense (Within a 12 month period)	Juvenile (16 and younger) Penalty Forfeiture[1]	Underage (17 through 20) Penalty Forfeiture	Suspension of DL or other License Juveniles (16 and under)	Suspension of DL 17 through 20 year olds	Com Serv[3]
Procuring[2] 125.07(4)(a) First offense Second offense Third offense Fourth offense +	 938.344(2b) $250 - $500 $300 - $500 $500 $500	 125.07(4)(bs) Same as Juv Same as Juv $500-$750 $750-$1000	 938.344(2b)[3] 30-90 day suspension of DL Up to one year suspension Up to two year suspension Up to two year suspension 938.344(2g) Court may stay/modify or suspend sentence with agreement of Juvenile and order AODA, Teen Court or "Youth Report Center"	Penalty as Juvenile EXCEPT 125.07(4)(e) Ct may stay/modify or suspend sentence with agreement of Def and order AODA assessment, education or treatment	 Yes Yes Yes Yes
Possession/Consumption[2] 125.07(4)(b), 125.09(2) First offense Second offense[5] Third offense[5] Fourth offense +[5]	 938.344(2) $0 - $50 $0 - $100 $0 - $500 $0 - $500	 125.07(4)(c) $100-$200 $200-$300 $300-$500 $500-$1000	 938.344(2g) Court may stay/modify or suspend sentence as noted above 938.344(2)[3] 30-90 day suspension of DL[5] Up to one year suspension[5] Up to two year suspension[5]	Penalty as Juvenile EXCEPT 125.07(4)(e) Ct may stay/modify or suspend sentence with agreement of Def and order AODA assessment, education or treatment	 Yes Yes Yes Yes
False ID [2] 125.085(3)(b) First offense Second offense Third offense Fourth offense +	 938.344(2d) $100 - $500 $300 - $500 $500 $500	 125.085(3)(bd) $300-$1250 $300-$1250 $300-$1250 $300-$1250	938.344(2g) Court may stay/modify or suspend sentence as noted above 938.344(2d)[3] 30-90 day suspension of DL Up to one year suspension Up to two year suspension	125.085(3)(bd) 30 - 90 day suspension FOR ANY OFFENSE	 Yes Yes Yes Yes
Possession of Drug Paraphernalia 961.573(2), 961.574(2) 961.575(2)[4] First offense Second offense Third offense +	 938.344(2e) $0 - $50 $0 - $100 $0 - $500	 961.574(1) 961.577	 938.344(2e)[3] MANDATORY 6 month to 5 year suspension		 Yes Yes Yes
346.63(2m) Absolute Sobriety, Persons 20 and younger (if passenger 16 or younger, no muni court Jurisdiction)	346.65(2q) $200 MANDATORY		90 Day Suspension MANDATORY		No

If the court suspends a Ch. 29 license, the court shall take it and notify the applicable department.
If the court suspends a Ch. 343 license, the court may take and shall destroy it.

1. Court must find child alone has ability to pay within 12 months
2. May be one or all of the three penalties -- forfeiture, community service, suspension of operating privilege
3. Child must be present
4. Court must order suspension AND either a forfeiture or community service/supervised work program
5. If the offense involved a motor vehicle must suspend "up to 2 years"

STATE OF WISCONSIN MUNICIPAL COURT CITY OF MILWAUKEE

City of Milwaukee,

v. Case No.________________

____
Defendant

DISPOSITIONAL ORDER

The Court has this date found the defendant guilty of a violation of the ordinances of the City of Milwaukee. As a result of this finding, the defendant is ordered to do the following:

☐ Perform _____ hours of community service at a location approved by the Court within _____ days of the date of this Order.

☐ Other:____
____
____

If the defendant chooses not to perform the community service or comply with any other alternative imposed by the Court, the defendant has the option of paying a forfeiture in the amount of $__________ by the date assigned for compliance.

Further, defendant is hereby notified that if the terms of this Order are not complied with, the Court will consider the imposition of the sanctions authorized by sec. 938.355(6)(d), which include suspension of the defendant's operating privileges, as defined under sec. 340.01(40), for a period of up to 3 years, placement in a secure detention facility for up to 10 days, and detention in defendant's home for a period of up to 30 days possibly with an electronic monitoring system. The date for this sanctions hearing is being provided separately to defendant on this date.

Dated at Milwaukee, Wisconsin, this ______ day of _______________, 20_____.

BY ORDER OF THE COURT:

____
Hon. (Name of Municipal Judge)
Municipal Judge, (Municipality)

I have read and understand the conditions and possible sanctions described above.

____________________________________ ____________________
Defendant Date

________________________Municipal Court

Community Service Completion Form

____
Date

____________________Municipal Court

____

____

____

Dear Judge:

The purpose of this letter is to inform you that _______________________________________ has successfully performed the _______________hours of community service s/he was ordered to perform by ______________________________Municipal Court

____
Agency/Organization

____
Name

____
Address

____
Position

____
Phone

Select Statutes Pertaining to Juveniles

938.17 – Jurisdiction over traffic, boating, snowmobile, all-terrain vehicle, and utility terrain vehicle violations and over civil and ordinance violations
938.342 – Disposition: truancy and school dropout ordinance violations
938.343 – Disposition of juvenile adjudged to have violated a civil law or an ordinance
938.344 – Disposition; certain intoxicating liquor, beer and drug violations
938.346 – Notice to victims of juvenile's acts
938.355 – Dispositional orders (excerpts)
938.396 – Records

938.17 – Jurisdiction over traffic, boating, snowmobile, all-terrain vehicle, and utility terrain vehicle violations and over civil and ordinance violations

(1) Traffic, boating, snowmobile, all-terrain vehicle, utility terrain vehicle, and limited use off-highway motorcycle violations. Except for violations of ss. 342.06 (2) and 344.48 (1), and violations of ss. 30.67 (1) and 346.67 (1) when death or injury occurs, courts of criminal and civil jurisdiction have exclusive jurisdiction in proceedings against juveniles 16 years of age or older for violations of ss. 23.33 and 23.335, of ss. 30.50 to 30.80, of chs. 341 to 351, and of traffic regulations, as defined in s. 345.20, and nonmoving traffic violations, as defined in s. 345.28 (1). A juvenile charged with a traffic, boating, snowmobile, all-terrain vehicle, utility terrain vehicle, or limited use off-highway motorcycle offense in a court of criminal or civil jurisdiction shall be treated as an adult before the trial of the proceeding except that the juvenile may be held in secure custody only in a juvenile detention facility. A juvenile convicted of a traffic, boating, snowmobile, all-terrain vehicle, utility terrain vehicle, or limited use off-highway motorcycle offense in a court of criminal or civil jurisdiction shall be treated as an adult for sentencing purposes except as follows:

(a) The court may disregard any minimum period of incarceration specified for the offense.

(b) If the court orders the juvenile to serve a period of incarceration of less than 6 months, the juvenile may serve that period of incarceration only in a juvenile detention facility.

(c) If the court of civil or criminal jurisdiction orders the juvenile to serve a period of incarceration of 6 months or more, that court shall petition the court assigned to exercise jurisdiction under this chapter and ch. 48 to order one or more of the dispositions under s. 938.34,

including placement of the juvenile in a juvenile correctional facility or a secured residential care center for children and youth, if appropriate.

(2) Civil law and ordinance violations.

(a) *Concurrent municipal and juvenile court jurisdiction; ordinance violations.*

1. Except as provided in subd. 1m. and sub. (1), municipal courts have concurrent jurisdiction with the court assigned to exercise jurisdiction under this chapter and ch. 48 in proceedings against juveniles 12 years of age or over for violations of county, town, or other municipal ordinances. If evidence is provided by the school attendance officer that the activities under s. 118.16 (5) have been completed or were not required to be completed as provided in s. 118.16 (5m), the municipal court specified in subd. 2. may exercise jurisdiction in proceedings against a juvenile for a violation of an ordinance enacted under s. 118.163 (2) regardless of the juvenile's age and regardless of whether the court assigned to exercise jurisdiction under this chapter and ch. 48 has jurisdiction under s. 938.13 (6).

1m. Except as provided in sub. (1), municipal courts have exclusive jurisdiction in proceedings against juveniles 12 years of age or over for violations of municipal ordinances enacted under ch. 349 that are in conformity with chs. 341 to 349. When a juvenile 12 years of age or over is alleged to have violated a municipal ordinance enacted under ch. 349 that is in conformity with chs. 341 to 349, the juvenile may be issued a citation directing the juvenile to appear in municipal court or make a deposit or stipulation and deposit in lieu of appearance or, if there is no municipal court in the municipality that enacted the ordinance, the juvenile may be issued a citation or referred to intake as provided in par. (b). If a municipal court finds that a juvenile has violated a municipal ordinance enacted under ch. 349 that is in conformity with chs. 341 to 349, the court shall enter any of the dispositional orders permitted under s. 938.343 that are authorized under sub. (2) (cm).

2. a. In this subdivision, "administrative center" means the main administrative offices of a school district.

b. The municipal court that may exercise jurisdiction under subd. 1. is the municipal court that is located in the same municipality as the administrative center of the school district in which the juvenile is enrolled, if that municipality has adopted an ordinance under s. 118.163.

c. If the municipality specified under subd. 2. b. has not adopted an ordinance under s. 118.163, the municipal court that may exercise jurisdiction under subd. 1. is the municipal court that is located in the municipality where the school in which the juvenile is enrolled is located, if that municipality has adopted an ordinance under s. 118.163.

d. If the municipality specified under subd. 2. b. or c. has not adopted an ordinance under s. 118.163, the municipal court that may exercise jurisdiction under subd. 1. is the municipal court that is located in the municipality where the juvenile resides, if that municipality has adopted an ordinance under s. 118.163.

3. Except as provided in subd. 1m., when a juvenile is alleged to have violated a municipal ordinance, one of the following may occur:

a. The juvenile may be issued a citation directing the juvenile to appear in municipal court or make a deposit or stipulation and deposit in lieu of appearance.

b. The juvenile may be issued a citation directing the juvenile to appear in the court assigned to exercise jurisdiction under this chapter and ch. 48 or make a deposit or stipulation and deposit in lieu of appearance as provided in s. 938.237.

c. The juvenile may be referred to intake for a determination whether a petition should be filed in the court assigned to exercise jurisdiction under this chapter and ch. 48 under s. 938.125.

(b) *Juvenile court jurisdiction; civil law and ordinance violations.* When a juvenile 12 years of age or older is alleged to have violated a civil law punishable by a forfeiture or to have violated a municipal ordinance but there is no municipal court in the municipality, one of the following may occur:

1. The juvenile may be issued a citation directing the juvenile to appear in the court assigned to exercise jurisdiction under this chapter and ch. 48 or make a deposit or stipulation and deposit in lieu of appearance as provided in s. 938.237.

2. The juvenile may be referred to intake for a determination whether a petition under s. 938.125 should be filed in the court assigned to exercise jurisdiction under this chapter and ch. 48.

(c) *Citation procedures.* The citation procedures described in ch. 800 govern proceedings involving juveniles in municipal court, except that this chapter governs the taking and holding of a juvenile in custody and par. (cg) governs the issuing of a summons to the juvenile's parent, guardian, or legal custodian. When a juvenile is before the court assigned to exercise jurisdiction under this chapter and ch. 48 upon a citation alleging that the juvenile violated a civil law or municipal ordinance, the procedures specified in s. 938.237 apply. If a citation is issued to a juvenile, the issuing agency shall notify the juvenile's parent, guardian, and legal custodian within 7 days. The agency issuing a citation to a juvenile who is 12 to 15 years of age for a violation of s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 961.573 (2), 961.574 (2), or 961.575 (2) or an ordinance conforming to one of those statutes shall send a copy to an intake worker under s. 938.24 for informational purposes only.

(cg) *Summons procedures.* After a citation is issued, unless the juvenile and his or her parent, guardian, and legal custodian voluntarily appear, the municipal court may issue a summons requiring the parent, guardian, or legal custodian of the juvenile to appear personally at any hearing involving the juvenile and, if the court so orders, to bring the juvenile before the court at a time and place stated. Section 938.273 governs the service of a summons under this paragraph, except that the expense of service or publication of a summons and of the travelling expenses and fees of a person summoned allowed in ch. 885 shall be a charge on the municipality of the court issuing the summons when approved by the court. If any person summoned under this paragraph fails without reasonable cause to appear, he or she may be proceeded against for contempt of court under s. 785.06. If a summons cannot be served or if the person served fails to obey the summons or if it appears to the court that the service will be ineffectual, a capias may be issued for the juvenile and for the parent, guardian, or legal custodian.

(cm) *Authorization for dispositions and sanctions.* A city, village, or town may adopt an ordinance or bylaw specifying which of the dispositions under ss. 938.343 and 938.344 and sanctions under s. 938.355 (6) (d) and (6m) the municipal court of that city, village, or town is authorized to impose or to petition the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose. The use by the court of those dispositions and sanctions is subject to any ordinance or bylaw adopted under this paragraph.

(d) *Disposition; ordinance violations generally.*

1. If a municipal court finds that the juvenile violated a municipal ordinance other than an ordinance enacted under s. 118.163 or an ordinance that conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 961.573 (2), 961.574 (2), or 961.575 (2), the court shall enter any of the dispositional orders permitted under s. 938.343 that are authorized under par. (cm). If a juvenile fails to pay the forfeiture imposed by the municipal court, the court may not impose a jail sentence but may suspend any license issued under ch. 29 for not less than 30 days nor more than 5 years, or suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not more than 2 years.

2. If a court suspends a license or privilege under subd. 1., the court shall immediately take possession of the applicable license if issued under ch. 29 or, if the license is issued under ch. 343, the court may take possession of, and if possession is taken, shall destroy, the license. The court shall forward to the department that issued the license the notice of suspension stating that the suspension is for failure to pay a forfeiture imposed by the court, together with any license issued under ch. 29 of which the court takes possession. If the forfeiture is paid during the period of suspension, the court shall immediately notify the department, which shall then, if the license is issued under ch. 29, return the license to the person.

(e) *Disposition; alcohol and drug ordinance violations.* If a municipal court finds that a juvenile violated a municipal ordinance that conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 961.573 (2), 961.574 (2) or 961.575 (2), the court shall enter a dispositional order under s. 938.344 that is authorized under par. (cm).

(f) *Notice to victims.* If the act the juvenile committed resulted in personal injury or damage to or loss of the property of another, the municipal court shall, to the extent possible, provide each known victim of the act with the information contained in the notice required under s. 938.346.

(g) *Disposition; truancy or school dropout ordinance violations.* If the municipal court finds that a juvenile violated a municipal ordinance enacted under s. 118.163 (1m), it shall enter a dispositional order under s. 938.342 (1d). If a municipal court finds that a juvenile violated a municipal ordinance enacted under s. 118.163 (2), it shall enter a dispositional order under s. 938.342 (1g), and may enter a dispositional order under s. 938.342 (1m) (a), that is consistent with the municipal ordinance. If a municipal court finds that a juvenile violated a municipal ordinance enacted under s. 118.163 (2m), it shall enter a dispositional order under s. 938.342 (2) that is consistent with the municipal ordinance.

(h) *Sanctions; dispositional order violations generally.*

1. If a juvenile who has violated a municipal ordinance, other than an ordinance enacted under s. 118.163 (1m) or (2), violates a condition of his or her dispositional order, the municipal court may impose on the juvenile any of the sanctions specified in s. 938.355 (6) (d) 2. to 5. that are authorized under par. (cm) except for monitoring by an electronic monitoring system. The municipal court may also petition the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose on the juvenile the sanction specified in s. 938.355 (6) (d) 1. or home detention with monitoring by an electronic monitoring system as specified in s. 938.355 (6) (d) 3., if authorized under par. (cm). A sanction may be imposed under this subdivision only if at the time of judgment the court explained the conditions to the juvenile and informed the juvenile of the possible sanctions under s. 938.355 (6) (d) that are authorized under par. (cm) for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

2. A motion requesting the municipal court to impose or petition for a sanction may be brought by the person or agency primarily responsible for the provision of dispositional services, the municipal attorney, or the court that entered the dispositional order. If the court initiates the motion, that court may not hold a hearing on the motion. Notice of the motion shall be given to the juvenile and the juvenile’s parent, guardian, or legal custodian.

3. Before imposing any sanction, the court shall hold a hearing, at which the juvenile may present evidence. Except as provided in s. 901.05, neither common law nor statutory rules of evidence are binding at a hearing under this subdivision.

4. If the court assigned to exercise jurisdiction under this chapter and ch. 48 imposes the sanction specified in s. 938.355 (6) (d) 1. or home detention with monitoring by an electronic monitoring system as specified in s. 938.355 (6) (d) 3., on a petition described in subd. 1., that court shall order the municipality of the municipal court that filed the petition to pay to the county the cost of providing the sanction imposed under s. 938.355 (6) (d) 1. or 3.

(i) *Sanctions; truancy or school dropout dispositional order violations.*

1. If a juvenile who has violated a municipal ordinance enacted under s. 118.163 (1m) violates a condition of his or her dispositional order, the municipal court may impose on the juvenile any of the sanctions specified in s. 938.355 (6m) (ag). A sanction may be imposed under this subdivision only if at the time of judgment the court explained the conditions to the juvenile and informed the juvenile of those possible sanctions or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

2m. If a juvenile who has violated a municipal ordinance enacted under s. 118.163 (2) violates a condition of his or her dispositional order, the municipal court may impose on the juvenile any of the sanctions specified in s. 938.355 (6m) (a) that are authorized under par. (cm) except for the sanction specified in s. 938.355 (6m) (a) 1g. The municipal court may also petition the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose on the juvenile the sanction specified in s. 938.355 (6m) (a) 1g., if authorized under par. (cm). A sanction may be

imposed under this subdivision only if at the time of judgment the court explained the conditions to the juvenile and informed the juvenile of the possible sanctions under s. 938.355 (6m) (a) that are authorized under par. (cm) for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

3g. A motion requesting the municipal court to impose or petition for a sanction may be brought by the person or agency primarily responsible for the provision of dispositional services, the municipal attorney, or the court that entered the dispositional order. If the court initiates the motion, that court may not hold a hearing on the motion. Notice of the motion shall be given to the juvenile and the juvenile's parent, guardian, or legal custodian.

4. Before imposing any sanction, the court shall hold a hearing, at which the juvenile may present evidence. Except as provided in s. 901.05, neither common law nor statutory rules of evidence are binding at a hearing under this subdivision.

4m. If the court assigned to exercise jurisdiction under this chapter and ch. 48 imposes the sanction specified in s. 938.355 (6m) (a) 1g., on a petition described in subd. 2m., that court shall order the municipality of the municipal court that filed the petition to pay to the county the cost of providing the sanction imposed under s. 938.355 (6m) (a) 1g.

(3) Safety at sporting events. Notwithstanding sub. (2), courts of criminal or civil jurisdiction have exclusive jurisdiction in proceedings against juveniles under s. 167.32 or under a local ordinance strictly conforming to s. 167.32. A juvenile convicted of a violation under s. 167.32 or under a local ordinance strictly conforming to s. 167.32 shall be treated as an adult for sentencing purposes.

History: *1995 a. 77, 352, 448; 1997 a. 205, 239, 258; 1999 a. 9; 2001 a. 16; 2005 a. 190, 344; 2007 a. 97; 2009 a. 103; 2011 a. 108; 2015 a. 170.*

938.342 – Disposition: truancy and school dropout ordinance violations

(1d) Truancy ordinance violations. If the court finds that the person violated a municipal ordinance enacted under s. 118.163 (1m), the court shall enter an order making one or more of the following dispositions if the disposition is authorized by the municipal ordinance:

(a) Order the person to attend school.

(b) Impose a forfeiture of not more than $50 plus costs for a first violation, or a forfeiture of not more than $100 plus costs for any 2nd or subsequent violation committed within 12 months of a previous violation, subject to s. 938.37 and subject to a maximum cumulative forfeiture amount of not more than $500 for all violations committed during a school semester. All or part of the forfeiture plus costs may be assessed against the person, the parent or guardian of the person, or both.

(c) Order the person to report to a youth report center after school, in the evening, on weekends, on other nonschool days, or at any other time that the person is not under immediate adult supervision, for participation in the social, behavioral, academic, community service, and other programming of the center. Section 938.34 (5g) applies to any community service work performed by a person under this paragraph.

(1g) Habitual truancy ordinance violations. If the court finds that a person under 18 years of age violated a municipal ordinance enacted under s. 118.163 (2), the court shall enter an order making one or more of the following dispositions if the disposition is authorized by the municipal ordinance:

(a) Suspend the person’s operating privilege, as defined in s. 340.01 (40), for not less than 30 days nor more than one year. The court may take possession of the suspended license. If the court takes possession of a license, it shall destroy the license. The court shall forward to the department of transportation a notice stating the reason for and duration of the suspension.

(b) Order the person to participate in counseling or a supervised work program or other community service work as described in s. 938.34 (5g). The costs of any counseling, supervised work program, or other community service work may be assessed against the person, the parents or guardian of the person, or both. Any county department, community agency, public agency, or nonprofit charitable organization administering a supervised work program or other community service work to which a person is assigned under an order under this paragraph acting in good faith has immunity from any civil liability in excess of $25,000 for any act or omission by or impacting on that person.

(c) Order the person to remain at home except during hours in which the person is attending religious worship or a school program, including travel time required to get to and from the school program or place of worship. The order may permit a person to leave his or her home if the person is accompanied by a parent or guardian.

(d) Order the person to attend an educational program under s. 938.34 (7d).

(e) Order the department of workforce development to revoke, under s. 103.72, a permit under s. 103.70 authorizing the employment of the person.

(f) Order the person to be placed in a teen court program if all of the following conditions apply:

1. The chief judge of the judicial administrative district has approved a teen court program established in the person’s county of residence and the court determines that participation in the teen court program will likely benefit the person and the community.

2. The person admits or pleads no contest in open court, in the presence of the person’s parent, guardian, or legal custodian, to the allegations that the person violated the municipal ordinance enacted under s. 118.163 (2).

3. The person has not successfully completed participation in a teen court program during the 2 years before the date of the alleged municipal ordinance violation.

(g) Order the person to attend school.

(h) Impose a forfeiture of not more than $500 plus costs, subject to s. 938.37. All or part of the forfeiture plus costs may be assessed against the person, the parent or guardian of the person, or both.

(i) Order the person to comply with any other reasonable conditions that are consistent with this subsection, including a curfew, restrictions as to going to or remaining on specified premises and restrictions on associating with other juveniles or adults.

(j) Place the person under formal or informal supervision, as described in s. 938.34 (2), for up to one year.

(k) Order the person to report to a youth report center after school, in the evening, on weekends, on other nonschool days, or at any other time that the juvenile is not under immediate adult supervision, for participation in the social, behavioral, academic, community service, and other programming of the center. Section 938.34 (5g) applies to any community service work performed by a person under this paragraph.

(1m) Orders applicable to parents, guardians, and legal custodians.

(a) If the court finds that the person violated a municipal ordinance enacted under s. 118.163 (2), the court may, in addition to or instead of the dispositions under sub. (1g), order the person's parent, guardian, or legal custodian to participate in counseling at the parent's, guardian's, or legal custodian's own expense or to attend school with the person, or both, if the disposition is authorized by the municipal ordinance.

(am) If the court finds that the person violated a municipal ordinance enacted under s. 118.163 (1m), the court may, as part of the disposition under sub. (1d), order the person's parent or guardian to pay all or part of a forfeiture plus costs assessed under sub. (1d) (b). If the court finds that the person violated a municipal ordinance enacted under s. 118.163 (2), the court may, as part of the disposition under sub. (1g), order the person's parent or guardian to pay all or part of the costs of any program ordered under sub. (1g) (b) or to pay all or part of a forfeiture plus costs assessed under sub. (1g) (h).

(b) No order to any parent, guardian, or legal custodian under par. (a) or (am) may be entered until the parent, guardian, or legal custodian is given an opportunity to be heard on the contemplated order of the court. The court shall cause notice of the time, place, and purpose of the hearing to be served on the parent, guardian, or legal custodian personally at least 10 days before the date of the hearing. The procedure in these cases shall, as far as practicable, be the same as in other cases to the court. At the hearing, the parent, guardian, or legal custodian may be represented by counsel and may produce and cross-examine witnesses. A parent, guardian, or legal custodian who fails to comply with any order issued by a court under par. (a) or (am) may be proceeded against for contempt of court.

(1r) School attendance condition. If school attendance is a condition of an order under sub. (1d) or (1g), the order shall specify what constitutes a violation of the condition and shall direct the

school board of the school district or the governing body of the private school in which the person is enrolled, or shall request the governing body of the tribal school in which the person is enrolled, to notify the court or, if the person is under the supervision of an agency under sub. (1g)(j), the agency that is responsible for supervising the person, within 5 days after any violation of the condition by the person.

(2) School dropout ordinance violation.

(a) Except as provided in par. (b), if the court finds that a person is subject to a municipal ordinance enacted under s. 118.163 (2m) (a), the court shall enter an order suspending the person's operating privilege, as defined in s. 340.01 (40), until the person attains 18 years of age.

(b) The court may order any of the dispositions specified under sub. (1g) if the court finds that suspension of the person's operating privilege, as defined in s. 340.01 (40), until the person attains 18 years of age would cause an undue hardship to the person or the person's family.

History: *1995 a. 27 s. 9130 (4); 1995 a. 77, 352; 1997 a. 3, 239; 2001 a. 16; 2003 a. 82; 2005 a. 344; 2009 a. 103, 302.*

938.343 Disposition of juvenile adjudged to have violated a civil law or an ordinance.

Except as provided by ss. 938.342 and 938.344, if the court finds that the juvenile violated a civil law or an ordinance, the court shall enter an order making one or more of the following dispositions:

(1) Counseling. Counsel the juvenile or the parent or guardian.

(2) Forfeiture. Impose a forfeiture not to exceed the maximum forfeiture that may be imposed on an adult for committing that violation or, if the violation is only applicable to a person under 18 years of age, $50. The order shall include a finding that the juvenile alone is financially able to pay and shall allow up to 12 months for the payment. If a juvenile fails to pay the forfeiture, the court may suspend any license issued under ch. 29 or suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not more than 2 years. The court shall immediately take possession of the suspended license if issued under ch. 29 or, if the license is issued under ch. 343, the court may take possession of, and if possession is taken, shall destroy, the license. The court shall forward to the department which issued the license the notice of suspension stating that the suspension is for failure to pay a forfeiture imposed by the court, together with any license issued under ch. 29 of which the court takes possession. If the forfeiture is paid during the period of suspension, the court shall immediately notify the department, which shall, if the license is issued under ch. 29, return the license to the person. Any recovery under this subsection shall be reduced by the amount recovered as a forfeiture for the same act under s. 938.45 (1r) (b).

(2m) Teen court program. Order the juvenile to be placed in a teen court program if all of the following conditions apply:

(a) The chief judge of the judicial administrative district has approved a teen court program established in the juvenile's county of residence and the court determines that participation in the teen court program will likely benefit the juvenile and the community.

(b) The juvenile admits or pleads no contest in open court, in the presence of the juvenile's parent, guardian or legal custodian, to the allegations that the juvenile violated the civil law or ordinance.

(c) The juvenile has not successfully completed participation in a teen court program during the 2 years before the date of the alleged civil law or ordinance violation.

(3) Community service work program. Order the juvenile to participate in a supervised work program or other community service work under s. 938.34 (5g).

(3m) Youth report center. Order the juvenile to report to a youth report center after school, in the evening, on weekends, on other nonschool days, or at any other time that the juvenile is not under immediate adult supervision, for participation in the social, behavioral, academic, community service, and other programming of the center. Section 938.34 (5g) applies to any community service work performed by a juvenile under this subsection.

(4) Restitution. If the violation has resulted in damage to the property of another, or in actual physical injury to another excluding pain and suffering, order the juvenile to make repairs of the damage to property or reasonable restitution for the damage or injury, either in the form of cash payments or, if the victim agrees, the performance of services for the victim, or both, if the court, after taking into consideration the well-being and needs of the victim, considers it beneficial to the well-being and behavior of the juvenile. An order requiring payment for repairs or restitution shall include a finding that the juvenile alone is financially able to pay or physically able to perform the services, may allow up to the date of the expiration of the order for the payment or for the completion of the services, and may include a schedule for the performance and completion of the services. If the juvenile objects to the amount of damages claimed, the juvenile is entitled to a hearing on the question of damages before the amount of restitution is ordered. Any recovery under this subsection shall be reduced by the amount recovered as restitution for the same act under s. 938.45 (1r) (a).

(5) Boating safety course. If the violation is related to unsafe use of a boat, order the juvenile to attend a boating safety course under s. 30.74 (1). If the juvenile has a valid boating safety certificate at the time that the court imposes the disposition, the court shall revoke the certificate and order the person to obtain another boating safety certificate under s. 30.74 (1).

(6) Hunting, trapping, or fishing license suspension. If the violation is of ch. 29, suspend the license or licenses of the juvenile issued under that chapter for not more than one year or until the juvenile is 18 years of age, whichever occurs first.

(7) Hunter education program. If the violation is related to the unsafe use of firearms, order the juvenile to attend the hunter education program course under s. 29.591.

(8) Snowmobile safety course. If the violation is one under ch. 350 concerning the use of snowmobiles, order the juvenile to attend a snowmobile safety course under s. 350.055.

(9) All-terrain or utility terrain vehicle safety course. If the violation is one under s. 23.33 or under an ordinance enacted in accordance with s. 23.33 concerning the use of all-terrain vehicles or utility terrain vehicles, order the juvenile to attend an all-terrain vehicle or utility terrain vehicle safety course.

(9m) Off-highway motorcycle safety certification program. If the violation is one under s. 23.335 or under an ordinance enacted in accordance with s. 23.335 concerning the use of off-highway motorcycles, as defined in s. 23.335 (1) (q), order the juvenile to attend the off-highway motorcycle safety certification program under s. 23.335 (14).

(10) Alcohol or drug assessment, treatment, or education. If the violation is related to the use or abuse of alcohol beverages, controlled substances or controlled substance analogs, order the juvenile to do any of the following:

(a) Submit to an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 938.547 (4) and that is conducted by an approved treatment facility. The order shall designate an approved treatment facility to perform the assessment and shall specify the date by which the assessment must be completed.

(b) Participate in an outpatient alcohol and other drug abuse treatment program if an assessment conducted under par. (a) or s. 938.295 (1) recommends treatment.

(c) Participate in a court-approved alcohol or other drug abuse education program.

History: *1995 a. 77, 352, 448; 1997 a. 84, 183, 197, 198, 205, 248; 1999 a. 9, 32, 185; 2001 a. 16; 2005 a. 344; 2009 a. 103, 367; 2011 a. 32, 208; 2015 a. 170.*

Municipal courts have statutory authority to order parents of a juvenile to pay a forfeiture imposed on their child for violating a nontraffic municipal ordinance. OAG 4-00.

938.344 Disposition; certain intoxicating liquor, beer and drug violations.

(2) Underage alcohol possession or possession on school grounds. If a court finds a juvenile committed a violation under s. 125.07 (4) (b) or 125.09 (2), or a local ordinance that strictly conforms to one of those statutes, the court shall order one or any combination of the following penalties:

(a) For a first violation, a forfeiture of not more than $50, suspension of the juvenile’s operating privilege under s. 343.30 (6) (b) 1., or participation in a supervised work program or other community service work under s. 938.34 (5g).

(b) For a violation committed within 12 months of one previous violation, a forfeiture of not more than $100 or participation in a supervised work program or other community service work under s. 938.34 (5g). In addition, the juvenile’s operating privilege may be suspended under s. 343.30

(6) (b) 2., except that if the violation of s. 125.07 (4) (b) involved a motor vehicle the juvenile's operating privilege shall be suspended under s. 343.30 (6) (b) 2.

(c) For a violation committed within 12 months of 2 or more previous violations, a forfeiture of not more than $500 or participation in a supervised work program or other community service work under s. 938.34 (5g). In addition, the juvenile's operating privilege may be suspended under s. 343.30 (6) (b) 3., except that if the violation of s. 125.07 (4) (b) involved a motor vehicle the juvenile's operating privilege shall be suspended under s. 343.30 (6) (b) 3.

(2b) Underage purchase of alcohol or entering licensed premises. If a court finds a juvenile committed a violation under s. 125.07 (4) (a), or a local ordinance which strictly conforms to s. 125.07 (4) (a), the court shall order one or any combination of the following penalties:

(a) For a first violation, a forfeiture of not less than $250 nor more than $500, suspension of the juvenile's operating privilege under s. 343.30 (6) (b) 1., or participation in a supervised work program or other community service work under s. 938.34 (5g).

(b) For a violation committed within 12 months of one previous violation, a forfeiture of not less than $300 nor more than $500 or participation in a supervised work program or other community service work under s. 938.34 (5g). In addition, the juvenile's operating privilege may be suspended under s. 343.30 (6) (b) 2., except that if the violation involved a motor vehicle the juvenile's operating privilege shall be suspended under s. 343.30 (6) (b) 2.

(c) For a violation committed within 12 months of 2 or more previous violations, a forfeiture of $500 or participation in a supervised work program or other community service work under s. 938.34 (5g). In addition, the juvenile's operating privilege may be suspended under s. 343.30 (6) (b) 3., except that if the violation involved a motor vehicle the juvenile's operating privilege shall be suspended under s. 343.30 (6) (b) 3.

(2d) False proof of age. If a court finds a juvenile committed a violation under s. 125.085 (3) (b), or a local ordinance which strictly conforms to s. 125.085 (3) (b), the court shall order one or any combination of the following penalties:

(a) For a first violation, a forfeiture of not less than $100 nor more than $500, suspension of the juvenile's operating privilege under s. 343.30 (6) (b) 1., or participation in a supervised work program or other community service work under s. 938.34 (5g).

(b) For a violation committed within 12 months of a previous violation, a forfeiture of not less than $300 nor more than $500, suspension of the juvenile's operating privilege under s. 343.30 (6) (b) 2., or participation in a supervised work program or other community service work under s. 938.34 (5g).

(c) For a violation committed within 12 months of 2 or more previous violations, a forfeiture of $500, suspension of the juvenile's operating privilege under s. 343.30 (6) (b) 3., or participation in a supervised work program or other community service work under s. 938.34 (5g).

(2e) Drug paraphernalia violation.

(a) If a court finds a juvenile committed a violation under s. 961.573 (2), 961.574 (2) or 961.575 (2), or a local ordinance that strictly conforms to one of those statutes, the court shall suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not less than 6 months nor more than 5 years and, in addition, shall order one of the following penalties:

1. For a first violation, a forfeiture of not more than $50 or participation in a supervised work program or other community service work under s. 938.34 (5g) or both.

2. For a violation committed within 12 months of a previous violation, a forfeiture of not more than $100 or participation in a supervised work program or other community service work under s. 938.34 (5g) or both.

3. For a violation committed within 12 months of 2 or more previous violations, a forfeiture of not more than $500 or participation in a supervised work program or other community service work under s. 938.34 (5g) or both.

(b) Whenever a court suspends a juvenile's operating privilege under this subsection, the court may take possession of any suspended license. If the court takes possession of a license, it shall destroy the license. The court shall forward to the department of transportation the notice of suspension stating that the suspension is for a violation under s. 961.573 (2), 961.574 (2), or 961.575 (2), or a local ordinance that strictly conforms to one of those statutes.

(c) If the juvenile's license or operating privilege is currently suspended or revoked or the juvenile does not currently possess a valid operator's license under ch. 343, the suspension under this subsection is effective on the date on which the juvenile is first eligible for issuance or reinstatement of an operator's license under ch. 343.

(2g) Stay of order.

(a) After ordering a penalty under sub. (2), (2b), (2d) or (2e), the court, with the agreement of the juvenile, may enter an additional order staying the execution of the penalty order and suspending or modifying the penalty imposed. The order under this paragraph shall require the juvenile to do any of the following:

1. Submit to an alcohol and other drug abuse assessment that conforms to the criteria under s. 938.547 (4) and that is conducted by an approved treatment facility. The order shall designate an approved treatment facility to conduct the alcohol and other drug abuse assessment and shall specify the date by which the assessment must be completed.

2. Participate in an outpatient alcohol or other drug abuse treatment program at an approved treatment facility, if an alcohol or other drug abuse assessment conducted under subd. 1. or s. 938.295 (1) recommends treatment.

3. Participate in a court-approved alcohol or other drug abuse education program.

4. Participate in a teen court program if all of the following conditions apply:

a. The chief judge of the judicial administrative district has approved a teen court program established in the juvenile's county of residence and the court determines that participation in the teen court program will likely benefit the juvenile and the community.

b. The juvenile admits or pleads no contest in open court, in the presence of the juvenile's parent, guardian or legal custodian, to the allegations that the juvenile committed the violation specified in sub. (2), (2b), (2d) or (2e).

c. The juvenile has not successfully completed participation in a teen court program during the 2 years before the date of the alleged violation.

5. Report to a youth report center after school, in the evening, on weekends, on other nonschool days, or at any other time that the juvenile is not under immediate adult supervision, for participation in the social, behavioral, academic, community service, and other programming of the center. Section 938.34 (5g) applies to any community service work performed by a juvenile under this subdivision.

(b) If the approved treatment facility, with the written informed consent of the juvenile or, if the juvenile has not attained the age of 12, the written informed consent of the juvenile's parent, notifies the agency primarily responsible for providing services to the juvenile that the juvenile has submitted to an assessment under par. (a) and that the juvenile does not need treatment, intervention or education, the court shall notify the juvenile of whether or not the penalty will be reinstated.

(c) If the juvenile completes the alcohol or other drug abuse treatment program or court-approved alcohol or other drug abuse education program, the approved treatment facility or court-approved alcohol or other drug abuse education program shall, with the written informed consent of the juvenile or, if the juvenile has not attained the age of 12, the written informed consent of the juvenile's parent, notify the agency primarily responsible for providing services to the juvenile that the juvenile has complied with the order and the court shall notify the juvenile of whether or not the penalty will be reinstated.

(d) If an approved treatment facility or court-approved alcohol or other drug abuse education program, with the written informed consent of the juvenile or, if the juvenile has not attained the age of 12, the written informed consent of the juvenile's parent, notifies the agency primarily responsible for providing services to the juvenile that a juvenile is not participating, or has not satisfactorily completed, a recommended alcohol or other drug abuse treatment program or a court-approved alcohol or other drug abuse education program, the court shall hold a hearing to determine whether to impose the penalties under sub. (2), (2b), (2d), or (2e).

(2m) Counting violations. For purposes of subs. (2) to (2e), all violations arising out of the same incident or occurrence shall be counted as a single violation.

(3) Prosecution in adult court. If the juvenile alleged to have committed the violation is within 3 months of his or her 17th birthday, the court assigned to exercise jurisdiction under this chapter and ch. 48 may, at the request of the district attorney or on its own motion, dismiss the citation without prejudice and refer the matter to the district attorney for prosecution under s. 125.07 (4).

The juvenile is entitled to a hearing only on the issue of his or her age. This subsection does not apply to violations under s. 961.573 (2), 961.574 (2) or 961.575 (2) or a local ordinance that strictly conforms to one of those statutes.

History: *1995 a. 77, 448; 1997 a. 84; 1999 a. 9 s. 3263; 1999 a. 109; 2001 a. 16; 2005 a. 344; 2009 a. 103; 2011 a. 32.*

938.346 Notice to victims of juveniles' acts.

(1) Information to victims. Each known victim of a juvenile's act shall receive timely notice of the following information:

(a) The procedures under s. 938.396 (1) (c) 5. and 6. for obtaining the identity of the juvenile and the juvenile's parents.

(b) The procedure under s. 938.396 (1) (c) 5. for obtaining the juvenile's police records.

(c) The potential liability of the juvenile's parents under s. 895.035.

(d) Either of the following:

1. Information regarding any decision to close a case under s. 938.24 (5m), any deferred prosecution agreement under s. 938.245, any decision not to file a petition under s. 938.25 (2m), any consent decree under s. 938.32 or any dispositional order under ss. 938.34 to 938.345. The information may not include reports under s. 938.295 or 938.33 or any other information that deals with sensitive personal matters of the juvenile and the juvenile's family and that does not directly relate to the act or alleged act committed against the victim. This subdivision does not affect the right of a victim to attend any hearing that the victim is permitted to attend under s. 938.299 (1) (am).

2. The procedure for obtaining the information in subd. 1.

(e) The procedure under s. 938.296 under which the victim, if an adult, or the parent, guardian or legal custodian of the victim, if the victim is a child, may request an order requiring a juvenile who is alleged to have violated s. 940.225, 948.02, 948.025, 948.05, 948.06, or 948.085 (2) to submit to an HIV test, as defined in s. 252.01 (2m), and a test or a series of tests to detect the presence of a sexually transmitted disease, as defined in s. 252.11 (1), and to have the results of the tests disclosed as provided in s. 938.296 (4) (a) to (e).

(ec) The procedure under s. 938.296 under which the victim, if an adult, or the parent, guardian or legal custodian of the victim, if the victim is a child, may request an order requiring a juvenile who is alleged to have violated s. 946.43 (2m) to submit to a test or a series of tests to detect the presence of communicable diseases and to have the results of that test or series of tests disclosed as provided in s. 938.296 (5) (a) to (e).

(em) The right to confer, if requested, with an intake worker regarding deferred prosecution agreements under s. 938.245 (1m) or with a district attorney or corporation counsel under s.

938.265 regarding the possible outcomes of the proceedings and under s. 938.32 (1) (am) regarding consent decrees.

(f) The right to request and receive notice of the time and place of any hearing that the victim may attend under s. 938.299 (1) (am).

(fm) All of the following:

1. The right to a separate waiting area as provided under s. 938.2965.

2. The right to have his or her interest considered concerning continuances in the case under s. 938.315 (2).

3. The right to have victim impact information included in a court report under s. 938.33 and to have the person preparing the court report attempt to contact the victim, as provided under s. 938.331.

4. The right to employer intercession services under s. 950.04 (1v) (bm).

(g) The right to make a statement to the court as provided in ss. 938.32 (1) (b) and 938.335 (3m).

(h) All of the following:

1. The right to be accompanied by a service representative, as provided under s. 895.45.

2. The right to restitution, as provided under ss. 938.245, 938.32 (1t) and 938.34 (5).

3. The right to compensation, as provided under subch. I of ch. 949.

4. The right to a speedy disposition of the case under s. 950.04 (1v) (k).

5. The right to have personal property returned, as provided under s. 950.04 (1v) (s).

6. The right to complain to the department of justice concerning the treatment of crime victims, as provided under s. 950.08 (3), and to request review by the crime victims rights board of the complaint, as provided under s. 950.09 (2).

(1m) Duties of intake workers and district attorneys. The intake worker shall make a reasonable attempt to provide notice of the information under sub. (1) (a), (b), (c), and (h), the information under sub. (1) (d) relating to a deferred prosecution agreement under s. 938.245, the information under sub. (1) (em) relating to the right to confer, if requested, on deferred prosecution agreements and the information under sub. (3) if the juvenile's case is closed. The district attorney or corporation counsel shall make a reasonable attempt to provide notice of the information under sub. (1) (e), (ec), (f), (fm), and (g), the information under sub. (1) (d) relating to a consent decree under s. 938.32 or a dispositional order under ss. 938.34 to 938.345, the information under sub. (1) (em) relating to the right to request an opportunity to confer, if requested, on amendment of petitions, consent decrees and disposition recommendations and the

information under sub. (3) if he or she decides not to file a petition or the proceeding is terminated without a consent decree or dispositional order after the filing of a petition.

(2) Restrictions on disclosure of information. The notice under sub. (1) shall include an explanation of the restrictions on disclosing information obtained under this chapter and the penalties for violating the restrictions.

(3) Closed cases. If an inquiry is closed by an intake worker or otherwise does not result in a deferred prosecution agreement, the intake worker shall make a reasonable attempt to inform each known victim of the juvenile's alleged act as provided in s. 938.24 (5m). If a district attorney or corporation counsel decides not to file a petition or if, after a petition is filed, a proceeding is dismissed or otherwise does not result in a consent decree or dispositional order, a district attorney or corporation counsel shall make a reasonable attempt to inform each known victim of the juvenile's alleged act as provided in s. 938.25 (2m) or 938.312, whichever is applicable.

(4) Child victims. If the victim, as defined in s. 938.02 (20m) (a) 1., is a child, the notice under this section shall be given to the child's parents, guardian or legal custodian.

(5) Court policies and rules. Chief judges and circuit judges shall establish by policy and rule procedures for the implementation of this section. Subject to subs. (1m) and (3), the policies and rules shall specify when, how and by whom the notice under this section shall be provided to victims and with whom victims may confer regarding deferred prosecution agreements, amendment of petitions, consent decrees and disposition recommendations.

History: *1995 a. 77; 1997 a. 181, 205; 1999 a. 188; 2005 a. 155, 277, 344; 2007 a. 20; 2009 a. 209.*

938.355 Dispositional orders.

(6) Sanctions for violation of order.

(a) *Juvenile court orders.*

1. Except as provided in subd. 3., if a juvenile who has been adjudged delinquent or to have violated a civil law or ordinance, other than an ordinance enacted under s. 118.163 (1m) or (2), violates a condition specified in sub. (2) (b) 7., the court may impose on the juvenile any of the sanctions specified in par. (d).

2. Except as provided in subd. 3., if a juvenile who has been found to be in need of protection or services under s. 938.13 (4), (6m), (7), (12), or (14) violates a condition specified in sub. (2) (b) 7., the court may impose on the juvenile any of the sanctions under par. (d), other than placement in a juvenile detention facility or juvenile portion of a county jail.

2m. A sanction may be imposed under subd. 1. or 2. only if, at the dispositional hearing under s. 938.335, the court explained the conditions specified in sub. (2) (b) 7. to the juvenile and informed the juvenile of those possible sanctions or if before the violation the juvenile has

acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

3. The court may not impose a sanction under subd. 1. or 2. on a juvenile who is subject to an order under this section or s. 938.357 or 938.365 that terminates as provided in sub. (4) (am) 4. or s. 938.357 (6) (a) 4. or 938.365 (5) (b) 4.

(an) *Municipal court orders.*

1. If a juvenile who has violated a municipal ordinance, other than an ordinance enacted under s. 118.163 (1m) or (2), violates a condition of a dispositional order imposed by the municipal court, the municipal court may petition the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose on the juvenile the sanction under par. (d) 1. or the sanction under par. (d) 3., with monitoring by an electronic monitoring system. A sanction may be imposed under this subdivision only if, at the time of the judgment, the municipal court explained the conditions to the juvenile and informed the juvenile of those possible sanctions for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions. The petition shall contain a statement of whether the juvenile may be subject to the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the juvenile may be subject to that act, the names and addresses of the juvenile's Indian custodian, if any, and tribe, if known.

2. If the court assigned to exercise jurisdiction under this chapter and ch. 48 imposes the sanction under par. (d) 1. or home detention with monitoring by an electronic monitoring system under par. (d) 3., on a petition described in subd. 1., the court shall order the municipality of the municipal court that filed the petition to pay to the county the cost of providing the sanction imposed under par. (d) 1. or 3.

(b) *Motion to impose sanction.* A motion for imposition of a sanction may be brought by the person or agency primarily responsible for the provision of dispositional services, the district attorney or corporation counsel, or the court that entered the dispositional order. If the court initiates the motion, that court is disqualified from holding a hearing on the motion. Notice of the motion shall be given to the juvenile, guardian ad litem, counsel, parent, guardian, legal custodian, and all parties present at the original dispositional hearing. The motion shall contain a statement of whether the juvenile may be subject to the federal Indian Child Welfare Act, 25 USC 1901 to 1963 and, if the juvenile may be subject to that act, the names and addresses of the juvenile's Indian custodian, if any, and tribe, if known.

(bm) *Indian juvenile; notice.* If the person initiating the motion knows or has reason to know that the juvenile is an Indian juvenile who has been found to be in need of protection or services under s. 938.13 (4), (6m), or (7) or who has been adjudged to have violated a civil law or ordinance, other than an ordinance enacted under s. 118.163 (1m) or (2), and if the motion is seeking removal of the juvenile from the home of his or her parent or Indian custodian and placement of the juvenile in a place of nonsecure custody specified in par. (d) 1., notice under par. (b) to the Indian juvenile's parent shall be provided in the manner specified in s. 938.028 (4) (a). In like manner, the court shall also notify the Indian juvenile's Indian custodian and tribe. No hearing may be held under par. (c) until at least 10 days after receipt of the notice by the Indian juvenile's

parent, Indian custodian, and tribe or, if the identity or location of the Indian juvenile's parent, Indian custodian, or tribe cannot be determined, until at least 15 days after receipt of the notice by the U.S. secretary of the interior. On request of the Indian juvenile's parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

(c) *Sanction hearing.* Before imposing any sanction, the court shall hold a hearing, at which the juvenile is entitled to be represented by legal counsel and to present evidence.

(cm) *Reasonable efforts finding.* The court may not order the sanction of placement in a place of nonsecure custody specified in par. (d) 1. unless the court finds that the agency primarily responsible for providing services for the juvenile has made reasonable efforts to prevent the removal of the juvenile from his or her home and that continued placement of the juvenile in his or her home is contrary to the welfare of the juvenile. These findings are not required if they were made in the dispositional order under which the juvenile is being sanctioned. The court shall make the findings under this paragraph on a case-by-case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which that finding is based in the sanction order. A sanction order that merely references this paragraph without documenting or referencing that specific information in the sanction order or an amended sanction order that retroactively corrects an earlier sanction order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(cr) *Indian juvenile; findings.* In the case of an Indian juvenile who has been found to be in need of protection or services under s. 938.13 (4), (6m), or (7) or who has been adjudged to have violated a civil law or ordinance, other than an ordinance enacted under s. 118.163 (1m) or (2), the court may not order the sanction of removal from the home of the Indian juvenile's parent or Indian custodian and placement in a place of nonsecure custody specified in par. (d) 1., unless the court finds by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1. and the court finds that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile's family and that those efforts have proved unsuccessful. These findings are not required if they were made in the dispositional order under which the juvenile is being sanctioned. The findings under this paragraph shall be in addition to the findings under par. (cm), except that for the sole purpose of determining whether the cost of providing care for an Indian juvenile is eligible for reimbursement under 42 USC 670 to 679b, the findings under this paragraph and the findings under par. (cm) shall be considered to be the same findings.

(d) *Sanctions permitted.* If the court finds by a preponderance of the evidence that the juvenile has violated a condition of his or her dispositional order, the court may order any of the following sanctions as a consequence for any incident in which the juvenile has violated one or more conditions of his or her dispositional order:

1. Placement of the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department of corrections by rule or in a place of nonsecure custody, for not more than 10 days and the provision of educational services consistent with his or her current course of study during the period of placement. The juvenile shall be given credit against the period of detention or nonsecure custody imposed under this subdivision for all

time spent in secure detention in connection with the course of conduct for which the detention or nonsecure custody was imposed. If the court orders placement of the juvenile in a place of nonsecure custody under the supervision of the county department, the court shall order the juvenile into the placement and care responsibility of the county department as required under 42 USC 672 (a) (2) and shall assign the county department primary responsibility for providing services to the juvenile.

2. Suspension of or limitation on the use of the juvenile's operating privilege, as defined under s. 340.01 (40), or of any approval issued under ch. 29 for a period of not more than 3 years. If the juvenile does not hold a valid operator's license under ch. 343, other than an instruction permit under s. 343.07 or a restricted license under s. 343.08, on the date of the order issued under this subdivision, the court may order the suspension to begin on the date on which the juvenile is first eligible for issuance or reinstatement of an operator's license under ch. 343. If the court suspends the juvenile's operating privileges or an approval issued under ch. 29, the court shall immediately take possession of the suspended approval and may take possession of, and if possession is taken, shall destroy, the suspended license. The court shall forward to the department that issued the license or approval the notice of suspension, together with any approval of which the court takes possession.

3. Detention in the juvenile's home or current residence for a period of not more than 30 days under rules of supervision specified in the order. An order under this subdivision may require the juvenile to be monitored by an electronic monitoring system.

4. Not more than 25 hours of uncompensated participation in a supervised work program or other community service work under s. 938.34 (5g).

5. Participation after school, in the evening, on weekends, on other nonschool days, or at any other time that the juvenile is not under immediate adult supervision, in the social, behavioral, academic, community service, and other programming of a youth report center. Subdivision 4. and s. 938.34 (5g) apply to any community service work performed by a juvenile under this subdivision.

(e) *Contempt of court.* This subsection does not preclude a person who is aggrieved by a juvenile's violation of a condition specified in sub. (2) (b) 7. from proceeding against the juvenile for contempt of court under ch. 785.

(6g) Contempt for continued violation of order.

(a) If a juvenile upon whom the court has imposed a sanction under sub. (6) (a) or (6m) commits a 2nd or subsequent violation of a condition specified in sub. (2) (b) 7., the district attorney may file a petition under s. 938.12 charging the juvenile with contempt of court, as defined in s. 785.01 (1), and reciting the recommended disposition under s. 938.34. The district attorney may file the petition on his or her own initiative or on the request of the court that imposed the condition specified in sub. (2) (b) 7. or that imposed the sanction under sub. (6) (a) or (6m). If the district attorney files the petition on the request of the court that imposed the condition specified in sub. (2) (b) 7. or that imposed the sanction under sub. (6) (a) or (6m), that court is disqualified from holding a hearing on the contempt petition.

(b) The court may find a juvenile in contempt of court, as defined in s. 785.01 (1), and order a disposition under s. 938.34 if the court makes all of the following findings:

1. That the juvenile has previously been sanctioned under sub. (6) (a) or (6m) for violating a condition specified in sub. (2) (b) 7. and, subsequent to that sanction, has committed another violation of a condition specified in sub. (2) (b) 7.

2. That at the sanction hearing the court explained the conditions to the juvenile and informed the juvenile of a possible finding of contempt for a violation and the possible consequences of that contempt.

3. That the violation is egregious.

4. That the court has considered less restrictive alternatives and found them to be ineffective.

(c) This subsection does not preclude a person who is aggrieved by a juvenile's violation of a condition specified in sub. (2) (b) 7. from proceeding against the juvenile for contempt of court under ch. 785.

(6m) Sanctions for violation of order: truancy or habitual truancy.

(a) *Violation of habitual truancy order.* If the court finds by a preponderance of the evidence that a juvenile who has been found to have violated a municipal ordinance enacted under s. 118.163 (2) or who has been found to be in need of protection or services under s. 938.13 (6) has violated a condition specified under sub. (2) (b) 7., the court may order as a sanction any combination of the sanctions under subds.1g. to 4. and the dispositions under s. 938.342 (1g) (d) to (j) and (1m), regardless of whether the disposition was imposed in the order violated by the juvenile. A sanction may be imposed under this paragraph only if at the dispositional hearing under s. 938.335 the court explained those conditions to the juvenile and informed the juvenile of the possible sanctions under this paragraph for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions. The court may not impose a sanction under this paragraph on a juvenile who is subject to an order under this section or s. 938.357 or 938.365 that terminates as provided in sub. (4) (am) 4. or s. 938.357 (6) (a) 4. or 938.365 (5) (b) 4. The court may order as a sanction under this paragraph any of the following:

1g. Placement of the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department of corrections by rule or in a place of nonsecure custody, for not more than 10 days and the provision of educational services consistent with his or her current course of study during the period of placement. The juvenile shall be given credit against the period of detention or nonsecure custody imposed under this subdivision for all time spent in secure detention in connection with the course of conduct for which the detention or nonsecure custody was imposed. The use of placement in a juvenile detention facility or in a juvenile portion of a county jail as a sanction under this subdivision is subject to the adoption of a resolution by the county board of supervisors under s. 938.06 (5) authorizing the use of those placements as a sanction. If the court orders placement of the juvenile in a place of nonsecure

custody under the supervision of the county department, the court shall order the juvenile into the placement and care responsibility of the county department as required under 42 USC 672 (a) (2) and shall assign the county department primary responsibility for providing services to the juvenile.

1m. Suspension or limitation on the use of the juvenile's operating privilege, as defined under s. 340.01 (40), or of any approval issued under ch. 29 for not more than one year. If the juvenile does not hold a valid operator's license under ch. 343, other than an instruction permit under s. 343.07 or a restricted license under s. 343.08, on the date of the order issued under this subdivision, the court may order the suspension or limitation to begin on the date on which the juvenile is first eligible for issuance or reinstatement of an operator's license under ch. 343. If the court suspends a juvenile's operating privilege or an approval issued under ch. 29, the court shall immediately take possession of the suspended approval and may take possession of, and if possession is taken, shall destroy, the suspended license. The court shall forward to the department that issued the license or approval a notice stating the reason for and the duration of the suspension, together with any approval of which the court takes possession.

2. Counseling or participation for not more than 25 hours in a supervised work program or other community service work under s. 938.34 (5g).

3. Detention in the juvenile's home or current residence for a period of not more than 30 days except during hours in which the juvenile is attending religious worship or a school program, including travel time required to get to and from the place of worship or school program. The order may permit a juvenile to leave his or her home or current residence if he or she is accompanied by a parent or guardian.

4. Participation after school, in the evening, on weekends, on other nonschool days, or at any other time that the juvenile is not under immediate adult supervision, in the social, behavioral, academic, community service, and other programming of a youth report center. Subdivision 2. and s. 938.34 (5g) apply to any community service work performed by a juvenile under this subdivision.

(ag) *Violation of truancy order.* If the court finds by a preponderance of the evidence that a juvenile who has been found to have violated a municipal ordinance enacted under s. 118.163 (1m) has violated a condition specified under sub. (2) (b) 7., the court may order as a sanction any combination of the operating privilege suspension specified in par. (a) and the dispositions specified in s. 938.342 (1g) (b) to (k) and (1m), regardless of whether the disposition was imposed in the order violated by the juvenile. A sanction may be imposed under this paragraph only if at the dispositional hearing under s. 938.335 the court explained those conditions to the juvenile and informed the juvenile of the possible sanctions under this paragraph for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

(am) *Violation of municipal court order.*

1. If a juvenile who has violated a municipal ordinance enacted under s. 118.163 (2) violates a condition of a dispositional order imposed by the municipal court, the municipal court may

petition the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose on the juvenile the sanction specified in par. (a) 1g. A sanction may be imposed under this subdivision only if, at the time of the judgment the municipal court explained the conditions to the juvenile and informed the juvenile of that possible sanction or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and that possible sanction and that he or she understands those conditions and that possible sanction. The petition shall contain a statement of whether the juvenile may be subject to the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the juvenile may be subject to that act, the names and addresses of the juvenile's Indian custodian, if any, and tribe, if known.

2. If the court assigned to exercise jurisdiction under this chapter and ch. 48 imposes the sanction under par. (a) 1g. on a petition under subd. 1., the court shall order the municipality of the municipal court that filed the petition to pay to the county the cost of providing the sanction imposed under par. (a) 1g.

(b) *Motion for sanction.* A motion for the imposition of a sanction under par. (a) or (ag) may be brought by the person or agency primarily responsible for providing dispositional services to the juvenile, the district attorney, the corporation counsel or the court that entered the dispositional order. If the court initiates the motion, that court is disqualified from holding a hearing on the motion. Notice of the motion shall be given to the juvenile, guardian ad litem, counsel, parent, guardian, legal custodian and all parties present at the original dispositional hearing.

(bm) *Indian juvenile; notice*. If the person initiating the motion knows or has reason to know that the juvenile is an Indian juvenile who has been found to be in need of protection or services under s. 938.13 (6) or who has been adjudged to have violated an ordinance enacted under s. 118.163 (2), and if the motion is seeking removal of the juvenile from the home of his or her parent or Indian custodian and placement in a place of nonsecure custody specified in par. (a) 1g., notice under par. (b) to the Indian juvenile's parent shall be provided in the manner specified in s. 938.028 (4) (a). In like manner, the court shall also notify the Indian juvenile's Indian custodian and tribe. No hearing may be held under par. (c) until at least 10 days after receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe or, if the identity or location of the Indian juvenile's parent, Indian custodian, or tribe cannot be determined, until at least 15 days after receipt of the notice by the U.S. secretary of the interior. On request of the Indian juvenile's parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

(c) *Sanction hearing.* Before imposing a sanction under par. (a) or (ag), the court shall hold a hearing at which the juvenile is entitled to be represented by legal counsel and to present evidence. Except as provided in par. (bm), the hearing shall be held within 15 days after the filing of a motion under par. (b).

(cm) *Reasonable efforts finding.* The court may not order the sanction of placement in a place of nonsecure custody under par. (a) 1g. unless the court finds that the agency primarily responsible for providing services for the juvenile has made reasonable efforts to prevent the removal of the juvenile from his or her home and that continued placement of the juvenile in his or her home is contrary to the welfare of the juvenile. The court shall make the findings under this paragraph on a case-by-case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which that finding is based in the sanction order. A sanction

order that merely references this paragraph without documenting or referencing that specific information in the sanction order or an amended sanction order that retroactively corrects an earlier sanction order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(cr) *Indian juvenile; findings.* In the case of an Indian juvenile who has been found to be in need of protection or services under s. 938.13 (6) or who has been adjudged to have violated an ordinance enacted under s. 118.163 (2), the court may not order the sanction of removal from the home of the Indian juvenile's parent or Indian custodian and placement in a place of nonsecure custody specified in par. (a) 1g., unless the court finds by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1. and the court finds that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile's family and that those efforts have proved unsuccessful. These findings are not required if they were made in the dispositional order under which the juvenile is being sanctioned. The findings under this paragraph shall be in addition to the findings under par. (cm), except that for the sole purpose of determining whether the cost of providing care for an Indian juvenile is eligible for reimbursement under 42 USC 670 to 679b, the findings under this paragraph and the findings under par. (cm) shall be considered to be the same findings.

(7) Orders applicable to parents, guardians, legal custodians, and other adults. In addition to any dispositional order entered under s. 938.34 or 938.345, the court may enter an order applicable to a juvenile‘s parent, guardian, or legal custodian or to another adult, as provided under s. 938.45.

History: *1995 a. 77, 352; 1997 a. 27, 35, 205, 237, 239, 252; 1999 a. 9, 32, 103; 2001 a. 16, 69, 109; 2003 a. 50; 2005 a. 277, 344; 2007 a. 20, 97; 2009 a. 28, 79, 94, 103, 180, 185, 302; 2011 a. 181, 258; 2013 a. 165, 334, 362; 2015 a. 55, 80; 2015 a. 195 ss. 64, 83; 2015 a. 366, 367, 373; 2017 a. 366; 2019 a. 8.*

938.396 Records.

(1) Law enforcement records.

(a) *Confidentiality.* Law enforcement agency records of juveniles shall be kept separate from records of adults. Law enforcement agency records of juveniles may not be open to inspection or their contents disclosed except under par. (b) or (c), sub. (1j), (2m) (c) 1p., or (10), or s. 938.293 or by order of the court.

(b) *Applicability.* Paragraph (a) does not apply to any of the following:

1. The disclosure of information to representatives of the news media who wish to obtain information for the purpose of reporting news. A representative of the news media who obtains information under this subdivision may not reveal the identity of the juvenile involved.

2. The confidential exchange of information between a law enforcement agency and officials of

the public or private school attended by the juvenile. A public school official who obtains information under this subdivision shall keep the information confidential as required under s. 118.125, and a private school official who obtains information under this subdivision shall keep the information confidential in the same manner as is required of a public school official under s. 118.125.

2m. The confidential exchange of information between a law enforcement agency and officials of the tribal school attended by the juvenile if the law enforcement agency determines that enforceable protections are provided by a tribal school policy or tribal law that requires tribal school officials to keep the information confidential in a manner at least as stringent as is required of a public school official under s. 118.125.

3. The confidential exchange of information between a law enforcement agency and another law enforcement agency. A law enforcement agency that obtains information under this subdivision shall keep the information confidential as required under par. (a) and s. 48.396 (1).

4. The confidential exchange of information between a law enforcement agency and a social welfare agency. A social welfare agency that obtains information under this subdivision shall keep the information confidential as required under ss. 48.78 and 938.78.

5. The disclosure of information relating to a juvenile 10 years of age or over who is subject to the jurisdiction of a court of criminal jurisdiction.

(c) *Exceptions.* Notwithstanding par. (a), law enforcement agency records of juveniles may be disclosed as follows:

1. If requested by the parent, guardian or legal custodian of a juvenile who is the subject of a law enforcement officer’s report, or if requested by the juvenile, if 14 years of age or over, a law enforcement agency may, subject to official agency policy, provide to the parent, guardian, legal custodian or juvenile a copy of that report.

2. Upon the written permission of the parent, guardian or legal custodian of a juvenile who is the subject of a law enforcement officer’s report or upon the written permission of the juvenile, if 14 years of age or over, a law enforcement agency may, subject to official agency policy, make available to the person named in the permission any reports specifically identified by the parent, guardian, legal custodian or juvenile in the written permission.

3. At the request of a school district administrator, administrator of a private school, or administrator of a tribal school, or designee of a school district administrator, private school administrator, or tribal school administrator, or on its own initiative, a law enforcement agency may, subject to official agency policy, provide to the school district administrator, private school administrator, or tribal school administrator or designee, for use as provided in s. 118.127, any information in its records relating to any of the following if the official agency policy specifies that the information may not be provided to an administrator of a tribal school or a tribal school administrator’s designee unless the governing body of the tribal school agrees that the information will be used by the tribal school as provided in s. 118.127:

a. The use, possession, or distribution of alcohol or a controlled substance or controlled substance analog by a juvenile enrolled in the public school district, private school, or tribal school.

b. The illegal possession by a juvenile of a dangerous weapon, as defined in s. 939.22 (10).

c. An act for which a juvenile enrolled in the school district, private school, or tribal school was taken into custody under s. 938.19 based on a law enforcement officer's belief that the juvenile was committing or had committed a violation of any state or federal criminal law.

d. An act for which a juvenile enrolled in the public school district, private school, or tribal school was adjudged delinquent.

4. A law enforcement agency may enter into an interagency agreement with a school board, a private school, a tribal school, a social welfare agency, or another law enforcement agency providing for the routine disclosure of information under subs. (1) (b) 2. and 2m. and (c) 3. to the school board, private school, tribal school, social welfare agency, or other law enforcement agency.

5. If requested by a victim of a juvenile's act, a law enforcement agency may, subject to official agency policy, disclose to the victim any information in its records relating to the injury, loss or damage suffered by the victim, including the name and address of the juvenile and the juvenile's parents. The victim may use and further disclose the information only for the purpose of recovering for the injury, damage or loss suffered as a result of the juvenile's act.

6. If requested by the victim-witness coordinator, a law enforcement agency shall disclose to the victim-witness coordinator any information in its records relating to the enforcement of rights under the constitution, this chapter, and s. 950.04 or the provision of services under s. 950.06 (1m), including the name and address of the juvenile and the juvenile's parents. The victim-witness coordinator may use the information only for the purpose of enforcing those rights and providing those services and may make that information available only as necessary to ensure that victims and witnesses of crimes, as defined in s. 950.02 (1m), receive the rights and services to which they are entitled under the constitution, this chapter, and ch. 950. The victim-witness coordinator may also use the information to disclose the name and address of the juvenile and the juvenile's parents to the victim of the juvenile's act.

7. If a juvenile has been ordered to make restitution for any injury, loss or damage caused by the juvenile and if the juvenile has failed to make that restitution within one year after the entry of the order, the insurer of the victim, as defined in s. 938.02 (20m) (a) 1., may request a law enforcement agency to disclose to the insurer any information in its records relating to the injury, loss or damage suffered by the victim, including the name and address of the juvenile and the juvenile's parents, and the law enforcement agency may, subject to official agency policy, disclose to the victim's insurer that information. The insurer may use and further disclose the information only for the purpose of investigating a claim arising out of the juvenile's act.

8. If requested by a fire investigator under s. 165.55 (15), a law enforcement agency may, subject to official agency policy, disclose to the fire investigator any information in its records relating to a juvenile as necessary for the fire investigator to pursue his or her investigation under s. 165.55.

The fire investigator may use and further disclose the information only for the purpose of pursuing that investigation.

(d) *Law enforcement access to school records.* On petition of a law enforcement agency to review pupil records, as defined in s. 118.125 (1) (d), other than pupil records that may be disclosed without a court order under s. 118.125 (2) or (2m), for the purpose of pursuing an investigation of any alleged delinquent or criminal activity or on petition of a fire investigator under s. 165.55 (15) to review those pupil records for the purpose of pursuing an investigation under s. 165.55 (15), the court may order the school board of the school district, or the governing body of the private school, in which a juvenile is enrolled to disclose to the law enforcement agency or fire investigator the pupil records of that juvenile as necessary for the law enforcement agency or fire investigator to pursue the investigation. The law enforcement agency or fire investigator may use the pupil records only for the purpose of the investigation and may make the pupil records available only to employees of the law enforcement agency or fire investigator who are working on the investigation.

(1j) Law enforcement records, court-ordered disclosure.

(a) Any person who is denied access to a record under sub. (1) (a) or (10) may petition the court to order the disclosure of the record. The petition shall be in writing and shall describe as specifically as possible all of the following:

1. The type of information sought.

2. The reason the information is being sought.

3. The basis for the petitioner's belief that the information is contained in the records.

4. The relevance of the information sought to the petitioner's reason for seeking the information.

5. The petitioner's efforts to obtain the information from other sources.

(b) Subject to par. (bm), the court, on receipt of a petition, shall notify the juvenile, the juvenile's counsel, the juvenile's parents, and appropriate law enforcement agencies in writing of the petition. If any person notified objects to the disclosure, the court may hold a hearing to take evidence relating to the petitioner's need for the disclosure.

(bm) If the petitioner is seeking access to a record under sub. (1) (c) 3., the court shall, without notice or hearing, make the inspection and determinations specified in par. (c) and, if the court determines that disclosure is warranted, shall order disclosure under par. (d). The petitioner shall provide a copy of the disclosure order to the law enforcement agency that denied access to the record, the juvenile, the juvenile's counsel, and the juvenile's parents. Any of those persons may obtain a hearing on the court's determinations by filing a motion to set aside the disclosure order within 10 days after receipt of the order. If no motion is filed within those 10 days or if, after hearing, the court determines that no good cause has been shown for setting aside the order, the law enforcement agency shall disclose the juvenile's record as ordered.

(c) The court shall make an inspection, which may be in camera, of the juvenile's records. If the court determines that the information sought is for good cause and that it cannot be obtained with reasonable effort from other sources, it shall then determine whether the petitioner's need for the information outweighs society's interest in protecting its confidentiality. In making this determination, the court shall balance the following private and societal interests:

1. The petitioner's interest in recovering for the injury, damage or loss he or she has suffered against the juvenile's interest in rehabilitation and in avoiding the stigma that might result from disclosure.

2. The public's interest in the redress of private wrongs through private litigation against the public's interest in protecting the integrity of the juvenile justice system.

3. If the petitioner is a person who was denied access to a record under sub. (1) (c) 3., the petitioner's legitimate educational interests, including safety interests, in the information against society's interest in protecting its confidentiality.

(d) If the court determines that disclosure is warranted, it shall order the disclosure of only as much information as is necessary to meet the petitioner's need for the information.

(e) The court shall record the reasons for its decision to disclose or not to disclose the juvenile's records. All records related to a decision under this subsection are confidential.

(2) Court records; confidentiality.

(a) Records of the court assigned to exercise jurisdiction under this chapter and ch. 48 and of municipal courts exercising jurisdiction under s. 938.17 (2) shall be entered in books or deposited in files kept for that purpose only. Those records shall not be open to inspection or their contents disclosed except by order of the court assigned to exercise jurisdiction under this chapter and ch. 48 or as required or permitted under sub. (2g), (2m) (b) or (c), or (10).

(b) The provisions of ss. 801.19 to 801.21 are applicable in court proceedings under this chapter and ch. 48.

(2g) Confidentiality of court records; exceptions. Notwithstanding sub. (2), records of the court assigned to exercise jurisdiction under this chapter and ch. 48 and of courts exercising jurisdiction under s. 938.17 (2) may be disclosed as follows:

(ag) *Request of parent or juvenile.* Upon request of the parent, guardian, or legal custodian of a juvenile who is the subject of a record of a court assigned to exercise jurisdiction under this chapter and ch. 48 or of a municipal court exercising jurisdiction under s. 938.17 (2), or upon request of the juvenile, if 14 years of age or over, the court that is the custodian of the record shall open for inspection by the parent, guardian, legal custodian, or juvenile its records relating to that juvenile, unless that court finds, after due notice and hearing, that inspection of those records by the parent, guardian, legal custodian, or juvenile would result in imminent danger to anyone.

(am) *Permission of parent or juvenile.* Upon the written permission of the parent, guardian, or legal custodian of a juvenile who is the subject of a record of a court assigned to exercise jurisdiction under this chapter and ch. 48 or of a municipal court exercising jurisdiction under s. 938.17 (2), or upon written permission of the juvenile if 14 years of age or over, the court that is the custodian of the record shall open for inspection by the person named in the permission any records specifically identified by the parent, guardian, legal custodian, or juvenile in the written permission, unless e that court finds, after due notice and hearing, that inspection of those records by the person named in the permission would result in imminent danger to anyone.

(b) *Federal program monitoring.*

1. Upon request of the department of corrections, the department of children and families, or a federal agency to review court records for the purpose of monitoring and conducting periodic evaluations of activities as required by and implemented under 45 CFR 1355, 1356, and 1357, the court shall open those records for inspection and copying by authorized representatives of the requester. Those representatives shall keep those records confidential and may use and further disclose those records only for the purpose for which those records were requested.

2. Upon request of an entity engaged in the bona fide research, monitoring, or evaluation of activities conducted under 42 USC 629h, as determined by the director of state courts, to review court records for the purpose of that research, monitoring, or evaluation, the court shall open those records for inspection and copying by authorized representatives of that entity. Those representatives shall keep those records confidential and may use and further disclose those records only for the purpose for which those records were requested. The director of state courts may use the circuit court automated information system under s. 758.19 (4) to facilitate the transfer of electronic records between the court and that entity.

(c) *Law enforcement agencies.* Upon request of a law enforcement agency to review court records for the purpose of investigating alleged criminal activity or activity that may result in a court exercising jurisdiction under s. 938.12 or 938.13 (12), the court assigned to exercise jurisdiction under this chapter and ch. 48 shall open for inspection by authorized representatives of the requester the records of the court relating to any juvenile who has been the subject of a proceeding under this chapter.

(d) *Criminal and civil proceedings.* Upon request of a court of criminal jurisdiction to review court records for the purpose of conducting or preparing for a proceeding in that court, upon request of a district attorney to review court records for the purpose of performing his or her official duties in a proceeding in a court of criminal jurisdiction, or upon request of a court of civil jurisdiction or the attorney for a party to a proceeding in that court to review court records for the purpose of impeaching a witness under s. 906.09, the court assigned to exercise jurisdiction under this chapter and ch. 48 shall open for inspection by authorized representatives of the requester the records of the court relating to any juvenile who has been the subject of a proceeding under this chapter.

(dm) *Delinquency or criminal defense.* Upon request of a defense counsel to review court records for the purpose of preparing his or her client's defense to an allegation of delinquent or criminal activity, the court shall open for inspection by authorized representatives of the requester the records of the court relating to that client.

(dr) *Presentence investigation. Upon* request of the department of corrections or any other person preparing a presentence investigation under s. 972.15 to review court records for the purpose of preparing the presentence investigation, the court shall open for inspection by any authorized representative of the requester the records of the court relating to any juvenile who has been the subject of a proceeding under this chapter.

(em) *Sex offender registration.* Upon request of the department of corrections to review court records for the purpose of obtaining information concerning a juvenile who is required to register under s. 301.45, the court shall open for inspection by authorized representatives of the requester the records of the court relating to any juvenile who has been adjudicated delinquent or found in need of protection or services or not responsible by reason of mental disease or defect for an offense specified in s. 301.45 (1g) (a). The department of corrections may disclose information that it obtains under this paragraph as provided under s. 301.46.

(f) *Victim-witness coordinator.* Upon request of the victim-witness coordinator to review court records for the purpose of enforcing rights under the constitution, this chapter, and s. 950.04 and providing services under s. 950.06 (1m), the court shall open for inspection by the victim-witness coordinator the records of the court relating to the enforcement of those rights or the provision of those services, including the name and address of the juvenile and the juvenile's parents. The victim-witness coordinator may use any information obtained under this paragraph only for the purpose of enforcing those rights and providing those services and may make that information available only as necessary to ensure that victims and witnesses of crimes, as defined in s. 950.02 (1m), receive the rights and services to which they are entitled under the constitution, this chapter and ch. 950. The victim-witness coordinator may also use that information to disclose the name and address of the juvenile and the juvenile’s parents to the victim of the juvenile’s act.

(fm) *Victim’s insurer.* Upon request of an insurer of the victim, as defined in s. 938.02 (20m) (a) 1., the court shall disclose to an authorized representative of the requester the amount of restitution, if any, that the court has ordered a juvenile to make to the victim.

(g) *Paternity of juvenile.* Upon request of a court having jurisdiction over actions affecting the family, an attorney responsible for support enforcement under s. 59.53 (6) (a) or a party to a paternity proceeding under subch. IX of ch. 767, the party’s attorney or the guardian ad litem for the juvenile who is the subject of that proceeding to review or be provided with information from the records of the court assigned to exercise jurisdiction under this chapter and ch. 48 relating to the paternity of a juvenile for the purpose of determining the paternity of the juvenile or for the purpose of rebutting the presumption of paternity under s. 891.405, 891.407, or 891.41, the court assigned to exercise jurisdiction under this chapter and ch. 48 shall open for inspection by the requester its records relating to the paternity of the juvenile or disclose to the requester those records.

NOTE: Par. (g) is shown as amended eff. 8-1-20 by 2019 Wis. Act 95. Prior to 8-1-20 it reads:

> **(g) Paternity of juvenile. Upon request of a court having jurisdiction over actions affecting the family, an attorney responsible for support enforcement under s. 59.53 (6) (a) or a party to a paternity proceeding under subch. IX of ch. 767, the party’s attorney or the guardian ad litem for the juvenile who is the subject of that proceeding to review or be provided with information from the records of the court assigned to exercise jurisdiction under this chapter and ch. 48 relating to the paternity of a juvenile for the purpose of determining the paternity of the juvenile or for the purpose of rebutting**

the presumption of paternity under s. 891.405 or 891.41, the court assigned to exercise jurisdiction under this chapter and ch. 48 shall open for inspection by the requester its records relating to the paternity of the juvenile or disclose to the requester those records.

(gm) *Other courts.* Upon request of any court assigned to exercise jurisdiction under this chapter and ch. 48, any municipal court exercising jurisdiction under s. 938.17 (2), or a district attorney, corporation counsel, or city, village, or town attorney to review court records for the purpose of any proceeding in that court or upon request of the attorney or guardian ad litem for a party to a proceeding in that court to review court records for the purpose of that proceeding, the court assigned to exercise jurisdiction under this chapter and ch. 48 or the municipal court exercising jurisdiction under s. 938.17 (2) shall open for inspection by any authorized representative of the requester its records relating to any juvenile who has been the subject of a proceeding under this chapter.

(h) *Custody of juvenile.* Upon request of the court having jurisdiction over an action affecting the family or of an attorney for a party or a guardian ad litem in an action affecting the family to review court records for the purpose of considering the custody of a juvenile, the court assigned to exercise jurisdiction under this chapter and ch. 48 or a municipal court exercising jurisdiction under s. 938.17 (2) shall open for inspection by an authorized representative of the requester its records relating to any juvenile who has been the subject of a proceeding under this chapter.

(i) *Probate court.* Upon request of the court assigned to exercise probate jurisdiction, the attorney general, the personal representative or special administrator of, or an attorney performing services for, the estate of a decedent in any proceeding under chs. 851 to 879, a person interested, as defined in s. 851.21, or an attorney, attorney-in-fact, guardian ad litem or guardian of the estate of a person interested to review court records for the purpose of s. 854.14 (5) (b), the court assigned to exercise jurisdiction under this chapter and ch. 48 shall open for inspection by any authorized representative of the requester the records of the court relating to any juvenile who has been adjudged delinquent on the basis of unlawfully and intentionally killing a person.

(j) *Fire investigator.* Upon request of a fire investigator under s. 165.55 (15) to review court records for the purpose of pursuing an investigation under s. 165.55, the court shall open for inspection by authorized representatives of the requester the records of the court relating to any juvenile who has been adjudicated delinquent or found to be in need of protection or services under s. 938.13 (12) or (14) for a violation of s. 940.08, 940.24, 941.10, 941.11, 943.01, 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, or 943.06 or for an attempt to commit any of those violations.

(k) *Serious juvenile offenders.* Upon request of any person, the court shall open for inspection by the requester the records of the court, other than reports under s. 938.295 or 938.33 or other records that deal with sensitive personal information of the juvenile and the juvenile's family, relating to a juvenile who has been alleged to be delinquent for committing a violation specified in s. 938.34 (4h) (a). The requester may further disclose the information to anyone.

(L) *Repeat offenders.* Upon request of any person, the court shall open for inspection by the requester the records of the court, other than reports under s. 938.295 or 938.33 or other records that deal with sensitive personal information of the juvenile and the juvenile's family, relating to a juvenile who has been alleged to be delinquent for committing a violation that would be a felony if committed by an adult if the juvenile has been adjudicated delinquent at any time

preceding the present proceeding and that previous adjudication remains of record and unreversed. The requester may further disclose the information to anyone.

(m) *Notification of juvenile's school.*

1. If a petition under s. 938.12 or 938.13 (12) is filed alleging that a juvenile has committed a delinquent act that would be a felony if committed by an adult, the court clerk shall notify the school board of the school district, the governing body of the private school, or the governing body of the tribal school in which the juvenile is enrolled or the designee of the school board or governing body of the fact that the petition has been filed and the nature of the delinquent act alleged in the petition. If later the proceeding on the petition is closed, dismissed, or otherwise terminated without a finding that the juvenile has committed a delinquent act, the court clerk shall notify the school board of the school district or the governing body of the private school or tribal school in which the juvenile is enrolled or the designee of the school board or governing body that the proceeding has been terminated without a finding that the juvenile has committed a delinquent act.

2. Subject to subd. 4., if a juvenile is adjudged delinquent, within 5 days after the date on which the dispositional order is entered, the court clerk shall notify the school board of the school district, the governing body of the private school, or the governing body of the tribal school in which the juvenile is enrolled or the designee of the school board or governing body of the fact that the juvenile has been adjudicated delinquent, the nature of the violation committed by the juvenile, and the disposition imposed on the juvenile under s. 938.34 as a result of the violation.

3. If school attendance is a condition of a dispositional order under s. 938.342 (1d) or (1g) or 938.355 (2) (b) 7., within 5 days after the date on which the dispositional order is entered, the clerk of the court assigned to exercise jurisdiction under this chapter and ch. 48 or the clerk of the municipal court exercising jurisdiction under s. 938.17 (2) shall notify the school board of the school district, the governing body of the private school, or the governing body of the tribal school in which the juvenile is enrolled or the designee of the school board or governing body of the fact that the juvenile's school attendance is a condition of a dispositional order.

4. If a juvenile is found to have committed a delinquent act at the request of or for the benefit of a criminal gang, as defined in s. 939.22 (9), that would have been a felony under chs. 939 to 948 or 961 if committed by an adult and is adjudged delinquent on that basis, within 5 days after the date on which the dispositional order is entered, the court clerk shall notify the school board of the school district, the governing body of the private school, or the governing body of the tribal school in which the juvenile is enrolled or the designee of the school board or governing body of the fact that the juvenile has been adjudicated delinquent on that basis, the nature of the violation committed by the juvenile, and the disposition imposed on the juvenile under s. 938.34 as a result of that violation.

5. In addition to the disclosure made under subd. 2. or 4., if a juvenile is adjudicated delinquent and as a result of the dispositional order is enrolled in a different school district, private school, or tribal school from the school district, private school, or tribal school in which the juvenile is enrolled at the time of the dispositional order, the court clerk, within 5 days after the date on which the dispositional order is entered, shall provide the school board of the juvenile's new school district, the governing body of the juvenile's new private school, or the governing body of

the tribal school or the designee of the school board or governing body with the information specified in subd. 2. or 4., whichever is applicable, and, in addition, shall notify that school board, governing body, or designee of whether the juvenile has been adjudicated delinquent previously by that court, the nature of any previous violations committed by the juvenile, and the dispositions imposed on the juvenile under s. 938.34 as a result of those previous violations.

6. Except as required under subds. 1. to 5. or by order of the court, no information from the juvenile's court records may be disclosed to the school board of the school district, the governing body of the private school, or the governing body of the tribal school in which the juvenile is enrolled or the designee of the school board or governing body. Any information from a juvenile's court records provided to the school board of the school district or the governing body of the private school in which the juvenile is enrolled or the designee of the school board or governing body shall be disclosed by the school board, governing body, or designee to employees of the school district or private school who work directly with the juvenile or who have been determined by the school board, governing body, or designee to have legitimate educational interests, including safety interests, in the information. A school district or private school employee to whom that information is disclosed may not further disclose the information. If information is disclosed to the governing body of a tribal school under this subdivision, the court shall request that the governing body of the tribal school or its designee disclose the information to employees who work directly with the juvenile or who have been determined by the governing body or its designee to have legitimate educational interests, including safety interests, in the information, and shall further request that the governing body prohibit any employee to whom information is disclosed under this subdivision from further disclosing the information. A school board may not use any information from a juvenile's court records as the sole basis for expelling or suspending a juvenile or as the sole basis for taking any other disciplinary action against a juvenile, but may use information from a juvenile's court records as the sole basis for taking action against a juvenile under the school district's athletic code. A member of a school board or of the governing body of a private school or tribal school or an employee of a school district, private school, or tribal school may not be held personally liable for any damages caused by the nondisclosure of any information specified in this subdivision unless the member or employee acted with actual malice in failing to disclose the information. A school district, private school, or tribal school may not be held liable for any damages caused by the nondisclosure of any information specified in this subdivision unless the school district, private school, or tribal school or its agent acted with gross negligence or with reckless, wanton, or intentional misconduct in failing to disclose the information.

(n) *Firearms restrictions record search or background check.* If a juvenile is adjudged delinquent for an act that would be a felony if committed by an adult, the court clerk shall notify the department of justice of that fact. No other information from the juvenile's court records may be disclosed to the department of justice except by order of the court. The department of justice may disclose any information provided under this subsection only as part of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

(o) *Criminal history record search.* If a juvenile is adjudged delinquent for committing a serious crime, as defined in s. 48.685 (1) (c) or 48.686 (1) (a), the court clerk shall notify the department of justice of that fact. No other information from the juvenile's court records may be disclosed to the department of justice except by order of the court. The department of justice may disclose any

information provided under this subsection only as part of a criminal history record search under s. 48.685 (2) (am) 1. or (b) 1m. or s. 48.686 (2) (am).

(2m) Electronic court records.

(a) In this subsection, "court" means the court assigned to exercise jurisdiction under this chapter and ch. 48.

(b) 1. The court shall make information relating to a proceeding under this chapter that is contained in the electronic records of the court available to any other court assigned to exercise jurisdiction under this chapter and ch. 48, a municipal court exercising jurisdiction under s. 938.17 (2), a court of criminal jurisdiction, a person representing the interests of the public under s. 48.09 or 938.09, an attorney or guardian ad litem for a parent or child who is a party to a proceeding in a court assigned to exercise jurisdiction under this chapter or ch. 48 or a municipal court, a district attorney prosecuting a criminal case, a law enforcement agency, the department of children and families, the department of corrections, or a county department, regardless of whether the person to whom the information is disclosed is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created. The director of state courts may use the circuit court automated information systems established under s. 758.19 (4) to make information contained in the electronic records of the court available as provided in this subdivision.

2. Subdivision 1. does not authorize disclosure of any information relating to the physical or mental health of an individual or that deals with any other sensitive personal matter of an individual, including information contained in a patient health care record, as defined in s. 146.81 (4), a treatment record, as defined in s. 51.30 (1) (b), the record of a proceeding under s. 48.135, a report resulting from an examination or assessment under s. 938.295, a court report under s. 938.33, or a permanency plan under s. 938.38, except with the informed consent of a person authorized to consent to that disclosure, by order of the court, or as otherwise permitted by law.

(c) 1g. A court assigned to exercise jurisdiction under this chapter and ch. 48, a municipal court exercising jurisdiction under s. 938.17 (2), or a court of criminal jurisdiction shall keep any information made available to that court under par. (b) 1. confidential and may use or allow access to that information only for the purpose of conducting or preparing for a proceeding in that court. That court may allow that access regardless of whether the person who is allowed that access is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created.

1m. A person representing the interests of the public under s. 48.09 or 938.09, an attorney or guardian ad litem for a parent or child who is a party to a proceeding in a court assigned to exercise jurisdiction under this chapter or ch. 48 or a municipal court, or a district attorney prosecuting a criminal case shall keep any information made available to that person under par. (b) 1. confidential and may use or allow access to that information only for the purpose of performing his or her official duties relating to a proceeding in a court assigned to exercise jurisdiction under this chapter and ch. 48, a municipal court, or a court of criminal jurisdiction. That person may allow that access regardless of whether the person who is allowed that access is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created.

1p. A law enforcement agency shall keep any information made available to the law enforcement agency under par. (b) 1. confidential and may use or allow access to that information only for the purpose of investigating alleged criminal activity or activity that may result in a court exercising jurisdiction under s. 938.12 or 938.13 (12). A law enforcement agency may allow that access regardless of whether the person who is allowed that access is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created.

1r. The department of children and families, the department of corrections, or a county department shall keep any information made available to that department or county department under par. (b) 1. confidential and may use or allow access to that information only for the purpose of providing services under s. 48.06, 48.067, 48.069, 938.06, 938.067, or 938.069. That department or county department may allow that access regardless of whether the person who is allowed that access is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created.

2. An individual who is allowed under subd. 1g., 1m., 1p., or 1r. to have access to any information made available under par. (b) 1. shall keep the information confidential and may use and further disclose the information only for the purpose described in subd. 1g., 1m., 1p., or 1r.

(d) Any person who intentionally uses or discloses information in violation of par. (c) may be required to forfeit not more than $5,000.

(3) Motor vehicle violation records. This section does not apply to proceedings for violations of chs. 340 to 349 and 351 or any county or municipal ordinance enacted under ch. 349, except that this section does apply to proceedings for violations of ss. 342.06 (2) and 344.48 (1), and ss. 30.67 (1) and 346.67 (1) when death or injury occurs.

(4) Operating privilege records. When a court assigned to exercise jurisdiction under this chapter and ch. 48 or a municipal court exercising jurisdiction under s. 938.17 (2) revokes, suspends, or restricts a juvenile's operating privilege under this chapter, the department of transportation may not disclose information concerning or relating to the revocation, suspension, or restriction to any person other than a court assigned to exercise jurisdiction under this chapter and ch. 48, a municipal court exercising jurisdiction under s. 938.17 (2), a district attorney, county corporation counsel, or city, village, or town attorney, a law enforcement agency, a driver licensing agency of another jurisdiction, the juvenile whose operating privilege is revoked, suspended, or restricted, or the juvenile's parent or guardian. Persons entitled to receive this information may not disclose the information to other persons or agencies.

(10) Sexually violent person commitment. A law enforcement agency's records and records of the court assigned to exercise jurisdiction under this chapter and ch. 48 shall be open for inspection by authorized representatives of the department of corrections, the department of health services, the department of justice, or a district attorney for use in the prosecution of any proceeding or any evaluation conducted under ch. 980, if the records involve or relate to an individual who is the subject of the proceeding or evaluation. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subsection. Any representative of the department of corrections, the department of health services, the department of justice, or a

district attorney may disclose information obtained under this subsection for any purpose consistent with any proceeding under ch. 980.

History: *1995 a. 27 s. 9126 (19); 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 80, 95, 181, 205, 252, 258, 281; 1999 a. 9, 32, 89; 2001 a. 95; 2003 a. 82, 292; 2005 a. 344, 434; 2005 a. 443 s. 265; 2007 a. 20 ss. 3826 to 3827, 9121 (6) (a); 2007 a. 97; 2009 a. 302, 309, 338; 2011 a. 35, 165, 260, 270; 2013 a. 168 s. 21; 2013 a. 252; 2015 a. 55; Sup. Ct. Order No. 14-04, 2015 WI 89, 364 Wis. 2d xv; 2015 a. 144; 2017 a. 59; 2019 a. 95.*

The juvenile court must make a threshold relevancy determination by an in camera review when confronted with: 1) a discovery request under s. 48.293(2); 2) an inspection request of juvenile records under ss. 48.396 (2) and 938.396 (2); or 3) an inspection request of agency records under ss. 48.78 (2) (a) and 938.78(2) (a). The test for permissible discovery is whether the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Courtney F. v. Ramiro M.C. 2004 WI App 36, 269 Wis. 2d 709, 676 N.W.2d 545, 03-3018.

Applicable law allows electronic transmission of certain confidential case information among clerks of circuit court, county sheriff's offices, and the Department of Justice through electronic interfaces involving the Department of Administration's Office of Justice Assistance, specifically including electronic data messages about arrest warrants issued in juvenile cases that are confidential under sub. (2). OAG 2-10.

9: TRAFFIC CASES

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1. Jurisdiction

349.06

A. Be sure your municipality has enacted an ordinance giving you jurisdiction in the particular case at hand

349.06

1) Local traffic ordinances must strictly conform to the state traffic regulations in Chapters 341 to 348 and 350 or Wis Admin Code sections promulgated under Chapters 110, 347, and 348

349.06(1)

2) Municipalities may enact and enforce only those traffic regulations for which the penalty is a forfeiture

3) A state traffic violation for which the penalty is a fine and/or imprisonment is a criminal offense and therefore may not be adopted as a local ordinance

349.03

4) Municipalities may enact local regulations if not inconsistent with traffic code or authorized by other statutory provisions. Examples:

City of Janesville v. Garthwaite, 83 Wis. 2d 866 (1978)

a. Unnecessary noise due to tire squealing, excessive acceleration, or loud muffler noises

Scheunemann v. City of West Bend, 179 Wis. 2d 469 (Ct. App. 1993)
Brandmiller v. Areola, 199 Wis. 2d 528 (1996)

b. Cruising

938.17(2)(a)1m.

5) Violations of municipal traffic ordinances committed by 12–15 year olds are under the exclusive jurisdiction of municipal courts

938.343

a. Disposition options are the same as in juvenile court cases

340.01(22)

B. In general, traffic regulations apply to motor vehicles operated on highways

340.01(22)

1) "Highway" means all public ways and thoroughfares and bridges on the same. It includes the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purpose of vehicular travel. It includes those roads or driveways in the state, county, or municipal parks and in state forests that have been opened to the use of the public for the purpose of vehicular travel and roads or driveways upon the grounds of public schools, as defined in § 115.01(1), and institutions under the jurisdiction of the county board of supervisors, but does not include private roads or driveways as defined in § 340.01(46)

In re the Interest of E.J.H., 112 Wis. 2d 439 (1983)

a. Highway means entire right of way, including area beyond any shoulder, rather than merely that portion of the roadway intended for purposes of vehicular travel

Ellerman v. City of Manitowoc, 2003 WI App 216 267 Wis. 2d 480

b. Highway is an area which the entire community has free access to travel

340.01(22e)

2) "Highway maintenance or construction area" means the entire section of roadway between the first advance warning sign of highway maintenance or construction work and an "END ROAD WORK" or "END CONSTRUCTION" sign or, in the case of a moving vehicle engaged in the maintenance or construction work, that section or roadway where traffic may return to its normal flow without impeding such work

340.01(54)

3) "Highway" is distinct from "Roadway." A "Roadway" excludes shoulders of a highway, and is the portion of a highway between the regularly established curb lines

4) See **Other Traffic Violations (Sec. 11)** for expanded areas in which offenses can occur

2. Arrest

345.22

A. A person may be arrested without a warrant if an officer has reasonable grounds to believe that the person is violating or has violated a traffic regulation

345.21

B. A municipal judge may issue a warrant if an officer has probable cause to believe that a person has violated a traffic regulation and if the warrant substantially complies with Chapter 968. The person must be brought before the judge without unreasonable delay if the deposit amount on the warrant is not posted

3. Stop/Arrest Outside Municipality

Under certain circumstances, a police officer may make a stop or a warrantless arrest outside the officer's jurisdiction. This can be any of the following:

175.40(2)
349.03(4)
Brookfield v. Collar,
148 Wis. 2d 839 (1989)
St v. Haynes,
2001 WI App 266
248 Wis. 2d 724

A. Fresh pursuit: Continuous pursuit from the officer's municipality to another municipality based on a violation within the officer's municipality

66.0313(2)

B. Mutual aid: Observation of violation in another municipality may result in a stop and hold by an officer based on a mutual aid request (explicit or implicit) by law enforcement in that municipality. The issuance of citation must be by an officer from the jurisdiction in which the violation occurred

175.40(6)(a)

C. Emergency: Upon an emergency situation posing a significant threat to life or bodily harm, or upon a reasonable belief that a felony was committed. The issuance of citation must be by an officer from the jurisdiction in which the violation occurred

175.40(4)
340.01(25)

D. Common boundary: When a violation occurs on a highway that shares a common boundary between 2 jurisdictions, or on the entire intersection of such a highway and a highway located in an adjacent jurisdiction, a police officer from either jurisdiction may issue a citation for their own jurisdiction. An intersection is a place where 2 highways come together, and motorists either cross 1 or leave 1 to join the other. This does not extend an officer's jurisdiction outside the boundaries of the state

59.26(5)

E. Deputization: When a municipal officer has been deputized by the county sheriff, the officer can act anywhere in the county

City of Waukesha v. Gorz
166 Wis. 2d 243 (1991)
St v. Slawek
114 Wis. 2d 332 (1983)

F. Citizen's arrest: Any person, including a law enforcement officer, may make a citizen's arrest for a felony or breach of peace, including OWI, committed in their presence

4. Speeding

A. Proof

Milwaukee v. Berry,
44 Wis. 2d 321 (1969)

1) Speed can be proven by the eyewitness testimony of a person or persons who saw or heard it, by physical facts from which the speed can be calculated, or by circumstantial evidence from which inferences can be drawn. Estimates of speed can be made by any person of ordinary intelligence, ability, and experience. The witness need not be an expert. Witnesses must show that they were in a position to observe the vehicle for a reasonable length of time to be able to give an intelligent estimate of the speed. The experience of the witness in making such estimates is also a factor to consider

343.28(1)

2) If finding the defendant guilty, you must make a finding of speed and report this to DOT

B. Speed Measurement

1) Radar

2) Laser or LiDAR

3) VASCAR

4) Pace

C. Radar-Stationary v. Moving

1) Stationary radar is set up and operated from a parked car or stationary position

City of Wauwatosa v. Collett,
99 Wis. 2d 522 (1980)

   a. Stationary radar is presumed to be accurate

2) Moving radar is operated from a moving vehicle

State v. Mills
99 Wis. 2d 697 (1981)
State v. Hanson
85 Wis. 2d 233 (1978)

   a. Moving radar involves the emission of 2 frequency beams (1 to measure the speed of the moving patrol car, and 1 to measure the speed of the other car) as compared to the 1 frequency beam involved in stationary radar

   b. Moving radar has a prima facie presumption of accuracy if the following is proven

- The officer operating the device has adequate training and experience in its operation and;

- The radar device was in proper working condition at the time of arrest. This is established by proof that suggested methods of testing the proper functioning of the device were followed and;

- The device was used in an area where road conditions were such that there was a minimum possibility of distortion and;

State v. Kramer
99 Wis. 2d 700 (1981)
Washington v. Luedtke
135 Wis. 2d 131 (1987)

- The input speed of the patrol car was verified. This is accomplished by the officer's visual comparison of the squad car's speedometer reading with the radar readout of the squad's speed. It is unnecessary for the prosecution to establish that the patrol car's speedometer had been separately checked and certified to be accurate

- The radar unit was expertly tested within a reasonable time following the arrest by means other than the radar device's own internal calibrations

  — The court has accepted tuning forks as a method of testing. (The tuning forks themselves need not be shown to be accurate)

State v. Kramer
99 Wis. 2d 700
(1981)

  — A tuning fork test within 1 hour of stop meets reasonableness test. No precise time limit has been set

D. Stationary Radar—Factors to consider at trial

1) That the officer was qualified to operate the unit: training, experience, and familiarity with its operation

2) That the officer performed the manufacturer's suggested tests on the unit on the day of the alleged violation and at what time

3) That the tests indicated that the unit was in proper working order. (Many prosecutors have maintenance records showing when maintenance was last performed on the unit before and after the date of the alleged violation)

4) Where the radar unit was positioned

5) The direction or directions in which the officer was clocking vehicles

6) The range of the radar unit

7) The type or character of the highway where the clocking took place

8) Where defendant's vehicle was when first observed by the officer

9) Whether or not the officer made a visual estimate of the speed of defendant's vehicle and, if so, what that estimate was

10) Where defendant's vehicle was when its speed was displayed on the unit

11) What the speed limit was where the vehicle was clocked

12) Whether or not there were any other vehicles in the range of the radar unit at the time of the clocking

13) The speed at which defendant's vehicle was clocked

14) The quality of the tone emitted by the unit

15) Were visual observations of the target vehicle consistent with the displayed speed on the radar unit?

16) What statements, if any, defendant made to the officer after the stop

E. Moving Radar—Factors to be considered at trial

1) All the considerations set forth above concerning stationary radar are relevant and should be considered. In addition, the following factors should be considered in a moving radar case:

State v. Hanson
85 Wis. 2d 233 (1978)

a. The radar must be used in an area with a low possibility of distortions

Washington v. Luedtke
135 Wis. 2d 131 (1987)

b. The input speed of the patrol car that is displayed on the radar unit must be verified by comparing it to the squad's speedometer. The squad's speedometer does not need to be independently tested to verify its accuracy

State v. Kramer
99 Wis. 2d 131 (1987)

c. The radar unit was tested by external test within a reasonable time after the violation. Tuning forks that have been designed to vibrate to display a specific speed are the usual method for this testing

F. Laser (LiDAR)

1) Laser uses a very narrow beam of light to hit a target and travel back. The laser device computes the target vehicle's distance from the operator. Changes in the vehicle's distance over time computes the target vehicle's speed

2) Laser beam is narrow enough to strike a specific vehicle. The beam is 18 inches wide at 500 feet. Compare to radar beam width of 160 feet at 500 feet

3) There have been no Wisconsin appellate cases on the presumption of accuracy of laser, but it has generally been upheld in other states. It is recommended that you apply stationary radar criteria to the extent possible

G. VASCAR (Visual Average Speed Computer and Recorder)

State v. Frankenthal
113 Wis. 2d 269
(Ct App 1983)

1) A VASCAR unit couples a stopwatch with a simple computer. An operator records the moment that a vehicle passes 2 fixed objects (such as a white circle or square painted on the road) that are a known distance apart. The vehicle's average speed is then calculated by dividing the distance by the time

2) VASCAR speed computer-recorders are entitled to a prima facie presumption of accuracy. Any contention raised by defendant concerning reliability of the speed reading goes to weight of the evidence, not to its admissibility

H. Pace

1) An officer follows behind a target vehicle and maintains a steady distance. The officer checks the squad speedometer and presumes the target vehicle is traveling the same speed

2) Factors to Consider at Trial

   a. That the squad speedometer has been tested and certified to be accurate within a reasonable period of time

   Waukesha Cty v. Mueller
   34 Wis. 2d 628 (1967)

   b. There is no presumption that a properly calibrated police vehicle speedometer becomes inaccurate after any specified period of time

   c. The officer's visual estimate of the vehicle's speed

   d. How, when, and where the officer got into position to clock defendant's vehicle

   e. The distance between the officer's vehicle and defendant's vehicle at the time the clocking began

   f. That the distance between the 2 vehicles remained constant or was increasing during the entire time the officer was clocking defendant's vehicle

   g. The distance traveled during the time of the pace

I. Speeding in a School Zone

346.57(4)

1) Unless different limits are indicated by official traffic signs, no person may drive a vehicle at a speed in excess of 15 miles per hour in a school zone when:

   346.57(4)(a)

   a. Passing a schoolhouse at times when children are going to and from school or are present within the sidewalk area at or about the school

   346.57(4)(b)

   b. Passing an intersection or other location properly marked with a "school crossing" sign and any child is present or a school crossing guard is in the crosswalk or roadway

J. Selected penalties in speeding cases

343.30(1n)
346.57(4)(gm), (h)

1) If speed is 25 mph over the non-posted 55 mph speed limit or over the 65 or 70 mph speed limit by 25 mph, the court must order the mandatory 15-day suspension

346.60(3m)(a), (b)
349.06(3)
346.65(5m)

2) Forfeitures for speeding in school zones when children present or speeding committed in highway maintenance or construction areas are doubled

K. Other Important Cases Relating to Speed

City of Madison v. Geier
27 Wis. 2d 687 (1965)

1) Speed need not be excessive or illegal in prosecution for racing

State v. Zick
44 Wis. 2d 546 (1960)

2) Finding violation of speeding does not require proof of the exact speed written on citation

5. Motor Vehicle Liability Insurance Required

344.62

A. Upon demand, operator must show proof that either the operator or owner of the vehicle has liability insurance coverage. Proof may be displayed to officer by cellular or other electronic device

344.65(1)(b)
344.65(1)(c)

1) Failure to show proof of insurance carries a $10 forfeiture (no costs or surcharges) but if operator shows proof of insurance at or before his/her initial appearance the court must dismiss the citation

344.65(1)(a)

2) Failure to have insurance has no demerit points, but the maximum forfeiture is $500 plus costs and surcharges

344.64
344.65(2)

3) Fraudulent proof of insurance has a maximum forfeiture of $5,000 plus costs and surcharges

344.65(3)

4) Officer may not stop solely to determine compliance, nor can a custodial arrest be made solely for this violation

6. Seatbelt Violations

347.48(2m)(gm)

A. An officer who observes a motorist or passenger not wearing a seatbelt may initiate a traffic stop for this violation. The officer, however, cannot make a custodial arrest based solely on this offense

343.05

7. Operating Without a Valid License (OWL)—1st Offense

343.05(3)
343.05(3)(c)

A. No person may operate a motor vehicle upon a highway unless the person has a license which is not revoked, suspended, cancelled, or expired. This includes mopeds and motor bicycles

Trans 102.14(4)

1) Persons who establish Wisconsin residency shall apply for a driver license within 60 days, or 30 days if they hold a CDL from another jurisdiction

343.01(2)(g)

2) "Resident" means "an adult whose one home and customary and principal residence, to which the person has the intention of returning whenever he or she is absent, is in this state"

343.05(4)(b)1.

3) Nonresidents of Wisconsin are exempt from the requirement that they possess a valid Wisconsin license if they possess a valid operator's license issued in their home jurisdiction

343.05(4)(b)1.
343.05(4)(b)2.
343.05(4)(b)3.
343.05(4)(c)

4) Certain nonresidents of the United States, including those holding a valid Mexican driver's license, are exempt from the requirement that they possess a valid Wisconsin license. This exemption only applies for a period of 1 year after a nonresident's arrival in the United States and does not apply to someone who has been a Wisconsin resident for more than 60 days

343.05(5)(b)1.
343.05(3)(b)

B. The penalty for a first offense is a forfeiture, but note the following:

343.05(5)(b)4.

1) If, in the course of the violation, causes great bodily harm to another person forfeiture not less than $5,000 nor more than $7,500

343.05(5)(b)5.

2) If, in the course of the violation, causes death the forfeiture is not less than $7,500 nor more than $10,000

343.30(1d)

3) If convicted for OWL causing great bodily harm or death, you SHALL revoke for 6 months or lesser period and put reasons for reduction on the record

343.05(5)(b)4.
343.05(5)(b)5.

4) If the person knew they did not have a license and caused great bodily harm or death, it is a felony charge

343.05(5)(b)

C. **A second offense of operating a motor vehicle without a valid license within a 3-year period, as measured by violation dates, is a criminal offense not within the jurisdiction of municipal courts**

343.05(5)(am)

D. **Operating a commercial motor vehicle without a CDL is also a criminal offense**

343.05(6)

E. **This section only applies to drivers with an expired license or who have never had a Wisconsin license, not revoked or suspended drivers**

8. Operating While Suspended (OWS)

343.44(1)(a)
343.44(1g)

A. **No person whose operating privilege has been suspended may operate a motor vehicle upon any highway during the period of suspension or in violation of any restriction on an occupational license issued to the person during the period of suspension. A person's knowledge that his or her operating privilege is suspended is not an element of the offense**

Notwithstanding any specified term of suspension, the period of any suspension continues until the license is reinstated

343.44(2)(ag)

B. **The penalty for OWS is a forfeiture, but note the following:**

343.44(2)(ag)2.

1) If, in the course of the violation, causes great bodily harm to another person, the forfeiture is not less than $5,000 nor more than $7,500

343.44(2)(ag)3.

2) If, in the course of the violation, causes death the forfeiture is not less than $7,500 nor more than $10,000

343.44(2)(ag)2.
343.44(2)(ag)3.

3) If the person knew their license was suspended and caused great bodily harm or death, it is a felony charge

343.30(1g)(a)

C. **Upon conviction, you MAY suspend defendant's license for up to 6 months**

343.30(1g)(b)
343.30(1g)(d)

D. **If defendant has 3 prior convictions for either OWS or OAR within the 5-year period preceding the violation, you MAY revoke for 6 months or a lesser period and put reasons for reduction on record**

343.30(1g)(c), (d)

E. If convicted of OWS causing great bodily harm or death, you SHALL revoke for 6 months or lesser period and put reasons for reduction on the record

Recommendation

Because the legislature did not define what conduct is required to satisfy the "cause" of the accident element for OWL or OWS violations involving great bodily harm or death, judges should consult Wisconsin Jury Instruction, WIS JI-CIVIL 1500. This instruction sets forth a "substantial factor" test to determine whether someone's negligence was the "cause" of a property damage or injury

9. Operating After Revocation (OAR)

343.44(1)(b)

A. No person whose operating privilege has been revoked may operate a motor vehicle upon any highway during the period of revocation or in violation of any restriction on an occupational license issued to the person during the period of revocation. A person's knowledge that his or her operating privilege is suspended is not an element of the offense

Notwithstanding any specified term of revocation, the period of any revocation continues until the license is reinstated

343.44(2)(ar)1.

B. The penalty for OAR is forfeiture up to $2,500 unless:

343.44(2)(ar)2.

1) The revocation resulted from an OWI. This offense is criminal and municipal court does not have jurisdiction

343.44(2)(ar)3., 4.

2) Great bodily harm or death is caused. These offenses are criminal and the municipal court does not have jurisdiction

343.30(1g)(a)

C. Upon conviction, you MAY suspend defendant's license for up to 6 months

343.30(1g)(b)

D. If defendant has 3 prior convictions for either OWS or OAR within the 5-year period preceding the violation, you MAY revoke for 6 months or a lesser period and put reasons for reduction on the record

343.44(3)

E. Refusal to accept or receive the DOT notice of revocation, and failure to update address with DOT, are not defenses by themselves

10. Reckless Driving

346.62(2)

A. No person may endanger the safety of any person or property by the negligent operation of a vehicle

346.62(1)(c)

1) "Negligent" has the meaning designated in the criminal code under § 939.25(2). "Negligence" is "ordinary negligence to a high degree consisting of conduct that the actor should realize creates a substantial and unreasonable risk of death or great bodily harm to another"

2) In a reckless driving case, it also includes conduct that the actor should realize creates a substantial and unreasonable risk of property damage

346.61

3) In addition to all highways, the law applies to all premises held out to the public for use of their motor vehicles, all premises provided by employers to employees for the use of their motor vehicles, and all premises provided to tenants of rental housing in buildings of 4 or more units for the use of their motor vehicles

a. The statute does not apply to private parking areas at farms or single-family residences

State v. Tecza
2008 WI App 79
312 Wis. 2d 395

b. When determining if a particular location is "held out to the public for use of their motor vehicles," the appropriate test is whether on any given day, potentially any resident of the community with a driver license and access to a motor vehicle could use the facility in an authorized manner

346.65(1)
346.655(1)
346.657(1)

B. The penalty for a violation of § 346.62(2) is a forfeiture for the first offense, and you must also impose the driver improvement surcharge and the safe ride program surcharge

1) A second offense is criminal and not within the jurisdiction of a municipal court

346.62(3)
346.62(4)

C. Citations alleging reckless driving causing bodily harm are criminal violations and therefore not within municipal court jurisdiction

349.115

D. Vehicles used in reckless driving cases can be impounded under limited circumstances, but this is done by law enforcement and the court has no role

11. Other Traffic Violations

346.57(2)

A. Imprudent Speed

1) No person shall drive a vehicle at a speed greater than is reasonable and prudent under the existing conditions

Thoreson v. Milwaukee & Suburban Transp. Co. 56 Wis. 2d 231 (1973)

2) If violation is of § 346.57(2), Reasonable and Prudent Speed, or § 346.57(3), Conditions Requiring Reduced Speed, you should take into consideration all surrounding circumstances. A driver is not necessarily in violation of imprudent and unreasonable speed by merely exceeding the posted limit or by merely being involved in an accident

   a. Some examples of physical evidence are skid marks; force of impact taking into consideration conditions of the road; size and weight of vehicle involved; traffic; weather and light

346.57(3)

B. Driving Too Fast for Conditions

1) A person shall drive at appropriate, reduced speed at intersections, railroad crossings, around curves, approaching hillcrests, and in other special circumstances

2) A person shall also drive at reduced speed if traffic, weather, or road conditions make it necessary

3) A defendant is not necessarily guilty of this violation merely by being involved in an accident

346.57(2)

C. Failing to Keep Vehicle Under Control

1) A person shall control the speed of the vehicle as may be necessary to avoid colliding with any object, person, vehicle, or other conveyance on or entering the highway

2) A defendant is not necessarily guilty of this violation merely by being involved in an accident

D. Inattentive Driving

346.89(1)

1) A person while driving a motor vehicle shall not be so engaged or occupied as to interfere with the safe driving of the vehicle

346.89(3)

2) A person shall not drive a motor vehicle while composing or sending an electronic text message or an electronic mail message

346.89(4)(a)

3) Use of a cellular phone by drivers with a probationary license or instruction permit is prohibited, except in an emergency

346.89(4)(b)

4) Use of a cellular phone by a commercial motor vehicle operator is prohibited, unless hands-free or in an emergency

346.89(4m)

5) Use of a cellular phone in work areas by any driver is prohibited, unless hands-free or in an emergency

346.49(2m), (2r)
346.495

E. Railroad crossing signal and gate violations. These are 6-point violations with forfeitures and a discretionary 6-month revocation

340.01(22)

F. Moving violations apply exclusively upon public highways (See definition of Highway above, in Sec. 1.B.1). Also Uniform Bond Schedule or Appendix 1 for points)

346.66
346.61
State v. Tecza
2008 WI App 79
312 Wis. 2d 395

G. The following violations apply to highways and all premises held out to the public for use of motor vehicles, including premises provided by employers to employees and those provided to tenants in buildings of 4 or more units

346.63–346.65

1) OWI/PAC/ORCS

346.62
346.61

2) Reckless driving

346.68

3) Duty upon striking unattended vehicle

346.69

4) Duty upon striking property on or adjacent to highway

346.70

5) Duty to report an accident

346.63(2m)
346.65(2q)

H. Absolute sobriety applies to anyone under the legal drinking age

1) Mandatory $200 forfeiture plus fees, costs, and surcharges other than driver improvement surcharge

2) There is a mandatory 3-month suspension

3) 4-point violation

4) If there was a child under 16 in the vehicle at the time of the violation the municipal court does not have jurisdiction

343.305(3)(a)

5) Implied consent law applies to absolute sobriety violations

346.18

I. Failure to Yield

1) Penalties

346.22(1)(a)

a. A forfeiture, which increases with second and subsequent convictions within a year

343.31(2t)(b)

b. DOT will require the person to attend a vehicle right of way course. Traffic Safety School will satisfy this requirement. The Court does NOT order this

NOTE:

The requirement for DOT to order a defendant to attend a vehicle right-of-way course and issue a license suspension has been greatly expanded to apply to numerous other convictions, including Operating Left of Center, Unsafe Cutting in When Passing, Unlawful Passing Violations, Improper Turns, Failure to Stop Violations, and Unsafe Backing. See Appendix 9-A.

346.22(1)(d)
343.31(2t)(a)2.

c. If the violation results in great bodily harm, as defined in § 939.22(14), to another, the person shall forfeit $500. In addition, the DOT is required to suspend defendant's license for 3 months

939.22(14)

- "Great Bodily Harm" means bodily injury which creates a substantial risk of death, or which causes serious permanent or protracted loss or impairment of the function of any bodily member or organ, or other serious bodily injury

346.22(1)(e)
343.31(2t)(a)3.

d. If the violation results in death to another, the person shall forfeit $1,000. In addition, the DOT is required to suspend defendant's license for 9 months. The court does NOT order this suspension

Recommendation

The court should inform the defendant of these DOT requirements.

346.675

J. Hit and Run, Owner Responsibility

1) Applies to owner of vehicle involved in Hit and Run of person, occupied vehicle, unoccupied vehicle, or property

2) Requires specific reports and the issuance of a citation within 72 hours after receiving the information regarding the alleged hit and run

3) Limited defenses

346.74(6)

4) Forfeitures vary depending on paragraph 1) above

346.70

K. Duty to Report Accident

1) Applies to operator and all occupants (16 years and older) of a vehicle involved in an accident

2) Must report if accident resulted in:

   a. Injury or death of any person; or

   b. Damage to government-owned property other than a vehicle, to apparent extent of $200 or more or;

   c. Damage to property including vehicles, to apparent extent of $1,000 or more

3) Shall be responsible immediately by quickest means of communication

4) Person may not assist operator or occupants with fleeing scene of accident unless the accident has been reported (except to provide medical assistance)

5) Tow truck drivers prohibited from towing a vehicle involved in reportable accident unless tow truck driver has notified law enforcement of towing

343.30(1)

12. Discretionary License Suspension

A. Court may suspend a license for up to 1 year upon a conviction for any traffic violation, unless another specific license sanction is authorized or required

Recommendation

1) It is recommended that this tool be used sparingly and only in cases of extremely dangerous violations or drivers

13. Parking

349.13

A. Parking violation forfeitures are

346.56

1) Set by local ordinance, except for violations of §§ 346.505–346.55

NOTE:

Violations of § 346.51 and § 346.52(1)(f) are entered on the driver file with 2 demerit points, if occurring on roadway

165.755(1)(b)
757.05(1)

B. There are no surcharges authorized by state statutes

814.65(1)

C. Court costs may be charged on parking tickets in municipal courts

Recommendation

It is recommended, in the interest of fairness, that court costs be suspended in most instances

345.28(3)

D. If defendant fails to pay the forfeiture or to appear in court, a municipality has several alternatives

345.28(3)(a), (b)
345.28(5)

1) The local authority (defined by statute as the agency designated by the municipality) may issue a summons, but no warrant may be issued, except as provided in para. 3) below

2) After sending 2 notices, the local authority may ask the court to issue a warrant

3) The warrant must substantially comply with the provisions of § 968.04

4) The warrant shall direct the officer to accept a deposit of money or valid Wisconsin driver's license instead of serving the warrant and arresting the person

5) If the person refuses to deposit money or a bond, the officer may serve the warrant and arrest the person. The person must be brought before the court without unreasonable delay

6) If the person, after depositing money or a bond, fails to appear, the person shall be deemed to have entered a plea of no contest

345.28(4)

7) The local authority may enroll in the Traffic Violation and Registration Program with DOT

   a. The local authority must send 2 notices to the person

   b. The local authority shall notify the DOT if defendant fails to take any action after the notices are sent

   c. The DOT shall suspend or refuse the person's vehicle registration or both as specified by the local authority

345.28(5)

8) The local authority may assess the person for the cost of this program

345.28(5m)

9) If the vehicle involved in the non-moving violations is owned by a rental or leasing company, the owner must furnish the local authority with the name, address, and license number of the renter or lessee

   a. If, after notice to the renter, the renter fails to pay the forfeiture or appear in court, the local authority may notify the DOT and specify that the registration of any vehicle owned by the renter is to be refused

   b. The authority notifies the owner of its responsibility for half of the forfeiture

      - If the owner fails to pay, the local authority notifies the DOT that the registration of the vehicle in the violation is to be suspended

345.28(4)(h)

      - If the renter pays the forfeiture after the owner pays 50%, the local authority shall refund the owner the 50% payment

345.28

E. Procedure for parking citations seems to be divided into 2 separate areas: defendants who do not appear and do not post bond, and defendants who do appear. The Benchbook Committee believes that:

800.09(1)(c)

1) For defendants who DO appear, §§ 345.34–345.47 apply

   a. You may enter a default judgment on subsequent failure to appear

2) For defendants who DO NOT appear, § 345.28 outlines the procedure

800.09(1)(c)

a. See D. above

345.28(4)

b. The court can notify the DOT under § 345.28(4) and the DOT will deny vehicle registration

345.28(6)

F. Under no circumstances may a person be imprisoned for failure to pay

71.935

G. Tax intercept for parking tickets over $20 if unpaid for over 28 days or there is no court appearance by the citation date

14. Habitual Parking Violators

349.139(2)

A. Only applies if municipality creates ordinance complying with all provisions of the statute

349.139(1)(a)

B. Allows for vehicles to be immobilized or impounded if owner has not paid forfeiture or scheduled an appearance in court for 5 or more parking violations occurring more than 60 days before

1) Does not require court order

349.139(3)(b), (c)

C. Owner may secure release from immobilization or impoundment by paying any fees charged for removal/ impoundment and either:

1) Pays outstanding forfeitures, or

2) Schedules a court appearance for outstanding violations, or

3) Combination of above as to all violations

349.139(3)(d)

D. If owner then fails to appear in court or fails to comply with the court's order, including a payment plan, court may order law enforcement or municipal employee/ contractor to immobilize or impound vehicle

15. Commercial Vehicles/Overweight Trucks

349.06(1)

A. Your municipality may pass an overweight truck or commercial vehicle ordinance in strict conformity with Chapter 348

66.0114(3)

1) The entire amount in excess of $150 of any forfeiture imposed goes to the state if:

   a. The violation occurred on an interstate highway; or

   b. The violation occurred on a state trunk highway; or

   c. The violation occurred on a highway over which the local highway authority DOES NOT have primary maintenance responsibility

348.21

2) Mandatory surcharges required for certain Chapter 348 violations in addition to any forfeitures

49 CFR 384.226

3) A court must not "mask" an offense from appearing on a CDL holder's record, including non-CDL violations. "Masking" includes deferring imposition of judgment, entering into a diversion program, or reducing a charge, other than based on burden of proof

343.05(5)(am)

4) Operating a commercial vehicle without a CDL is a criminal offense

16. Vehicle Equipment Violations

349.06(1)(c)
State v. Bailey
2009 WI App 140
321 Wis. 2d 350

A. Municipalities may enact and enforce any traffic regulation that is in strict conformity with any rule of the Department of Transportation, for which the penalty for a violation thereof is a forfeiture, except rules pertaining to federal motor carrier safety standards. Trans 325, 326, and 327 are rules pertaining to federal motor carrier safety standards and may not be adopted by municipalities

Trans 305

B. DOT Standards for Vehicle Equipment can be adopted by municipalities

17. Habitual Traffic Offenders (HTO)

351.02(1)

A. The DOT will revoke for 5 years if a person accumulates within a 5-year period:

351.02(1)(a)

1) 4 convictions for major violations such as OWI, eluding, hit and run, reckless driving, or

351.02(1)(b)

2) 12 convictions for violations of Chap. 346

351.08

B. Operating after revocation while HTO is a criminal offense and not within the jurisdiction of municipal courts

347.48(4)(as)

18. Child Restraints

A. 4–8 year olds, at least 40 pounds but under 80 lbs and not more than 57", must be in child booster seat

B. Under 4 years, over 1 year, 20 to 40 pounds, forward-facing rear seat

C. Under 1 year and under 20 pounds, rear-facing rear seat

19. Graduated Driver Licenses

343.085(1)(b)
Trans 101.10(1)(a)

A. For a person under the age of 18 to obtain a license, he or she must hold an instruction permit for 6 months and not be convicted during that time period for any of the following:

1) An offense carrying points (except 2-point equipment violations under Ch. 347)

2) A child safety restraint or seatbelt violation

3) Defective speedometer

4) Illegal riding of moped or motorcycle

343.085(1)(a)

B. Driver is eligible for a probationary license after holding an instruction permit for 6 months without a conviction for any violation noted in paragraph A., above,

343.20(1)(a)

1) Probationary license lasts for 2 years from the driver's next birthday after issuance

2) Points on a first conviction do NOT double

Trans 101.02(7)(a)

3) After a conviction carrying points, points on second and subsequent convictions will be doubled except convictions for offenses under Ch. 347 (includes defective speedometer) will NOT be doubled

346.89(4)

4) Probationary status drivers banned from using cellular or other wireless telephone

343.085(2m)

C. When a person under the age of 18 obtains a probationary license he or she will be under "Special Restrictions" for the first 9 months

1) Limits number of people in vehicle, and hours and purpose of operation

343.085(2m)(b)1.
Trans 101.10(2)

2) The 9-month period of "Special Restrictions" will be extended by an additional 6 months if convicted of the following:

a. An offense carrying any points (except 2-point equipment violations under Ch. 347)

b. A child safety restraint or seatbelt violation

c. Defective speedometer

D. Except the 6-month extension will not occur if convicted of the following:

- Illegal riding of a moped or motorcycle
- Operating without a license or after disqualification, suspension, or revocation or without proper license endorsement or classification, or with multiple licenses
- Unnecessary acceleration

343.085(2m)

2) Special Restrictions will NEVER extend past 18th birthday

Right-of-Way Course Violations Under Wis. Stat. § 343.31(2t)(b)

The Department of Transportation will order a defendant to attend a vehicle right-of-way course if the defendant is convicted of one of the following violations:

Wis. Stat. § 346.05(1): Operating left of center

Wis. Stat. § 346.06: Failure to yield one-half of single-lane road

Wis. Stat. § 346.07(2): Unsafe cutting in while passing

Wis. Stat. § 346.07(3): Failure to yield to passing vehicle

Wis. Stat. § 346.09: Passing into oncoming traffic/on hill or curve/in no-passing zone/vehicle indicating left or U-turn

Wis. Stat. § 346.18: Failure to yield right-of-way violation

Wis. Stat. § 346.23: Failure to yield to pedestrian or bicyclist

Wis. Stat. § 346.31: Improper turns/failure to follow indicated turn

Wis. Stat. § 346.37(1)(a)1.: Failure to yield right-of-way—green light/ intersection/U-turn

Wis. Stat. § 346.37(1)(c)3.: Failure to yield right-of-way—red light

Wis. Stat. § 346.37(1)(d)1.: Failure to yield right-of-way—green arrow

Wis. Stat. § 346.39(1): Failure to stop for flashing red signal

Wis. Stat. § 346.46(1): Failure to stop/improper stop at stop sign

Wis. Stat. § 346.46(4)(a): Failure to stop/improper stop at stop sign (mid-block)

Wis. Stat. § 346.47(1): Failure to stop or yield emerging from alley or private drive

Wis. Stat. § 346.47(2): Failure to stop for intersecting alley

Wis. Stat. § 346.87: Unsafe backing of vehicle

10: OPERATING A MOTOR VEHICLE WHILE INTOXICATED (OWI/PAC/OWS)

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1. Introductory Note

A. The common terms of operating while intoxicated, or operating under the influence, or drunk driving actually refer to 3 separate, but interrelated offenses:

346.63(1)(a)

1) Operating while under the influence of an intoxicant, a controlled substance, a controlled substance analog, or any combination of an intoxicant, a controlled substance, or controlled substance analog, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving (OWI)

346.63(1)(am)

2) Operating with a detectable amount of controlled substance in his or her blood (OCS)

346.63(1)(b)

3) Operating with a prohibited alcohol concentration (PAC)

346.63(1)(c)

B. A person may be charged with any combination of the above charges arising out of the same incident. If found guilty of any combination of the above charges, the convictions shall be reported to DOT, but the penalties are to be imposed on only 1 violation

2. Jurisdiction of Municipal Courts

346.65(2)(am)1.

A. First offense OWI/PAC/OCS is a civil forfeiture except

346.65(2)(f)1.

1) If passenger under 16 was in vehicle, case is a criminal offense and municipal court does not have jurisdiction

343.30(1q)(b)1.
343.307, 346.65

B. If an operator has been convicted of OWI/PAC/OCS in Wisconsin or another state within the past 10 years, or of OWI Causing Death or Great Bodily Harm at any time, municipal court does not have jurisdiction. This is true even if the convicted offense has a later offense date than the current charge. (See flow-chart at end of chapter)

1) The third or subsequent offense is ALWAYS a criminal violation and municipal court does not have jurisdiction

340.01(9r)
343.307

C. There is a very expansive statutory definition of the term "conviction" in OWI cases

State v. Forrett,
2022 WI 37
401 Wis. 2d 678

1) Prior refusals to submit to chemical testing of blood do not count as a prior offense, but any OWI/PAC/OCS conviction out of the same event still counts

343.307(1)(d)

2) Prior refusals to submit to breath or urine testing generally count as a prior offense, even if not accompanied by a separate OWI/PAC/OCS conviction

State v. List,
2004 WI App 230,
277 Wis. 2d 836

3) "Court Supervision" resulting in dismissal, for OWI in Illinois, counts as prior offense

State v. Puchacz,
2010 WI App 30
323 Wis. 2d 741

4) Operating while "visibly impaired" in Michigan counts as prior offense

State v. Carter,
2010 WI 32
330 Wis. 2d 1

5) Underage "Not a Drop" violations in Illinois count as prior offenses

WI Ethics Opinion E-86-06

6) Defense counsel does not have affirmative duty to disclose to court or prosecutor that there is another first offense case(s) pending, unless specifically asked by the court or prosecutor

Recommendation
Form FF

Ask the defendant or counsel about prior or pending offenses

D. Multiple OWI/PAC/OCS offenses

State v. Banks,
105 Wis. 2d 32 (1981)

1) A defendant arrested for 2 OWI/PAC/OCS offenses faces criminal penalties on 1 of those even though defendant committed the second offense before suffering the penalties of the first

State v. Matke,
2005 WI App 4
278 Wis. 2d 403

2) Once a defendant is convicted of the first, a municipal court loses jurisdiction over any other OWI/PAC/OCS offenses committed within 10 years of the first offense date

800.09(4)
City of Cedarburg v. Hansen
2020 WI 11
390 Wis. 2d 109

3) If municipal court lacks jurisdiction due to prior offenses, failure to raise issue in writing and with specificity prior to entry of judgment bars later claim that conviction is void

E. Commercial motor vehicle offenses

346.63(5)(a)

1) Municipal court has jurisdiction in cases of OWI/PAC/OCS of a commercial motor vehicle where:

   a. The operator has a PAC of 0.04 – 0.08, and

346.65(2j)

   b. It is a first offense

346.63(7)

2) Municipal court has jurisdiction in commercial motor vehicle cases where:

   a. A person is driving, operating, or is on duty time under any of the following conditions

      - A person has a PAC above 0.0
      - The person has consumed an intoxicating beverage within 4 hours
      - The person is in possession of an intoxicating beverage

3. Initial Appearance

800.035(5)(a)

A. Generally, the defendant is not required to appear in court. But a judge or ordinance may require a defendant to appear

800.035(5)(c)

B. Defendant charged with OWI/PAC/OCS may request a jury trial within 10 days after entry of plea

City of Fond du Lac v. Kaehne, 222 Wis. 2d 323 (Ct. App. 1999)

1) 10-day period commences when defendant appears in court to enter plea or when written not guilty plea is received by court, even if received prior to the initial appearance

2) You should provide jury request forms to defendants who wish a jury trial. (See forms at end of this chapter)

3) Required jury fees must be posted

4) The case must be transferred to circuit court

5) Jury trials may not be held in municipal court

800.035(5)(c)

6) All other citations arising out of the same incident are also transferred to circuit court

800.14(5)
Recommendation

7) Clearly explain this right at the initial appearance and in any written handouts because a failure to request a jury trial within 10 days of the plea waives the defendant's right to a jury trial on appeal

Town of Menasha v. Bastian, 178 Wis. 2d 191 (CA 1993)
346.63(1)(c)

C. If defendant pleads guilty to any combination of the OWI, PAC, or OCS offenses, find the defendant guilty on the charges. Enter judgment and impose penalties on only 1. All citations must be sent to DOT and should clearly indicate the 1 citation upon which the penalties have been imposed

Recommendation
Form FF

In order to assure that your court has jurisdiction, you should ask the defendant if he or she has recently been charged with or convicted of a separate OWI/PAC/OCS violation, or he/she has another OWI/PAC/OCS charge pending in any court. This can be done orally, in the form of a written plea questionnaire, or both.

4. Elements of the Offenses

A. Operation-What is it?

346.63(3)(b)

1) "Operate" means the physical manipulation or activation of any of the controls of a motor vehicle necessary to put it in motion

Milwaukee Cty v. Proegler, 95 Wis. 2d 614 (Ct. App. 1980)

2) No requirement that prosecution establish an intent to drive or move the vehicle. Proof of operation sufficient where defendant is found asleep behind the wheel with the engine running and defendant made statements consistent with having operated the vehicle

Cross Plains v. Haanstad, 2006 WI 16 288 Wis. 2d 573

3) Sitting in driver's seat with engine running is not sufficient to prove operation absent ANY OTHER evidence that the defendant manipulated the driving controls in some manner at some time

St v. Mertes, 2008 WI App 179 315 Wis. 2d 756

4) Defendant found to have operated vehicle after being found passed out behind wheel of parked vehicle. The engine was not running, but the key was in the ignition and turned to the auxiliary position. Further, the defendant made statements consistent with having driven the vehicle to that location

In the Interest of EJH, 112 Wis. 2d 439 (1983)

5) Where defendant is charged with operating a motor vehicle on a highway in the state, highway is defined as the entire right of way and not just that portion intended for vehicular travel

Village of Elkhart Lake v. Borzyskowski, 123 Wis. 2d 185 (Ct. App. 1985)

6) Sitting in car with motor running can provide probable cause

State v. Modory, 204 Wis. 2d 185 (Ct. App. 1985)

7) Movement of the vehicle or ability of the vehicle to move is not required for operation of a vehicle. A defendant was found to be operating a vehicle when sitting in the driver seat and spinning the wheels of a vehicle that was stuck partially over the curb. The vehicle frame was resting on a mound of dirt and the tires were making little, if any, contact with the ground

B. Operation—Where?

340.01(22)

1) All highways. "Highways" include:

a. All public ways and thoroughfares and bridges

b. The entire width between the boundary lines of every way open to the use of the public

c. Those roads or driveways in the state, county, or municipal parks and in state forests which have been opened to the public for vehicular traffic

d. Roads or driveways upon the grounds of public schools

In the Interest of EJH, 112 Wis. 2d 439 (1983)

e. The entire right of way and not just the portion intended for vehicular travel

346.61

2) In addition to all highways, the statute applies to all premises held out to the public for use of their motor vehicles and all premises provided by employers to employees for the use of their motor vehicles and all premises provided to tenants of rental housing in buildings of 4 or more units for the use of their motor vehicles

a. The statute does not apply to private parking areas at farms or single-family residences

State v. Tecza, 2008 WI App 79 312 Wis. 2d 395

3) When determining whether a particular location is "held out to the public for use of their motor vehicles," the appropriate test is whether, on any given day, potentially any resident of the community with a driver license and access to a motor vehicle could use the location in an authorized manner

C. Under the Influence

346.63(1)(a)

1) No person may operate a motor vehicle while under the influence of an intoxicant or controlled substance or a combination thereof, or while under the influence of any other drug to a degree which renders them incapable of safely driving, or while under the combined influence of an intoxicant and any other drug to a degree which renders him/her incapable of safely driving

State v. Gaudesi,
112 Wis. 2d 213 (1983)

a. Improper driving is not an element of the offense of operating under the influence of an intoxicant. Sec. 346.63(1) does not require proof of an appreciable interference in the management of a motor vehicle, although erratic driving may be evidence that the defendant is under the influence of an intoxicant

346.63(1)(a)

b. Defendant may be found guilty of under the influence of an intoxicant, controlled substance, any drug, or combination of the above

340.01(20r)
340.01(25d)

- "Intoxicant" includes "hazardous inhalants"

961.01(4)

- "Controlled substance" is any drug or substance listed in Schedules I to IV of the Uniform Controlled Substances Act

450.01(10)

- "Drug" is defined by statute and has a very broad definition

346.63(1)(b)
340.01(1v), (46m)

D. Prohibited Alcohol Concentration

1) No person may operate a motor vehicle while having a prohibited alcohol concentration of 0.08% or more by weight of alcohol in that person's blood or 0.08 grams or more of alcohol in 210 liters of that person's breath

2) No person may operate a motor vehicle while having a prohibited alcohol concentration of 0.02% or more if the person is subject to an IID order

346.63(1)(am)

E. Restricted Controlled Substance

1) No person may operate a motor vehicle while having a detectable amount of a restricted controlled substance in his or her blood

340.01(50m)

2) Restricted controlled substance defined as:

a. A controlled substance included in Schedule I under Ch. 961 other than a tetrahydrocannabinol (THC)

b. A controlled substance analog, as defined in § 961.01(4m), of a controlled substance in Schedule I, other than THC

c. The heroin metabolite 6-monoacetylmorphine

d. Cocaine or any of its metabolites

e. Methamphetamine

f. Delta-9-tetrahydrocannabinol, if more than 1 ng/mL

346.63(1)(d)

3) If the restricted controlled substance is a detectable amount of methamphetamine, gamma-hydroxybutyric acid or delta-9-tretrahydrocannabinol, the defendant has a defense if they prove by a preponderance of the evidence that at the time of the incident they had a valid prescription for methamphetamine or 1 of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tretrahydrocannabinol

346.63(1)(c)

F. A person can be charged and found guilty of operating under the influence and operating with a restricted controlled substance and operating with a prohibited alcohol concentration. However, only 1 set of penalties may be imposed if found guilty of any combination of these 3 offenses.

5. Implied Consent

343.305(2)

A. A person operating a motor vehicle is deemed to have given consent to 1 or more tests of their blood, breath, or urine for the purpose of testing for alcohol or drugs

343.305(2)

B. Police agencies must be prepared to administer 2 of 3 tests (blood, breath, or urine) and may choose which of the tests to be given first

C. After making an arrest for OWI, the officer may request 1 or more samples of blood, breath, or urine from the defendant

343.305(3)(a)

1) Compliance with a request for 1 type of sample does not bar a subsequent request for a different type of sample

343.305(3)(b)
Mitchell v. Wis
139 S. Ct. 2525 (2019)

D. A warrantless blood draw may be performed on an unconscious driver

343.305(4)

E. When requesting a test, the officer must read the "Informing the Accused" form to the defendant

See Form at 10-A

F. "Informing the Accused"

Washburn Cty v. Smith,
2008 WI 23
308 Wis. 2d 65

State v. Zielke,
131 Wis. 2d 39 (1987)

1) On failure to advise defendant as required by § 343.305

   a. Municipality forfeits opportunity to revoke defendant's license for refusal

   b. Municipality forfeits "automatic admissibility of test result"

   c. Municipality forfeits admissibility of defendant's refusal at trial

Cty of Ozaukee v. Quelle,
198 Wis. 2d 269 (1995)

2) A 3-part standard is to be applied in assessing the adequacy of the warning process under the implied consent law

   a. Has the officer not met, or exceeded, his or her statutory duty to provide information to the accused driver? Was the form read? Did the officer further explain or elaborate the form?

   b. Is the lack of or oversupply of information misleading?

   c. Has the failure to properly inform the driver affected his/her ability to make the choice about chemical testing?

State v. Piddington,
2001 WI 24
241 Wis. 2d 754
State v. Begicevic,
2004 WI App 57
270 Wis. 2d 675

3) An officer must make reasonable attempts to convey the implied consent warnings according to the individual circumstances of the situation. The focus is NOT on whether or not the accused actually understood the warnings. Rather, the focus is on the officer's conduct and efforts to reasonably convey information in the informing the accused form

State v. Wintlend,
2002 WI App 314
258 Wis. 2d 875

4) The language of the "Informing the Accused Form" does not contain a threat that unconstitutionally coerces the defendant to submit to a test

343.305(5)(b)
State v. Kozel,
2017 WI 3
373 Wis. 2d 1

G. Blood sample must be taken by physician, registered nurse, medical technologist, physician assistant, phlebotomist, or other medical professional who is authorized to draw blood, or a person acting under the direction of a physician

H. After submitting to a primary test as requested by law enforcement, the defendant may request:

343.305(5)

1) An alternative test provided by the agency; or,

343.305(5)

2) At the defendant's expense, reasonable opportunity for an additional test

343.305(5)

3) The failure, or inability, of defendant to obtain a test at own expense does NOT preclude the admission of the primary test

State v. Donner, 192 Wis. 2d 305 (Ct. App. 1995)

4) Officer may request a blood test after the defendant has submitted to a primary breath test. Compliance with a request for 1 type of a sample does not bar a subsequent request for a different type of sample. Refusal to submit to a second test is admissible at trial

State v. Stary, 187 Wis. 2d 266 (Ct. App. 1994)

5) Officer must make "reasonably diligent" effort to provide defendant with an alternative test. IF the defendant refuses to take the alternative test, the officer does not have a continuing obligation to remain available and accommodate future requests for an alternative test

State v. Schmidt, 2004 WI App 235 277 Wis. 2d 561

6) A request for an additional test may be made either before or after taking the primary test, but the request must be made specifically and clearly

State v. Fahey, 2005 WI App 171 285 Wis. 2d 679

7) A request for an additional test that is made after being released from custody is NOT a valid request

State v. Batt, 2010 WI App 155 330 Wis. 2d 159

8) Once the defendant has taken the primary test selected by police, the implied consent law requires police, if requested, to provide either an alternative test at police expense, or an alternative test which the defendant selects and pays for, but not both

343.305(5)(d)

I. At trial, the results of tests administered in compliance with the implied consent statute are admissible

J. If the defendant refuses to take the test, the officer shall immediately take the defendant's license and issue a "Notice of Intent to Revoke" to the defendant. See Sec. 7

6. Chemical Tests

885.235(1g)

A. To be admissible as evidence

1) The test must be administered within 3 hours after the event to be proved, unless there is expert testimony establishing its probative value

2) No corroborating physical evidence is needed to prove that the person was under the influence of an intoxicant

3) A test result of 0.08 or more given within 3 hours of the alleged driving is prima facie evidence that the defendant was under the influence of an intoxicant and is prima facie evidence of an alcohol concentration of 0.08 or more at the time of driving

Village of Thiensville v. Olsen, 223 Wis. 2d 256 (Ct. App. 1998)

   a. A defendant's testimony that he or she consumed alcohol after the driving, but before the test, does not necessarily rebut the presumption of intoxication and presumption of an alcohol concentration of 0.08 or more

885.235(1k)

4) A chemical analysis of blood showing a detectable amount of a restricted controlled substance is prima facie evidence that the person had a detectable amount of a restricted controlled substance in his or her blood at the time of driving

   a. No expert testimony is needed as to the substance's effect in order to prove a restricted controlled substance violation, but that testimony might be relevant to an operating under the influence charge

Missouri v. McNeely, 133 S. Ct. 832 (2013)

5) Involuntary warrantless blood draws, may be admissible in OWI cases in limited circumstances. But See 12.F.

343.305(6)(a)

B. Blood and urine tests must be conducted by a laboratory approved by the DHS

343.305(6)(c)

C. If an infrared breath testing device (Intoximeter EC/IR) is used:

1) 2 separate breath samples must be analyzed

2) Failure to provide 2 adequate samples constitutes a refusal

State v. Grade,
165 Wis. 2d 143
(Ct. App. 1992)

3) If only 1 sample is obtained, this does not constitute an adequate test of defendant's breath and may not by itself be admitted at trial. It may be possible to admit a single test result with foundation by an expert witness

343.305(6)(b)
Trans 311.04
State v. Baldwin,
212 Wis. 2d 245
(Ct. App. 1997)
overruled on other grounds by
State v. Busch,
217 Wis. 2d 429 (1998)

4) The type of breath testing instrument must be tested and certified by the DOT's Chief of Chemical Testing Sec. Failure to test and to certify removes the prima facie presumption of accuracy of the device. If the presumption is removed, the test result may not be admitted into evidence without expert testimony to demonstrate the reliability of the device

905.04(4)(f)
Muskego v. Godec
167 Wis. 2d 536 (1992)

D. There is no physician-patient privilege that bars the admission of evidence regarding the results of, or circumstances surrounding, any chemical tests for intoxication or alcohol concentration

343.303

E. Preliminary breath tests (PBT)

County of Jefferson v. Renz,
231 Wis. 2d 293 (1999)

1) An officer may use a PBT as a screening test to establish probable cause for arrest. The officer must have more than a reasonable suspicion that the person may be operating while under the influence, but does not need probable cause to arrest in order to request a PBT as a screening device

State v. Mallick,
210 Wis. 2d 427
(Ct. App. 1997)

a. Refusal to take PBT may also be considered in determining probable cause for arrest

343.303

2) The PBT test result is admissible to show probable cause for the arrest. It is not admissible to prove intoxication at a trial under the OWI laws

State v. Doerr,
229 Wis. 2d 616
(Ct. App. 1999)

3) It may be admissible if relevant, to show defendant's level of intoxication in non-OWI/PAC/OCS cases. It does not, however, have a prima facie presumption of accuracy. To be admissible, evidence must be presented by an expert witness to show the device's scientific accuracy and reliability and to prove compliance with accepted scientific methods

7. Refusal to Take Test

A. If a defendant is arrested for OWI, issued a citation for OWI/PAC/OCS under a municipal ordinance and refuses to take the test, officer shall:

343.305(9)(a)
Form 10-C

1) Prepare "Notice of Intent to Revoke" and give/send a copy to:

   a. The defendant

   b. The DOT

   c. The municipal court

   d. The prosecutor for the municipal court

2) Send the "Notice of Intent to Revoke" to the municipal court

343.305(9)(a)4.
800.005
801.15(1)

B. Defendant must request hearing in writing within 10 business days of issuance of "Notice of Intent to Revoke"

Elm Grove v. Brefka,
2013 WI 54
348 Wis. 2d 282

Court lacks competency to hear a motion to extend 10-day time limit or take any action, other than to process the refusal finding and penalties

C. If defendant does NOT request a hearing

343.305(10)(b)2.

1) Issue an "Order of Revocation" or a "Conviction Status Report" to DOT to revoke the defendant's license for 1 year, DOT will require defendant to wait 30 days for occupational license

343.305(10)(c)

2) Order an assessment

3) Order Ignition Interlock Device (IID) and surcharge (*See* Sec. 10.E.)

D. If defendant requests a hearing

343.305(9)(c)

1) Hold hearing to determine if refusal proper. There is no statutory time limit for scheduling/conducting the hearing. Hearing may be scheduled to be heard at same time underlying OWI/PAC/OCS trial is held

343.305(9)(b)

2) "Notice of Intent to Revoke" issued by officer is adequate process to provide court with jurisdiction

343.305(9)(a)

3) Neither party is entitled to discovery, except, if cause shown, court may allow inspection of documents and test devices

343.305(9)(a)5.

4) Scope of hearing limited to following issues:

St v. Anagnos, 2012 WI 64 341 Wis. 2d 576

a. Whether officer had probable cause to believe the defendant was operating a motor vehicle while under the influence of alcohol and whether defendant was lawfully stopped and placed under arrest for OWI

State v. Nordness, 128 Wis. 2d 15 (1986)

- "We view the revocation hearing as a determination merely of an officer's probable cause, not as a forum to weigh the State's and the defendant's evidence. . . The trial court, in terms of the probable cause inquiry, simply must ascertain the plausibility of a police officer's account."

343.305(4)

b. Whether officer informed defendant in compliance with the statute, § 343.305(4) (i.e., Did the officer properly read the "Informing the Accused" form to the defendant?) See Section 5.F.

c. Whether defendant refused test

State v. Neitzel, 95 Wis. 2d 191 (1980)

- "The obligation of the accused is to take the test promptly or to refuse it promptly"

State v. Rydeski, 214 Wis. 2d 101 (Ct. App. 1997)

- "[O]nce a person has been properly informed of the implied consent statute, that person must promptly submit or refuse to submit to the requested test and … upon a refusal, the officer may 'immediately' gain possession of the accused's license and fill out the Notice of Intent to Revoke form. A person's refusal is thus conclusive…"

343.305(6)(c)3. *State v. Grade*, 165 Wis. 2d 143 (Ct. App. 1991)

- Failure to provide 2 separate, adequate breath samples in proper sequence constitutes refusal

Village of Elkhart Lake v. Borzyskowski, 123 Wis. 2d 185 (Ct. App. 1985)

- Verbal refusal is not necessary. Conduct of defendant may constitute refusal

State v. Rydeski,
214 Wis. 2d 101
(Ct. App. 1997)

- No right to recant a refusal. A defendant's offer to later take the test does not undo the refusal

State v. Neitzel,
95 Wis. 2d 191 (1980)
State v. Reitter,
227 Wis. 2d 213 (1991)

- No right to consult with attorney before deciding whether to take test. Very limited exception is if police led defendant to believe he will get opportunity to consult with an attorney prior to taking the test

d. Defendant has affirmative defense to refusal finding if refusal due to physical inability to submit to test

343.305(9)(a)5.c.

- Defendant deemed not to have refused, if defendant proves by a preponderance of evidence a physical inability to submit to test

- Applicable only when inability due to disability or illness UNRELATED to use of alcohol or controlled substances

343.305(9)(d)

5) Court must determine issues within 5 days of hearing

Village of Elkhart Lake v. Borzyskowski,
123 Wis. 2d 185 (Ct. App. 1985)

a. Failure to decide within 5 days does not strip court of jurisdiction

6) If all issues determined adversely to defendant

a. Revoke driver license

343.305(10)(b)2.

- For 1 year. DOT will require defendant to wait 30 days for occupational license

- The effective date of the refusal revocation is the date of the court decision, or 30 days after the date of refusal, whichever is later

343.305(10)(c)

b. Order assessment of defendant's use of alcohol or controlled substances

c. Order IID and surcharge (see Sec. 10.E.)

800.035(5)(c)

E. IF defendant has properly requested a jury trial on the OWI/PAC/OCS charge(s) and has made a timely request for a refusal hearing, BOTH the OWI/PAC/OCS charge(s) AND the refusal issue, along with any other citations arising from the same incident, are to be transferred together to circuit court

State v. Bardwell, 83 Wis. 2d 902 (1978)

F. Refusal issue is separate and distinct from the underlying OWI/PAC/OCS charge(s)

343.305(9)(d)

1) Refusal issue may be prosecuted regardless of the disposition of OWI/PAC/OCS charge(s)

State v. Brooks, 113 Wis. 2d 347 (1983)
State v. Bentdahl, 2013 WI 106
351 Wis. 2d 739

2) Dismissal of the refusal is discretionary with the court and can only occur if the defendant pleads guilty to the underlying OWI/PAC/OCS charge AND made a timely request for a refusal hearing

967.055

3) Dismissal requires a "public interest" finding; see below

967.055

8. Plea Bargaining

A. A prosecutor may move to dismiss or amend the charge stating the reasons why it is appropriate and in the public's interest in deterring the operation of motor vehicles by persons who are intoxicated; have detectable amount of a restricted controlled substance; or have a prohibited alcohol concentration

B. The court may grant the motion only if consistent with that public interest

C. This provision applies to traffic forfeiture actions for violating OWI/PAC/OCS and to refusal proceedings

967.055(3)

D. A prosecutor may not place a person in a deferred prosecution program if charged with OWI/PAC/OCS or a refusal

9. Trial of an OWI Case After a Not Guilty Plea

A. Inform defendant of right to a jury trial in circuit court

Recommendation

1) Have request for jury trial forms available at initial appearance

2) Request for jury trial must be made within 10 days of initial appearance (See 3.B. in this Chapter)

800.035(5)(c)

3) **NOTE**: A not guilty plea and a request for a jury trial "may be made in writing," even if appearance is otherwise considered mandatory

State v. Schneck, 2002 WI App 239 257 Wis. 2d 704

B. "Summary Judgment" is not available to either party in a civil forfeiture action

C. Testimony taken

1) Prosecution witnesses (defendant may be called as a witness)

2) Defense witnesses (if any)

3) Prosecution rebuttal witnesses (if any)

D. Opinion evidence on intoxication

Milwaukee v. Kelly, 40 Wis. 2d 136 (1968)

1) A layperson's opinion of the defendant's sobriety is admissible

E. Oral argument of counsel or parties

F. Make the decision to find defendant not guilty or guilty on each charge. If there is a finding of guilt on the PAC charge, you must make a specific finding as to the BAC value

Town of Menasha v. Bastian, 178 Wis. 2d 191 (CA 1993) 346.63(1)(c)

G. If defendant is found guilty of any combination of the OWI, PAC, or OCS offenses, impose penalties on only 1. All citations must be sent to DOT and should clearly indicate the citation upon which the penalties have been imposed

10. Penalties for OWI

A. Sentencing Guidelines (PAC and OCS Cases)

346.65(2m)(a)

1) Court shall review record and consider aggravating and mitigating factors. If amount of alcohol or amount of restricted controlled substance in defendant's blood is known, court shall consider that amount as a factor in sentencing

2) The chief judge of each district shall adopt guidelines for the consideration of aggravating and mitigating factors, which must be considered by the court

B. Forfeitures, Costs, and Surcharges

1) Court must impose forfeiture within range set by statute. $150–$300 plus costs and surcharges

346.655 — a. Driver improvement surcharge

757.05 — b. Penalty surcharge

814.65 — c. Court costs

302.46(1)(a) — d. Jail surcharge

165.755 — e. Crime lab surcharge

343.301(5) — f. Ignition Interlock surcharge (if applicable)

814.65(4m) — g. If defendant is required to appear in court AND convicted of OWI for motor vehicle, boat, ATV/UTV, aircraft, snowmobile, or off-highway motorcycle, court shall impose and collect from the defendant any costs paid by police for the withdrawal of defendant's blood. If the police not yet billed for the withdrawal, court shall impose and collect the expected cost. The court shall disburse the money to the police agency

346.65(2e) — 2) If defendant does not have ability to pay, court may reduce costs or forfeiture and instead have defendant pay amount of reduction toward assessment and treatment

C. License Revocation

1) Court must order revocation of 6–9 months

345.48(2) — 2) Revocation to start immediately upon conviction

D. Occupational License

343.10
Wis Adm Code
Ch Trans 117 — 1) Responsibility for issuing occupational license is with DOT

343.30(1q)(b)2. — 2) No waiting period to apply for occupational license

343.301(1g)
343.10(2)(f)

3) If an IID is ordered, defendant must show proof of payment of IID surcharge to DOT

E. IIDs

343.301(1g)
FORM CC

1) Court must order defendant's operating privilege to be restricted to vehicles equipped with an IID AND must order each vehicle with defendant's name on title or registration to be equipped with IID if

343.301(1g)(a)

a. Improper refusal to take test; or

343.301(1g)(b)

b. Convicted of OWI/PAC/OCS and had either

- An alcohol concentration of .15% or

Village of Grafton v. Seatz,
2014 WI App 23
352 Wis. 2d 747

- Prior OWI conviction in lifetime (even if out of 10-year period)

343.301(1g)(am)2.
165.957(4)(a)

2) The option of participation in the 24/7 frequent sobriety testing program (instead of imposing an IID) is not available in first-offense cases

343.301(1m)(a)

3) If equipping each owned or registered vehicle would cause undue hardship, court may order that 1 or more vehicles NOT be equipped with IID. This does not change that the defendant is restricted from driving any class D vehicle without an IID

343.301(1m)(b)

4) The requirement to equip each owned or registered vehicle does not apply to a vehicle for which DOT has not approved an IID capable of being installed on the vehicle

343.301(3)

5) Defendant is liable for reasonable cost to equip and maintain IID, except

FORMS DD & EE

a. If court finds defendant has household income below 150% of poverty guidelines, defendant's cost limited to 1/2 actual cost to install and maintain IID

343.301(2m)(a)

6) Defendant's operating privilege must be restricted to require IID when operating Class D vehicles (i.e., passenger vehicles and light trucks)

a. IID license restriction begins immediately and extends until 1 year passes from the date the DOT issues any license

343.301(2m)(a)

7) Court may set a deadline for installation of IID on vehicles titled to defendant, but this does not relieve the defendant of the IID license restriction

343.301(5)

8) Court must impose $50 ignition interlock surcharge

343.30(1q)(c)

F. Assessment

1) Court must order assessment if defendant is convicted of OWI/PAC/ORC or found to have unreasonably refused chemical test

2) WI residents to be referred to approved facility in county of residence

3) Out-of-state residents to be referred to approved facility in WI. Facility may refer defendant to facility in defendant's home state

343.30(1q)(c)1m.

4) Defendant may undergo voluntary assessment before conviction

a. Court may consider at sentencing

346.65(2e)

5) Court may reduce defendant's forfeiture by amount sufficient to have defendant pay assessment and treatment under § 343.30(1q)(c)

G. Community Service

346.65(2g)

1) Court may order defendant to perform community service in lieu of part or all of forfeiture

346.65(2g)

2) Court may order defendant to perform community service in addition to other penalties

346.65(2g)

3) Court may order community service with or without defendant's consent

H. Restitution

346.65(2r)
St v. Storlie,
2002 WI App 163
256 Wis. 2d 500

1) Court may order defendant to pay full or partial restitution to any victim(s) of an OWI offense, but may not order restitution for collateral expenses incurred in normal course of law enforcement

I. Order to Visit Other Site

346.65(2i)
343.30(1q)(d)1.

1) Court may order a visit to a site that demonstrates the adverse effects of substance abuse or OWI. This may include a treatment facility, emergency room, or Victim Impact Panel. It can be imposed as a condition of a driver safety plan, in lieu of part or all of the forfeiture, or in addition to other penalties

11. Related Offenses

350.101
23.33(4c)
23.335(12)
30.681

A. It is unlawful to operate an ATV/UTV, motorboat, snowmobile, or off-highway motorcycle, while under the influence of an intoxicant, controlled substance, or other drug, or any combination thereof or with a detectable amount of a restricted controlled substance, or with a prohibited alcohol concentration

23.33(13)(e),
23.335(23)(i),
30.80(6)(d),
350.11(3)(d)

1) A person convicted of OWI/PAC/OCS with an ATV/UTV, boat, snowmobile, or off-highway motorcycle must complete an alcohol assessment

30.80(6)(e)

2) In addition to the alcohol assessment, a person convicted of OWI/PAC/OCS with a boat may be ordered to pay a forfeiture and must complete a boating safety course

   a. If the defendant has a valid certificate indicating satisfactory completion of a boating safety course, the judge must revoke that certificate and require the defendant to complete a new boating safety course

3) There is no driver improvement surcharge for conviction of these offenses

346.63(2m)
30.681(1)(bn)
350.101(1)(c),
23.33(4c)(a)4.
23.335(12)(a)3.
See Chap. 13 (Judgment)

B. Absolute Sobriety **Persons below the legal drinking age may not operate a motor vehicle, motor boat, or off-highway motorcycle with more than 0.0% blood alcohol. Persons below the age of 19 may not operate any ATV/UTV or snowmobile with more than 0.0% blood alcohol. The penalties are:**

346.65(2q)
30.80(6)(a)6.

1) Mandatory forfeiture

2) If operating a motor vehicle, conviction carries 4 demerit points and a mandatory 3-month driver license suspension

a. No waiting period for occupational license

343.305(3)(a)

3) Implied consent law applies to Absolute Sobriety violations involving a motor vehicle

343.305(10)(em)

a. A refusal results in a 6-month revocation, with a 15-day waiting period for an occupational license. There is no IID or assessment requirement

12. OWI-Related Issues—Case Law

A. Auto stop

State v. Post,
2007 WI 60
301 Wis. 2d 1
State v. Waldner,
206 Wis. 2d 51 (1996)

1) Reasonable suspicion to stop. Totality of facts and circumstances would cause a reasonable police officer, in light of his or her training and experience to suspect that a violation has been, or is about to be committed. Reasonable suspicion is more than a hunch, but less than probable cause. An officer need not rule out the possibility of innocent behavior before initiating the stop of a vehicle

State v. Rutzinski,
2001 WI 22
241 Wis. 2d 729

a. Cell phone or other anonymous tip reporting a "drunk driver" may under certain circumstances provide police with sufficient circumstances for an investigative stop

349.02(2)(a)

2) Statutes prohibit the use of roadblocks as a mechanism for stopping vehicles

B. Right to counsel

State v. Neitzel,
95 Wis. 2d 191, 204
(1980)

1) There is no right to consult with counsel before deciding whether to take the breath test. "Once there has been a proper explanation and there has been a refusal, even though that refusal is conditioned on the accused's willingness to reconsider after conferring with counsel, a refusal has occurred under the statute and the accused is subject to the consequence of a mandatory suspension"

State v. Reiter,
227 Wis. 2d 213 (1999)

2) The officer is not required to tell the defendant that there is no right to counsel to assist in deciding whether to take the test

C. *Miranda* Rights

Menomonee Falls v. Kunz,
126 Wis. 2d 143
(Ct. App. 1985)

1) The roadside questioning of a motorist detained pursuant to a routine traffic stop does not constitute custodial interrogation that requires Miranda warnings

D. Horizontal Gaze Nystagmus (HGN)

State v. Zivcic,
229 Wis. 2d 119
(Ct. App. 1999)

1) An officer who has been properly trained to administer and evaluate the test may give testimony on the administration and result of the HGN test

E. Chemical tests

885.235
State v. Disch,
119 Wis. 2d 461 (1984)

1) Tests of blood, breath, or urine authorized by statute have a presumption of accuracy

State v. Baldwin,
212 Wis. 2d 461
(Ct. App. 1997)
overruled on other grounds by
City of New Berlin v. Wertz, 105 Wis. 2d 670 (1981)

2) An attack on the operator's qualifications, the methods of operation, the 20-minute observation period, or the accuracy of the machine is a matter of defense and goes to the weight of the evidence but not to its admissibility

State v. Baldwin,
212 Wis. 2d 461
(Ct. App. 1997)
overruled on other grounds in
State v. Busch, 217 Wis. 2d 429 (1998)

3) The type of breath testing instrument must be tested and certified by the DOT's Chief of Chemical Testing Section. Failure to test and to certify removes the prima facie presumption of accuracy of the device. If the presumption is removed, the test result may not be admitted into evidence without expert testimony to demonstrate the reliability of the device

State v. Turner,
114 Wis. 2d 544 (1983)

4) Results of an additional blood test requested by defendant cannot be suppressed even if:

   a. The blood sample was destroyed by the hospital

   b. The hospital was not certified by state hygiene laboratory

State v. Donner,
192 Wis. 2d 305
(Ct. App. 1995)

5) Officer may request a blood test after the defendant has submitted to a primary breath test. Compliance with a request of 1 type does not bar a subsequent request for a different type of sample. Refusal to submit to the second test is admissible as trial

State v. Stary,
187 Wis. 2d 266
(Ct. App. 1994)

6) Officer must make "reasonably diligent" effort to provide defendant with an alternative test. If the defendant refuses to take the alternative test, the officer does not have a continuing obligation to remain available and accommodate future requests for an alternative test

State v. Schmidt,
2004 WI App 235
277 Wis. 2d 561

7) A request for an additional test may be made either before or after taking the primary test, but the request must be made specifically and clearly

State v. Fahey,
2005 WI App 171
285 Wis. 2d 679

8) A request for an additional test that is made after being released from custody is NOT a valid request

F. Forced Withdrawal of Blood without a Warrant

Missouri v. McNeely,
133 S. Ct. 832 (2013)
Village of Grafton v. Seatz,
2014 WI App 23
352 Wis. 2d 747

1) A warrantless blood withdrawal requires exigent circumstances. The natural dissipation of alcohol does NOT by itself constitute exigency. This must be determined by the "totality of the circumstances". Factors to be considered in determining exigency include, but are not limited to:

   a. Time spent by law enforcement investigating the incident

   b. Time spent transporting an injured suspect to a hospital

   c. The procedures and time involved in obtaining a warrant

   d. The length of time between the driving and the taking of the sample

Mitchell v. Wis
139 S. Ct. 2525 (2019)

   e. Exigency is presumed in the case of an unconscious driver

G. Refusing to submit to evidentiary tests

Birchfield v. North Dakota,
136 S. Ct. 2160 (2016)
South Dakota v. Neville,
103 S. Ct. 916 (1983)

1) Evidence of a motorist's refusal to submit to a chemical test may be admitted at trial for weight that trier of fact wishes to give it. There is no coercion involved because the government gives the choice of submitting to the test or suffering civil and evidentiary penalties for refusing, as opposed to criminal prosecution for the refusal

2) Further, note that in first-time OWI/PAC/OCS prosecutions, all statements are admissible because there are no criminal penalties. Therefore, no 5th Amendment rights are implicated

State v. Mallick, 210 Wis. 2d 428 (Ct. App. 1997)

3) A defendant's refusal to submit to field sobriety test is admissible for the purpose of establishing probable cause and admissible at trial to show consciousness of guilt

H. Affirmative Defense to OWI charge

State v. Brown, 107 Wis. 2d 44 (1982)
State v. Schoenheide, 104 Wis. 2d 114 (Ct. App. 1981)

1) OWI is a strict-liability offense, and no mental state must be shown to prove liability. Statutory affirmative defenses or privileges in the Criminal Code do not apply, unless they are based on a greater public interest than mental state. Examples include self-defense, coercion, necessity, and entrapment

I. Constitutional Challenges

State v. Muehlenberg, 118 Wis. 2d 502 (Ct App. 1984)

1) Statute prohibiting operating a motor vehicle with a particular blood alcohol concentration is sufficiently definitive to give a person of ordinary intelligence fair notice of the conduct required or prohibited. The statute is not void for vagueness

Welsh v. Wisconsin, 80 L.Ed.2d 732 (1984)

2) Arrest without a warrant and without exigent circumstances in person's home is not lawful

State v. McManus, 152 Wis. 2d 113 (1989)
State v. Raddeman, 2000 WI App 190 238 Wis. 2d 628

3) Statute prohibiting operation of a motor vehicle with a particular breath alcohol concentration does not violate due process or equal protection clause of the Constitution

State v. McMaster, 206 Wis. 2d 30 (1996)

4) Penalties administered under the Administrative Suspension law followed by penalties under the OWI charge do not violate the double jeopardy clause of the Fifth Amendment

State v. Smet, 2005 WI App 263 288 Wis. 2d 525

5) Statutes prohibiting operation of motor vehicle with restricted controlled substance (OCS) are not unconstitutional

13. Administrative Suspension

A. If defendant submits to a chemical test and result is a prohibited alcohol concentration of 0.08% or more or there is a detectable amount of a restricted controlled substance, the officer shall:

343.305(8)(a)

1) Issue "notice of administrative suspension" advising defendant of administrative suspension and rights to administrative and judicial review

NOTE:

2) "Notice" serves as temporary license for 30 days

343.305(7)

B. Defendant is administratively suspended for 6 months based on test result of 0.08% or more; or a detectable amount of a restricted controlled substance

1) Suspension becomes effective at the time the 30-day temporary license expires

2) The length of administrative suspension is 6 months regardless of any prior convictions for OWI

343.305(8)(b)1.
See Form 10-B

C. Defendant may ask DOT to review administrative suspension

343.305(8)(c)

D. If the defendant is aggrieved by the determination of the hearing examiner, he or she may request review by the court hearing the underlying OWI/PAC/OCS charge

343.305(8)(c)1.

1) Request for judicial review must be filed with the court within 20 days of the issuance of the hearing examiner's decision

2) If the OWI/PAC/OCS charge is transferred to circuit court because of jury demand, the request must be filed in circuit court

343.305(8)(c)1.

3) The court must conduct the review at the time of trial

343.305(8)(c)1.

4) The prosecutor of the OWI/PAC/OCS charge shall represent the interests of DOT at the hearing

343.305(8)(c)1.

5) The court shall send a copy of the request for judicial review to DOT

343.305(8)(c)2.

6) DOT will vacate the administrative suspension 60 days from the date of the request for judicial review unless DOT notified of the result of the review

343.305(8)(c)2.

7) Upon receiving a request for judicial review the court may issue an order to DOT to stay the suspension pending judicial review

Recommendation

a. Upon receiving a request for judicial review, the court should schedule the review of the hearing examiner's decision on administrative suspension at the same time as the trial on the OWI/PAC/OCS. The trial should be scheduled as soon as possible and no later than 60 days from the filing of the request for judicial review

343.305(8)(c)3.

E. If the defendant is aggrieved by the court review

343.305(8)(c)3.

1) Municipal court review may be appealed to circuit court

343.30(1q)(h)

F. Any revocation resulting from a conviction for OWI/PAC/OCS charges will be reduced by any period of administrative suspension, if both arise from same incident

1) This calculation will be performed by DOT

- If defendant is found not guilty of OWI/PAC/OCS charge, any administrative suspension arising out of the same is removed

343.305(8)(d)

G. Defendant immediately eligible for occupational license if administratively suspended

State v. McMaster, 206 Wis. 2d 30 (1996)

H. Penalties administered under the administrative suspension law followed by penalties under the OWI charge do not violate the double jeopardy clause of the Fifth Amendment

INFORMING THE ACCUSED

SP4197 4/2010-2 s.343.305(4) Wis. Stats.

Wisconsin Department of Transportation

Police Number

Under Wisconsin's Implied Consent Law, I am required to read this notice to you:

You have either been arrested for an offense that involves driving or operating a motor vehicle while under the influence of alcohol or drugs, or both, or you are the operator of a vehicle that was involved in an accident that caused the death of, great bodily harm to, or substantial bodily harm to a person, or you are suspected of driving or being on duty time with respect to a commercial motor vehicle after consuming an intoxicating beverage.

This law enforcement agency now wants to test one or more samples of your breath, blood or urine to determine the concentration of alcohol or drugs in your system. If any test shows more alcohol in your system than the law permits while driving, your operating privilege will be suspended. If you refuse to take any test that this agency requests, your operating privilege will be revoked and you will be subject to other penalties. The test results or the fact that you refused testing can be used against you in court.

If you take all the requested tests, you may choose to take further tests. You may take the alternative test that this law enforcement agency provides free of charge. You also may have a test conducted by a qualified person of your choice at your expense. You, however, will have to make your own arrangements for that test.

If you have a commercial driver license or were operating a commercial motor vehicle, other consequences may result from positive test results or from refusing testing, such as being placed out of service or disqualified.

In addition, your operating privileges will also be suspended if a detectable amount of a restricted controlled substance is in your blood.

Will you submit to an evidentiary chemical test of your ______________________? ☐ Yes ☐ No
(breath, blood, urine)

I certify that I have read the above information to ________________________________,

who has been arrested for a violation of ________________________________, and have

provided him/her a copy of this form. He/She was identified by ________________________.

______________________ (Citation Number)

______________________ (Date and Time Signed) a.m./p.m.

______________________ (Agency)

X ______________________ (Law Enforcement Officer)

Distribution: 1 - Agency Requesting Test; 2 - Review Examiner; 3 - Person Requested to Submit to Test

ADMINISTRATIVE REVIEW REQUEST

Wisconsin Department of Transportation
MV3530 9/2020

IMPORTANT NOTICE – RESPOND WITHIN TEN (10) DAYS

REQUESTING AN ADMINISTRATIVE REVIEW IS OPTIONAL

- **This form, (MV3530) Should Not be completed if you Do Not want a review.**
- **If you Do Not request a review within ten (10) days you have waived your right to a review.**
- **This Is Not a review to get an occupational license.**

If you choose to request an administrative review of the loss of your operating privileges:

1. Fill in the information below and mail this form (MV3530) to the DMV address shown below.
2. Your request for a review must be postmarked within ten (10) days of the notice date on the *Notice of Intent To Suspend Operating Privilege* form MV3519; or within 13 days if the notice was mailed to you.

THE ADMINISTRATIVE REVIEW IS LIMITED TO THE FOLLOWING ISSUES

1. The correct identity of the person.
2. Whether the person was informed of the options regarding tests under s.343.305 Wis. Stats.
3. Whether the person had a prohibited alcohol concentration or a detectable amount of a restricted controlled substance in his or her blood at the time of offense.
4. Whether one or more of the tests were administered in accordance with s.343.305 Wis. Stats.
5. Whether each of the test results indicates the person had a prohibited alcohol concentration or a detectable amount of a restricted controlled substance in his or her blood.
6. Whether probable cause existed for the arrest.
7. Whether the person was driving or operating a commercial motor vehicle when the offense allegedly occurred.
8. Whether the person had a valid prescription for methaphetamineor one of its metabolic precursors or gammahydroxybutyric acid or delta-9-tetrahydrocannabinol.

GENERAL REVIEW INFORMATION

1. If you request a review, you will be notified of the time and location of the review.
2. The review will be held within 30 days of the notice date on the Notice of Intent To Suspend Operating Privilege form MV3519.
3. Types of Reviews:

Telephone Review: You will be instructed to call a DMV office in Madison or another location at a specific time and date. The hearing examiner will take testimony and discuss exhibits with witnesses, including you or your attorney, by telephone.

Written Review: You or your attorney may submit written arguments with this request. Written arguments must address one or more of the above issues only. The hearing examiner deciding the matter may be in Madison or at any DMV location. Written reviews are restricted to a review of the paperwork submitted by the police agency in connection with the arrest and written arguments about that evidence submitted by you or your attorney.

In-Person Review: You or your attorney will be instructed to appear in person at a DMV location. You may subpoena witnesses and examine witnesses in-person before a hearing examiner.

If you select a phone or written review you thereby waive your right to an in-person review and understand that the review may be held in a county other than where the offense occurred. You or your attorney may present evidence at telephone or in-person reviews.

You may be represented by an attorney at any of the proceedings.

REVIEW REQUEST

I request a *(must select one)*

☐ TELEPHONE ☐ WRITTEN ☐ IN-PERSON

administrative review of the suspension of my operating privileges resulting from an arrest for operation of a motor vehicle with a prohibited alcohol concentration or a detectable amount of a restricted controlled substance.

If I have requested a telephone or written review, I hereby waive my right to subpoena or confront witnesses at the hearing and consent to the hearing being conducted at a location other than the nearest DMV office to the county where the violation occurred.

Name (Last, First, Middle Initial)		
Birth Date	Sex	(Area Code) Telephone Number – Daytime
Driver License Number		State of Issuance
Citation Number	Arresting Agency Name	
Date of Violation (M M D D Y Y Y Y)	County of Violation	Notice Date (M M D D Y Y Y Y)

See back of form for all attorney and address information.

Mail to: DMV Driver Services, Wisconsin Department of Transportation, P.O. Box 7930, Madison, WI 53707-7930

Distribution: Yellow - Driver; Pink - Driver; White - Review Examiner; Green - Law Enforcement

If you choose to be represented by an attorney, you must complete the following information.

Attorney Name *(Print Name)*	(Area Code) Telephone Number
Law Firm Name	
Street Address	
City, State, ZIP Code	

If you request a copy of the file submitted by the arresting agency, you must complete the following information, or your attorney may submit Vehicle/Driver Record Information Request form MV2896. There is a charge of .25 cents per page. You will be billed when copies are mailed.

Undersigned Driver Name *(Print Name)*
I, the undersigned DRIVER, authorize the Wisconsin Department of Transportation, under the Federal Driver's Privacy Protection Act, to release any and all requested information related to this suspension, to my attorney identified above, for the WisDOT Administrative Review. **X** ______________________ **(Driver's Signature – Only)** ______________ (Date – m/d/yyyy)

The willful, unauthorized disclosure of information obtained from these records for a purpose other than stated on this request, or the sale or other distribution of the information to a person or organization not disclosed in this request may result in penalties imposed under Title 18 U.S.C. Section 2724.

CHANGE OF ADDRESS

The Department mails all correspondence to the address on your driving record. If the Department does not have your current address, please provide it below. If you hold a Commercial Driver License (CDL), you must visit a DMV Service Center to update your address. The Department will mail all future correspondence to your updated address.

Street Address
City, State, ZIP Code

NOTICE OF INTENT TO REVOKE OPERATING PRIVILEGE

Wisconsin Department of Transportation
MV3396 11/2014

Law Enforcement / Agency Name	Date of Notice (m/d/yy)	Time of **Arrest** ☐ am ☐ pm
☐ State of WI ☐ County ☐ City ☐ Village ☐ Town	Date of Refusal – IF Different (m/d/yy)	Time of **Notice** ☐ am ☐ pm

Name (last, first, middle initial)			Birth Date (m/d/yy)	Gender ☐ Male ☐ Female	Police Number
Address, City, State, ZIP Code					
Driver License Number	State of License	Expires	Citation Number	Criminal Complaint Issued ☐ Yes ☐ No	
At time of offense, check the class and endorsements the defendant operated as: Class: ☐ A ☐ B ☐ C ☐ D ☐ M Endorsement: ☐ F ☐ H ☐ N ☐ P ☐ S ☐ T					
Year and Make of Vehicle Involved in Violation	Plate Number	Vehicle Identification Number (VIN)			

I, a law enforcement officer, requested you, the above-named person, to submit to one or more chemical tests under s.343.305(9) Wisconsin Statutes. Unless the box for s.346.63(7) is checked below, prior to the request, an officer requested that you take a test under s.343.305(3)(ar) or placed you under arrest for a violation of the following Wisconsin state statute or a local ordinance conforming to that statute:

☐ s.346.63(1)(a)	☐ s.346.63(2)(a)2	☐ s.346.63(6)	☐ s.940.09(1)(b)
☐ s.346.63(1)(am)	☐ s.346.63(2)(a)3	☐ s.346.63(7) *(No arrest required)*	☐ s.940.25(1)(a)
☐ s.346.63(1)(b)	☐ s.346.63(2m)	☐ s.940.09(1)(a)	☐ s.940.25(1)(am)
☐ s.346.63(2)(a)1	☐ s.346.63(5)	☐ s.940.09(1)(am)	☐ s.940.25(1)(b)

Commercial Motor Vehicle Violations: ☐ If this box is checked, I issued an out-of-service order to you, which specified the date and time it was issued, for the 24 hours after you refused the test.

I complied with s.343.305(4) Wis. Stats., by reading you form SP4197, the *Informing the Accused* form, and provided a copy of that form to you. You refused a request to submit to a test or tests under s.343.305(3) Wis. Stats. Because of this refusal, your operating privileges may be revoked.

You have 10 days from the date of this notice to file a request in writing for a hearing on the revocation **with the municipal or circuit court named below**. (See reverse side for details regarding hearings.) If you do not request a hearing, the court must revoke your operating privileges 30 days from the date of this notice. You will receive a notification from the WisDOT when your privileges are revoked. Address any hearing requests to:

Municipal or Circuit Court Name
Court Street Address, City, State, ZIP Code

Distribution

White Original: Court
Yellow Copy: Chemical Test Section
3502 Kinsman Blvd.
Madison, WI 53704
Pink Copy: Person Refusing Test
Green Copy: District Attorney

X ______________________
(Enforcement Officer Name – Please Print)

See reverse side for additional information

Additional Information About Your Chemical Test Refusal

If it is determined that you refused a test you will be ordered to comply with assessment and a driver safety plan unless you were arrested for a violation of s.346.63(2m) or (7), Wis. Stats.
See s.343.305(10)(em), Wis. Stats.

Commercial Motor Vehicle Absolute Sobriety Violation Provisions

If you refused chemical tests and I have indicated on the front side of this notice that you were suspected of violating s.346.63(7), Wis. Stats., at the time you were asked to submit to a test, I was not required to place you under arrest before asking you to submit to a chemical test.
See s. 343.305(3)(am), Wis. Stats. In that case, the issues at a court hearing on your refusal revocation are limited to the following:

a. Whether an officer detected any presence of alcohol, controlled substance, controlled substance analog or other drug, or a combination thereof, on you or had reason to believe that you were violating or had violated s.346.63 (7), Wis. Stats.

b. Whether an officer complied with s.343.305(4), Wis. Stats.

c. Whether you refused to permit the test. You shall not be considered to have refused the test if it is shown by a preponderance of evidence that the refusal was due to a physical inability to submit to the test due to a physical disability or disease unrelated to the use of alcohol, controlled substances, controlled substance analogs or other drugs.

All Other Persons

If you were arrested for a violation of s.346.63(1), (2m), or (5), Wis. Stats., or a local ordinance in conformity therewith, or for a violation of s.346.63(2) or (6), 940.09 or 940.25, Wis. Stats., the issues at a court hearing on your refusal revocation are limited to the following:

a. Whether an officer had probable cause to believe you were driving or operating a motor vehicle while under the influence of alcohol, a controlled substance or a controlled substance analog or any combination of alcohol, a controlled substance and a controlled substance analog, under the influence of any other drug to a degree which renders you incapable of safely driving, or under the combined influence of alcohol and any other drug to a degree which renders you incapable of safely driving, having a restricted controlled substance in your blood, or having a prohibited alcohol concentration or, if you were driving or operating a commercial motor vehicle, an alcohol concentration of 0.04 or more and whether you were lawfully placed under arrest for violation of s.346.63 (1), (2m) or (5), Wis. Stats., or a local ordinance in conformity therewith or s.346.63 (2) or (6), 940.09 (1) or 940.25, Wis. Stats.

b. Whether an officer complied with s.343.305(4), Wis. Stats.

c. Whether you refused to permit the test. You shall not be considered to have refused the test if it is shown by a preponderance of evidence that the refusal was due to a physical inability to submit to the test due to a physical disability or disease unrelated to the use of alcohol, controlled substances, controlled substance analogs or other drugs.

No person may operate a motor vehicle in this State unless the owner or driver of the vehicle has liability insurance in effect for the vehicle being operated and carry proof of insurance whenever driving. Law Enforcement may ask for proof of insurance at any traffic stop or accident. Failure to have insurance could result in up to a $500 fine. Failure to have proof, when requested could result in a $10 fine. You do not need proof of insurance when registering a vehicle or obtaining a driver license, unless DMV specifically requested proof of financial responsibility (SR-22) after a revocation or suspension. Refer to Wis Stat 344.61-344.65 for full detail.

This form drafted to comply with the requirements of State v. Gautschi, 2000 WI. App. 274 (Nov. 9, 2000).

NOTICE OF INTENT TO SUSPEND OPERATING PRIVILEGE

Wisconsin Department of Transportation
MV3519 9/2020

NOTICE DATE
M M – D D – Y Y Y Y

IN THE MATTER OF THE SUSPENSION OF:

Name (Last, First, Middle Initial)		Birth Date	Sex
Address	Driver License Number	State of Issuance	
City	State	ZIP Code	

CITATION NUMBER	STATUTE NUMBER	DATE OF VIOLATION (M M – D D – Y Y Y Y)	TIME OF VIOLATION	Police Number
	s. 346.63(1)(a)			
	s. 346.63 (1)(b)	County Where Violation Occurred		
	s. 346.63(1)(am)	Operating Commercial Motor Vehicle at Time of Violation ☐ Yes ☐ No	Transporting Hazardous Materials ☐ Yes ☐ No	
	s. 346.63(2)(a)1	This Notice (MV3519) Issued ☐ In person ☐ Mailed	MV3530 Issued ☐ Yes ☐ No	
	s. 346.63(2)(a)2	Check if Criminal Complaint Issued: ☐		
	s. 346.63(2)(a)3			
	s. 940.09(1)(a)			
	s. 940.09(1)(b)	(Arresting Agency)	(Agency Code)	
	s. 940.25(1)(a)			
	s. 940.25(1)(b)	(Officer)	(Badge Number)	

On the above date you submitted to chemical testing administered in accordance with s.343.305 Wis. Stats. The test result indicated a prohibited alcohol concentration or a detectable amount of restricted controlled substance. Your operating privilege will be administratively suspended for six months. You have a right to obtain administrative and judicial review of the suspension under the provisions of s.343.305(8) Wis. Stats.

Thirty (30) days from the Notice Date listed in the box above your operating privilege will be suspended and a formal Order of Suspension will be mailed to you by the Department of Transportation.

Within 10 days after this notification or within 13 days if this notice was mailed to you, you may request, in writing, that the suspension be reviewed. If such a request is made a review shall be held within 30 days of this notice. You may present evidence and you may be represented by counsel at the review.

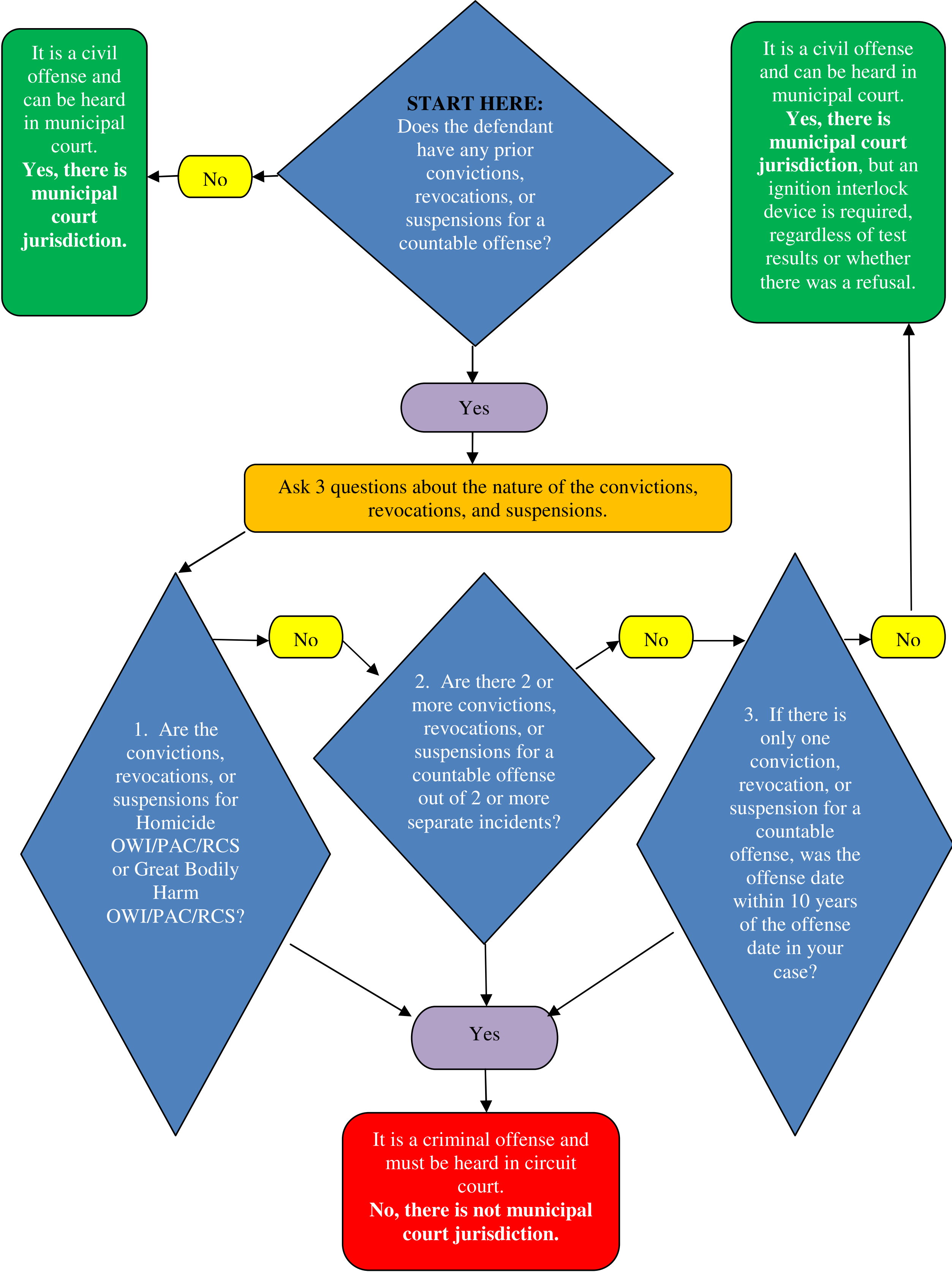
Arresting Agency submit white ply to:

DMV Driver Services
Wisconsin Department of Transportation
P.O. Box 7930
Madison, WI 53707-7930

Date DOT Received

Distribution: Yellow - Driver; Pink - Driver; White - Review Examiner; Green - Law Enforcement

Is There Municipal Court Jurisdiction
for This Impaired Driving Offense?



Definitions for Flowchart:

A conviction includes an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal, an unvacated forfeiture of property deposited to secure the person's appearance in court, a plea of guilty or no contest accepted by the court, the payment of a fine or court cost, or violation of a condition of release without the deposit of property, regardless of whether or not the penalty is rebated, suspended, or probated, in this state or any other jurisdiction. It is immaterial that an appeal has been taken. It also includes a forfeiture of deposit under ss. 345.26 and 345.37, which forfeiture has not been vacated, an adjudication of having violated a law enacted by a federally recognized American Indian tribe or band in this state, an adjudication of having violated a local ordinance enacted under ch. 349, a finding by a court assigned to exercise jurisdiction under chs. 48 and 938 of a violation of chs. 341 to 349 and 351 or a local ordinance enacted under ch. 349.

See Wis. Stat. § 340.01(9r).

A countable offense includes:
(a) Convictions for violations under s. 346.63 (1), or a local ordinance in conformity with that section.
(b) Convictions for violations of a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1).
(c) Convictions for violations under s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle.
(d) Convictions under the law of another jurisdiction that prohibits a person from refusing chemical testing or using a motor vehicle while intoxicated or under the influence of a controlled substance or controlled substance analog, or a combination thereof; with an excess or specified range of alcohol concentration; while under the influence of any drug to a degree that renders the person incapable of safely driving; or while having a detectable amount of a restricted controlled substance in his or her blood, as those or substantially similar terms are used in that jurisdiction's laws.
(e) Operating privilege suspensions or revocations under the law of another jurisdiction arising out of a refusal to submit to chemical testing.
(f) Revocations under s. 343.305 (10).
(g) Convictions for violations under s. 114.09 (1) (b) 1. or 1m.

See Wis. Stat. § 343.307(1).

11: EVIDENCE

1. Rules 11-1
2. Relevant Evidence 11-1
3. Inadmissible Evidence 11-1
4. Quick Reference Guide 11-3
5. Common Evidentiary Issues 11-3

Evidentiary Foundations Chart by Hon. Mark Nielsen 11-A

1. Rules

800.08, 901.01, 911.01

A. Chapters 901–911 (the Wisconsin Rules of Evidence) of Wisconsin Statutes apply at trial in municipal courts

B. A judge must apply these rules and determine whether evidence is admissible or inadmissible

C. The Rules of Evidence do not apply in motions to suppress, restitution hearings, sentencing hearings, and motions for relief from judgment

D. If no objection is raised by either party regarding the admission of evidence or testimony, the court has discretion to allow admission and determine what weight to give it

2. Relevant Evidence

904.01

Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence

3. Inadmissible Evidence

904.02

A. Irrelevant evidence is not admissible

Chapter 905

B. Privileged evidence is not admissible

1) Even if relevant, the evidence may fall under a privilege making it inadmissible

905.03(3), 905.04(3) 905.05(2)

2) The privilege may be claimed by the client/patient/spouse

905.04

a. Privilege attaches to health-care providers (physician, psychologist, registered nurse, chiropractor, social worker, therapists, counselors)

b. Medical situations where no privilege attaches

905.04(4)(f)

- Tests for intoxication

905.065–905.15

c. Other privileged evidence

905.05; 770.01(1)

- Husband or wife, domestic partners (Applies only to private communications made during the marriage or domestic partnership. Does not apply to what a spouse or domestic partner sees)

905.06

- Clergy

905.15

- Federal tax returns

905.065

- Lie detector results

905.07

- Political voting

905.10

- Government Informants

904.03

C. Unfairly prejudicial evidence is not admissible

1) Even if relevant, unduly prejudicial evidence may be excluded

2) Prejudice results when the probative value of evidence is substantially outweighed by the danger of

a. Unfair prejudice

b. Confusion of the issues, or

c. Undue delay, waste of time or needless presentation of cumulative evidence

D. Unreliable evidence is not admissible

1) Hearsay is unreliable and inadmissible unless there is an exception

2) Scientific evidence that is not the product of reliable principles and methods is unreliable and therefore inadmissible

904.04

E. **Character evidence and instances of prior bad conduct are often not admissible for proving that the person acted in conformity therewith on a particular occasion**

4. Quick Reference Guide

*** Follow these steps and you will usually be correct**

A. **Is the evidence relevant? No—inadmissible**

B. **Does the evidence have the proper foundation? (first-hand knowledge, under oath, from memory and subject to cross-examination OR properly a matter of judicial notice OR proper expert witness foundation) No—inadmissible**

C. **Is the evidence unfairly prejudicial? Yes— inadmissible**

D. **Is the evidence hearsay? Yes—inadmissible unless an exception to the hearsay rule applies**

5. Common Evidentiary Issues

909.01–.03

A. **Authentication and identification of documents**

909.01

1) Requirements of identification and authentication are met when evidence is sufficient to support a finding that the matter in question is what its proponent claims

909.015(1)

2) Testimony of a witness with knowledge that a matter is what it is claimed to be is one way to authenticate or identify documents

909.03

3) The testimony of the subscribing witness is not necessary to authenticate a writing unless required by other laws

909.02

4) Self-authentication

a. Most public documents or certified copies of them

b. Official publications

c. Newspapers and periodicals

d. Certain notarized documents (caution: see hearsay)

904.04–.05

B. Character/trait evidence—generally not admissible

1) Generally not admissible for purposes of proving conduct was in conformity therewith on a particular occasion except:

   a. Evidence of a pertinent character trait of the accused offered by the accused or by the prosecution to rebut the same

904.04(1)(b)

   b. Evidence of a pertinent character trait of the victim of the offense, offered by the accused or by the prosecution to rebut

   c. Evidence of the character of a witness for impeachment purposes as defined in §§ 906.07, 906.08, and 906.09

906.08

2) Character trait of truthfulness

   a. Credibility may be attacked or supported by evidence in the form of reputation or opinion only as to character for truthfulness or untruthfulness

   b. Except with respect to an accused who testifies on own behalf, the character trait of truthfulness may not be introduced unless the witness's credibility has been attacked

906.08(2)

3) Specific instances of conduct are generally not allowed; however, they may in special circumstances. If probative of truthfulness or untruthfulness and not remote in time, they may be inquired into on cross-examination of the witness or on cross-examination of a witness who testifies to his or her character for truthfulness or untruthfulness

906.09

4) Prior criminal conviction record or adjudication of delinquency can be admitted, but the rules of 906.09 must be followed

908.01–.02

C. Hearsay—Generally not admissible

1) Hearsay is a "statement" other than one made by the "declarant" while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted

a. Hearsay refers to any statement or document made outside of court, offered to prove that the content of the statement is true

NOTE:

b. To be hearsay, the out-of-court statement must be offered for the purpose of establishing the truth of the contents of the statement. If the person on the witness stand is explaining what someone else said for some other purpose (e.g., to explain why the witness did something) then the statement is NOT hearsay

Examples:

- Dan witnessed the smashing of the window, but does not appear in court to testify. Dan's neighbor Carol, who heard about the incident from Dan, testifies. Carol's testimony about what Dan told her should be excluded as hearsay, because Carol did not witness the events, but only heard Dan say something outside of court

- Philip and Alice both witnessed a crash. Philip is a witness in court and is asked: What did Alice tell you about the crash? Philip cannot tell the court what Alice said because Alice's prior statement was not made in court

- The defendant in a failure-to-yield/accident case brings a written statement from a person who witnessed the whole event. The defendant cannot introduce the letter because it is a prior out-of-court statement being offered to prove what happened. The witness must testify in court

- A police officer testifies that a witness came up to her and told her that a car with license plate PNY-123, driven by an elderly white man with a beard, ran her off the road 10 minutes ago. If this is offered to explain why the officer proceeded to investigate the defendant, and to furnish reasonable suspicion for confronting the defendant, it would not be hearsay. Of course, you could not consider it as evidence to prove that the defendant actually performed the act of running her off the road

908.01(4)

2) Statements are NOT hearsay if:

908.01(4)

a. The “declarant” testifies at trial and is subject to cross-examination concerning the statement and the statement is:

- Inconsistent with the testimony
- Consistent and offered to rebut a charge that it is recently fabricated or improperly influenced or motivated or
- One of identification of a person made soon after perceiving the person

b. It is an admission by a party or the party’s agent or a co-conspirator

Example: Driver runs a red light and crashes into another car. Driver admits running the red light to witness. Driver receives a citation for running a red light. Witness can testify at driver’s trial for running a red light as to what driver told witness

908.03
908.04–.045

3) Hearsay exceptions

a. Declarant is unavailable and statement is:

- Former testimony
- Statement of recent perception
- Statement under belief of impending death
- Statement against interest
- Statement of personal or family history
- Other statements not specifically covered but having comparable circumstantial guarantees of trustworthiness

b. Declarant is unavailable if:

- The declarant is exempted from testifying by the judge because of privilege
- The declarant refuses to testify about a prior statement despite an order of the judge to do so

- The declarant testifies he does not remember the prior statement
- The declarant is unable to testify because of death or physical or mental illness or infirmity
- The declarant is absent and the party seeking to admit the statement has been unable to procure the declarant's attendance by subpoena or other reasonable means

908.03

c. Declarant availability is irrelevant if statement is:

- Present sense impression
- Excited utterance
- Then existing emotional, mental, or physical condition
- Statements for purposes of medical diagnosis or treatment
- Recorded recollection
- Records of regularly conducted activity
- Health care records
- Public records and reports

908.05

4) Hearsay within hearsay

a. Not excluded if each part of the statement conforms with an exception to the hearsay rule

902.01–.03

D. Judicial notice—admissible

State v. Siegel,
163 Wis. 2d 871
(Ct. App. 1991)

1) A fact not reasonably subject to dispute (e.g., gravity exists; Highway 50 intersects with Interstate 94)

902.01(6)

2) Judicial notice may be taken at any stage of the proceedings

State v. Hanson,
85 Wis. 2d 233 (1978)
Wis. Med. Soc'y, Inc. v. Morgan,
2010 WI 94
328 Wis. 2d 469

3) A court may take judicial notice of its own records, CCAP, and other public records that are easily accessible, stopping distance charts, blood alcohol chart, and the reliability of the underlying principles of radar if certain performance requirements are met

Sisson v. Hansen Storage Co., 2008 WI App 111 313 Wis. 2d 411

4) The opponent to a request for taking judicial notice must have an opportunity to object and to supply evidence or make an offer of proof to show the subject is disputable and therefore not subject to the taking of judicial notice

E. Records and Reports

1) Records of Regularly Conducted Activity

Palisades Collection, LLC v. Kalal, 2010 WI App 38 324 Wis. 2d 180

a. A custodian or other qualified witness does not need to be the author of the records or have personal knowledge of the events recorded in order to testify about the records. However, the witness must have personal knowledge of how the records were made so that the witness is qualified to testify that they were made "at or near" the time of the recorded event, by or from information transmitted by a person with knowledge, and in the course of a regularly conducted activity

Wilder v. Classified Risk Ins., 47 Wis. 2d 286 (1970)

2) Police Reports

a. Generally, even though police reports seem like regularly kept business records, they are not admissible unless they fall within another exception. You must analyze each item sought to be admitted

908.05

b. Police reports are usually double hearsay when they include witness statements or single hearsay when they include events the officer witnessed

c. How can police reports be used?

906.12

- **To refresh the officer's memory**: but only if the officer first testifies that s/he doesn't remember something and that reviewing the report would in fact stir an actual memory. It is not enough that the officer sees the report and repeats it verbatim. It must unlock an actual memory of something the officer actually witnessed under this exception

908.03(5)

- **As a prior memory recorded while the event was fresh**: the witness must first testify that s/he can't remember something. Then the witness must state that a record was made by them personally of the events witnessed while the events were still fresh in his/her memory and the record is accurate. The officer cannot offer other witness statements under this exception

908.03–908.045

- **The hearsay statements within the document fall within an exception** (e.g., defendant's own statement, a witness' prior inconsistent statement, present sense impression, etc.) You must analyze each statement on its own merits. You may not admit the entire document just because a portion of it is admissible

346.73

3) MV4000 (accident report)

   The report itself is not admissible but may be used for limited purposes, including to refresh recollection

4) Other Documents

908.03

   a. Generally, documents are hearsay because they are out-of-court statements. All types of documents, including affidavits, letters, and receipts, are hearsay. They may be admitted if they fall within an exception

State v. Spaeth,
206 Wis. 2d 135 (1996)

   b. To prove prior offenses in traffic, a teletype of the defendant's DOT driving record, copies of prior judgments of conviction, and certified copies of the driving record from DOT are admissible

906.12

   c. To refresh memory—admissible under certain circumstances

906.13

   d. Prior written witness statements—admissible under certain circumstances

State v. Doss,
2008 WI 93
313 Wis. 2d 570

   e. Bank Records—Admissible under certain circumstances such as where there are foundational certifications in the form of affidavits from a bank record custodian authenticating "nontestimonial" records

906.01–.15

F. Witnesses

1) Lay witnesses

907.01

a. If a person is not testifying as an expert witness, his/her testimony is limited to opinions or inferences that are rationally based on the perception of the witness, are helpful to a clear understanding of their testimony or the determination of a fact in issue, and are not based on scientific, technical, or other specialized knowledge

b. The testimony is subject to the Rules of Evidence, including relevancy and hearsay rules

2) Expert Witnesses

907.02
Daubert v. Dow Pharm Inc., 113 S. Ct. 2786 (1993)

a. A witness who has specialized knowledge, skill, experience, training, or education in a particular area that will assist the judge to understand the evidence or to determine a fact in issue

b. Testimony must be based upon sufficient facts or data

c. Testimony must be the product of reliable principles and methods

Kumho Tire v. Carmichael, 119 S. Ct. 1167 (1999)

d. There are 5 factors that a court can, but is not required to, use in order to determine whether the expert opinion is admissible. These factors are not the only factors a court can use in making the determination and not all of these factors will apply to every type of expert testimony

- Whether the expert's theory or technique can or has been tested for reliability
- Whether the technique or theory has been subjected to peer review
- The known or potential rate of error
- The existence and maintenance of standards and controls

- Whether the technique or theory has been generally accepted within the scientific community

A resource is available from the State Bar of Wisconsin: The Wisconsin Rules of Evidence: A Courtroom Handbook
(800) 728-7788

JUDGE MARK NIELSEN
RETIRED, RACINE CO.

Evidentiary Foundations Chart

Evidence Described	Foundational Elements - Hearsay	Section #
Hearsay	Statement or assertion made not on your stand/ of a person / who is not a party / offered for truth of the matter asserted	908.02
Hearsay Within Hearsay	Hearsay within hearsay is where a hearsay statement contains another hearsay statement within it. To determine admissibility, you take each statement separately and determine whether it is admissible under some exception to the hearsay rules. It doesn't have to be the same exception for both. If each is admissible, then the entire statement can come in to evidence for the truth of what was said.	908.05
Unavailable Witness	908.04(1) "**Unavailability as a witness**" includes situations in which the declarant: **(a)** has a **privilege** to not testify, **or refuses to testify or (c)** Is called to the stand but testifies to a **lack of memory or (d)** Is **unable to be present** or to testify because of **health or (e) is otherwise absent and** the party seeking him has taken **reasonable steps** to get them to attend - necessary to admit Former Testimony, Statement of Recent Perception, Death Bed Statements/Statement Against Interest / Statements of Family History	908.04(1) 908.045
Excited Utterance	There was a startling event or condition; / The statement related to the startling event or condition; [and] / The declarant made the statement while under the stress of excitement caused by the startling event. [doesn't matter if witness is available or not]	908.03(2)
Health Care Provider Records (No Custodian)	908.03(6m) allows otherwise-admissible health care records to be admitted without being authenticated by a custodian or other witness. However, the records themselves are not made admissible by this section - they still have to fall under some other hearsay exception to be allowed in. The statute requires the party offering the records to serve a certified copy of the records on the other party, forty days or more before trial, or to notify the other party that the records are available to be reviewed.	908.03(6m)
Medical Diagnosis or Treatment	Statements made by declarant / to a medical professional /for purposes of medical diagnosis or treatment of declarant/ and Statement describes declarant's medical history, past or present symptoms, pain or sensations, or - if reasonably necessary - the inception, cause, or external source of the condition	908.03(4)
Public Records and Reports	A. The document or item was produced by a public office or agency B. It contains data setting forth one of the following: • Activities of the office or agency • Matters observed pursuant to a duty imposed by law • Except against a criminal defendant, finding of fact resulting from investigation C. There are no red flags indicating lack of trustworthiness.	908.03(8)

Evidentiary Foundations Chart

Evidence Described	Foundational Elements - Hearsay	Section #
Present Sense Impression	Statement describing an event/condition/condition/made while the declarant was perceiving it/ or immediately afterwards [doesn't matter if witness is available or not]	908.03(1)
Recorded Recollection	1. Witness has a failure of recollection 2. At time when he did remember a physical record of his recollection was made 3. The record is shown to reflect that knowledge correctly, 4. The record does not refresh the witness' recollection and 5. It is the record that is offered into evidence.	908.03(5)
Records of Regularly Conducted Activity	1. The record or report of data consisting of acts, events, conditions, opinions, or diagnoses \ 2. Report made at or near the time of the acts, events, or conditions occurring, or the forming of the diagnosis or opinion \ 3. The information in the report was provided by a person with firsthand knowledge \ 4. The information is reported to the author of the report by one with a business duty to know and report the information. \ 5. There are no “red flags” regarding reliability. [Doesn’t matter if witness is available or not]	908.03(6)
Statement Against Interest	1. Declarant made a statement 2. Declarant knew **at the time** of the statement that the content of the statement so **substantially hurts the defendant’s interests** that no reasonable person would say it if it were not true. 3. The declarant was **unavailable** to testify.	908.045(4)
Statement of Recent Perception	**(1)** the statement was not made in response to the instigation of a person engaged in investigating, litigating, or settling a claim and **(2)** was made in good faith with no contemplation of pending or anticipated litigation in which the declarant would be an interested party; and **(3)** the statement narrated, described, or explained an event or condition recently perceived by the declarant; and **(4)** the statement was made while the declarant's recollection is clear and **(5)** declarant is unavailable.	908.045(2)
Then Existing Mental, Emotional, or Physical Condition	1. A statement made by declarant / 2. of declarant’s then existing state of mind, emotion, sensation, or physical condition / 3. to prove how declarant felt or was thinking at the time of the statement or to prove what he or she was then likely to do in the future. Can include intent, plan, motive, design, mental feeling, pain, and bodily health. May not be used to prove either directly or circumstantially anything remembered or believed before the statement. [Doesn't matter if witness is available or not]	908.03(3)
Judicial Notice	The court can take notice of (1) facts known generally in the vicinity and (2) facts that are indisputable and readily ascertained (calendar, math, sunrise, etc). Courts must take notice of laws of the US and this state, and ordinances of local governments, as well as state and federal regulations.	902.01 902.02 902.03
Rule of Completeness	If a part of a written or recorded statement is offered by one party, the other party may - at that time without waiting for “their turn” - read into any other portions of that statement or other statements that in fairness should be should be considered at the same time.	901.07

12: DETERMINING CONSTITUTIONALITY

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Sample Decision 12-A
Sample Decision 12-B

1. Introduction

A. The most frequent types of constitutional challenges are based upon the due process and equal protection clauses in the United States and Wisconsin Constitutions. They read:

1) 14th Amendment to the United States Constitution: "No State shall … deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2) Article I, Section 1, of the Wisconsin Constitution: "All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness."

B. Ordinances may be challenged as unconstitutional on one or more of the grounds listed below

Aicher v. Patients Compensation Fund, 2000 WI 98, ¶ 19, 237 Wis. 2d 99

1) Unless otherwise noted, the party challenging the ordinance has to prove the ordinance is unconstitutional beyond a reasonable doubt

2) The test is the same whether the ordinance is being challenged at the initial stage in a municipal court or at the final stage before the Supreme Court

2. Procedural Information Regarding Constitutional Challenges

City of Milwaukee v. Wroten, 160 Wis. 2d 207, 221–22 (1991)

A. Municipal judges have the authority to determine constitutionality of ordinances where properly raised. When municipal judges "subscribe to the oath, they obligate themselves to determine the constitutionality of legislation when the legislation is challenged on that basis"

B. A judge may not decide a case on constitutional grounds if there is a non-constitutional basis for finding the ordinance invalid. For example, if a legislative body passes a clearly unconstitutional law but does it in a procedurally incorrect way, and both challenges are raised, the court must decide the case on the procedural ground

C. Constitutional challenges are usually raised by the defendant. It is possible, however, that the prosecutor or judge would raise the issue

State v. Holmes, 106 Wis. 2d 31, 40 (1982) (quoting with approval *State ex rel. Joint Sch Dist v. Becker,* 194 Wis. 464, 468 (1928))

D. Judges may raise the issue of the unconstitutionality of an ordinance, on their own, when the court is convinced that the ordinance is unconstitutional. "[A] court 'should raise the [constitutional] question itself where it appears necessary to the proper disposition of a case.'" Reasons for this include the court's role "to do justice between the parties." ***Holmes*****, 106 Wis. 2d at 39**

806.04(11)

E. The Attorney General should be notified whenever a constitutional challenge has been raised to the substance of the ordinance. This should be done as soon as the challenge is made and can be done by simply sending a letter. The AG's office may want to get involved in the case and file briefs, etc.

Just v. Marinette Cnty, 56 Wis. 2d 7, 26 (1972)

F. A constitutional challenge requires thorough briefing and presentation

1) The court should schedule dates for each side to submit written briefs

2) Just as in a trial, or in a motion, the party with the burden of proof (in this situation the defendant) gets to go first and last; therefore, the defendant will write the first and last brief

3) If the court believes an oral argument would be helpful it may schedule one. If there is an oral argument, the defendant would argue first and last

4) If the court does not desire to have an oral argument, but has some questions remaining after reading the briefs, it can ask both sides to submit additional written briefs or memoranda in response to those specific questions

Redevelopment Auth v. Uptown Arts, 229 Wis. 2d 458, 463 (Ct. App. 1999)

G. An ordinance may be unconstitutional but salvageable. If the ordinance can be "construed" (interpreted) to eliminate the unconstitutionality, it should be. A constitutionally deficient ordinance may be construed to include constitutionally required provisions

Lounge Mgmt, Ltd v. Town of Trenton, 219 Wis. 2d 13 (1998)

1) "Construction" is applying a meaning to a law that eliminates the unconstitutionality of it. Not all unconstitutional laws can be construed. To be construed, the meaning of the law must be unclear, the legislative intent must be discernable, and the necessary changes cannot be such as to constitute a major revision of the law

   a. If a law is able to be construed it must have the interpretation applied that is consistent with that intended by the people who wrote the law

2) For a good discussion on construction, see *City of Milwaukee v. Wroten*, 160 Wis. 2d at 233–34

3) Examples of cases in which the appellate courts have been willing and unwilling to construe or engage in construction are:

   a. *Lounge Management v. Town of Trenton*, 219 Wis. 2d 13, 26 (1998), refused to construe because changes would contravene expressed intent of ordinance

   b. *Rogers-Ruger Co. v. Murray*, 115 Wis. 267, 271 (1902). "To adopt the construction asked would be to make a new statute. This we cannot do"

   c. *State ex rel. Matalik v. Schubert*, 57 Wis. 2d 315 (1973), construed by adding a meaningful hearing requirement to sec. 71.14, in order to satisfy procedural due process

Sauk Cnty v. Gumz, 2003 WI App 165 266 Wis. 2d 758 *Nankin v. Village of Shorewood,* 2001 WI 92 245 Wis. 2d 86

H. Another judicial method of "saving" (making constitutional an unconstitutional law) an ordinance is called "severability." This involves elimination of the unconstitutional portion of the law from the rest of the body of the law

State ex rel Milwaukee Cnty v. Boos, 8 Wis. 2d 215, 224 (1959) (quoting with approval earlier decisions)

1) An ordinance can only be severed if "the part upheld constitutes, independently of the invalid portion, a complete law in some reasonable aspect, unless it appears from the act itself that the Legislature intended it to be effective only as an entirety and would not have enacted the valid part alone"

I. When a municipal judge finds a law unconstitutional, the case against the defendant must be dismissed

3. Basic Principles about the Constitutionality of Laws

State v. Prado, 2021 WI 64, ¶ 37, 397 Wis. 2d 719

A. Laws are presumed to be constitutional

B. Laws will be sustained against attack if there is any reasonable basis for the exercise of legislative power

State v. Thiel, 183 Wis. 2d 505, 522–23 (1994)

C. The party bringing the challenge must show the law to be unconstitutional beyond a reasonable doubt. However, the burden shifts to the party defending the law when the law has the effect of infringing on First Amendment Rights

State ex rel Hammermill Paper v. La Plante, 58 Wis. 2d 32, 46 (1973)

D. "Every presumption must be indulged to sustain the law if at all possible and, wherever doubt exists as to a legislative enactment's constitutionality, it must be resolved in favor of constitutionality"

State v. McManus, 152 Wis. 2d 113, 129 (1989) (quoting *State ex rel Strykowski v. Wilkie*, 81 Wis. 2d 491, 506 (1978))

E. "If the court can conceive any facts on which the legislation could reasonably be based, it must hold the legislation constitutional"

Reginald D. v. State (In Int. of Reginald D.), 193 Wis. 2d 299, 306–07 (1995)

F. In evaluating a constitutional challenge, consider that the due process and equal protection clauses of the Wisconsin Constitution are the substantial equivalents of their respective clauses in the U.S. Constitution

4. Overbreadth

For a good discussion of overbreadth, see *State v. Stevenson*, 2000 WI 71, 236 Wis. 2d 86

Overbreadth is rarely raised as a challenge, except in cases involving First Amendment rights. The U.S. Supreme Court and the Wisconsin Supreme Court rarely recognize the concept of overbreadth outside the limited context of the First Amendment. *Sabri v. United States*, 541 U.S. 600, 609–10, (2004); *State v. Konrath*, 218 Wis. 2d 290, 305 (1998); *Brandmiller v. Arreola*, 199 Wis. 2d 528 (1996). In *United States v. Salerno*, 481 U.S. 739, 745 (1987), the U.S. Supreme Court stated, "we have not recognized an 'overbreadth' doctrine outside the limited context of the First Amendment"

However, the U.S. Supreme Court has in fact allowed overbreadth challenges in non-First Amendment areas and invalidated statutes as facially overbroad when "fundamental" rights were involved. *See Aptheker v. Sec'y of State*, 378 U.S. 500, 508 (1964)

The U.S. Supreme Court has even accepted overbreadth analysis in deciding such cases since *Salerno*. *See Ohio v. Akron Center for Reproductive Health*, 497 U.S. 502 (1990); and *Hodgson v. Minnesota*, 497 U.S. 417 (1990)

Brandmiller v. Arreola,
199 Wis. 2d 528 (1996)

See generally Fallon, *Making Sense of Overbreadth*, Vol. 100 Yale L.J. 853, 859 n. 29 (1991). It should be noted that courts are discouraged from reaching the overbreadth issue because to do so results in "gratuitous wholesale attacks" on state laws

State v. Thiel,
183 Wis. 2d 505 (1994)

Because the typical overbreadth challenge involves First Amendment issues, this outline focuses on overbreadth in the context of First Amendment challenges. The rationale underlying an overbreadth challenge involves two goals: To prevent a "chilling effect" on free speech and to prevent selective enforcement of a law which would target and discriminate against certain classes of people

A. Facial Overbreadth

1) Overbreadth challenges are frequently made as "facial" challenges. This simply means that the law is being challenged as unconstitutional as it is written, and not unconstitutional as it is applied to the particular defendant and the facts of the case in which the ordinance is challenged

City of Milwaukee v. Wroten, 160 Wis. 2d at 225

2) "The principle is simply that an ordinance or statute which has the effect or the potential of chilling or inhibiting speech, which is protected by the first amendment, is unconstitutional." An overbroad law is one which forbids speech that cannot be forbidden. A law can also be overbroad if it has the potential for inhibiting people from speaking freely out of fear that they will be prosecuted. Laws which do this are sometimes described as having a "chilling effect" on the exercise of First Amendment activities

3) The word "speech" is sometimes used broadly to encompass more than words spoken by the defendant. Everything considered to be a First Amendment "activity" is protected. Examples of this include:

Edwards v. South Carolina, 372 U.S. 229, 235 (1963)

a. Political protest: Peaceful political assembly, marching, and protest are protected by the First Amendment

Cohen v. California, 403 U.S. 15 (1971)

b. Written words: "Fuck the draft" written on the back of a jacket was upheld as constitutionally protected speech

Spence v. Washington, 418 U.S. 4015 (1974)

c. Symbolic speech: Hanging a U.S. flag with a peace symbol affixed is protected under First Amendment freedom of expression

NAACP v. Claiborne Hardware Co., 458 U.S. 886, 907 (1982)

d. Boycotts: Peaceful picketing of businesses and economic boycotts are constitutionally protected expression

Hodgkins v. Peterson, 355 F.3d 1048 (7th Cir. 2004)

e. Attending religious services or political debates (including after juvenile curfew)

4) An ordinance may have legitimate applications and still be unconstitutionally overbroad

Brandmiller v. Arreola, 199 Wis. 2d 528, 546 (1996)
City of Milwaukee v. Wilson, 96 Wis. 2d 11 (1980)

5) A party challenging an ordinance as overbroad does not have to prove that defendant's own conduct was constitutionally protected (legal). In fact, the conduct may have been illegal, but the defendant may still challenge the ordinance as overbroad. This is known as "standing" to challenge a law

6) The defendant may provide the court with hypothetical examples of how the ordinance prohibits conduct or speech which cannot be forbidden

United States v. Williams, 553 U.S. 285, 292–93 (2008)
City of Milwaukee v. KF 145 Wis. 2d 24, 40 (1988)

7) It is very rare that an ordinance is declared overbroad. Since invalidating an ordinance for overbreadth is considered "strong medicine," it should not be "casually employed." Only ordinances that make unlawful a substantial amount of constitutionally protected conduct may be held facially invalid. This means simply that a law is not overbroad on its face if it prohibits only one or two types of protected speech or conduct. The law must prohibit a "substantial" amount of legal conduct before it can be unconstitutional "on its face"

8) Overbreadth challenges occur when the defendant asserts that the ordinance "infringes on First Amendment rights." The phrase, "First Amendment rights" includes freedom of speech (U.S. Const. amend. I; Wis. Const. Art. I, Sec. 3); and the right to petition for redress of grievances (U.S. Const. Amends. I and XIV; Wis. Const. Art. I, Sec. 4)

Scheunemann v. City of West Bend, 179 Wis. 2d 469 (Ct. App. 1993); *State v. Thiel*, 183 Wis. 2d 505 (1994)

9) "The degree of acceptable overbreadth will depend on where the regulated activity falls on the continuum of pure speech at the one extreme and pure conduct on the other"

10) Ordinances that affect constitutionally protected rights, even ones promoting legitimate governmental interest, must be drawn as narrowly as possible

    a. *See State v. Zwicker*, 41 Wis. 2d 497, 509 (1969), *appeal dismissed sub nom. Zwicker v. Wisconsin*, 396 U.S. 26 (1969)

City of Madison v. Baumann, 162 Wis. 2d 660, 681–83 (1991)

    b. This decision by the Wisconsin Supreme Court leaves open the question of whether the "narrowly as possible" standard will continue to be applied in Wisconsin

11) Examples of cases involving facial overbreadth challenges:

a. *State v. Janssen*, 219 Wis. 2d 362 (1998); flag desecration statute found unconstitutional because it punishes protected expression

b. *Lounge Management Ltd. v. Town of Trenton*, 219 Wis. 2d 13 (1998); anti-public nudity ordinance held unconstitutional

c. *Brandmiller v. Arreola*, 199 Wis. 2d 528 (1996); auto "cruising" ordinance upheld on a right to assemble challenge

d. *City of Milwaukee v. Wilson*, 96 Wis. 2d 11, 19–21 (1980); Milwaukee's ordinance against soliciting ruled to be constitutional

e. *State v. Zwicker*, 41 Wis. 2d at 508–11 (1969); disorderly conduct statute held not to be facially overbroad

f. *Hodgkins v. Peterson*, 355 F.3d 1048 (7th Cir. 2004); curfew law held unconstitutional because it chilled the exercise of First Amendment rights

g. *Reed v. Town of Gilbert*, 576 U.S. 155 (2015); Sign regulations must be content neutral. "Directional Signs" or "Political Signs" are regulations based on sign content and are unconstitutional

B. Overbroad as Applied

1) "Overbroad as applied" is very different from the overbreadth discussed above. This type of overbreadth affects only the particular defendant and facts of that defendant's case. This overbreadth challenge means the defendant in a particular case believes that the defendant was engaged in constitutionally protected conduct and therefore cannot be convicted. The defendant is not asserting that the law itself is invalid (the assertion in facial overbreadth)

For a good discussion of this issue, see *State v. Douglas D*, 2001 WI 47, 243 Wis. 2d 204
State v. A.S., 2001 WI 48, 243 Wis. 2d 173

2) Laws which are constitutional "on their face" may be unconstitutional as applied to a particular defendant. An example of this would be the state statute on disorderly conduct which has been upheld as constitutional on its face. A defendant charged with disorderly conduct for engaging in constitutionally protected speech would be able to successfully challenge the statute as unconstitutional as applied

State v. Zwicker, 41 Wis. 2d at 511–13

3) *Zwicker* is an example of a case where the defendant challenged a law as applied and where the defendant had also challenged the law as overly broad on its face

5. Vagueness

A. There are two concerns involved when a law is challenged as vague: whether it provides citizens with sufficient notice of what is illegal, and whether it protects citizens from arbitrary enforcement

City of Madison v. Baumann, 162 Wis. 2d 660, 674 (1991) (quoting with approval *State v. Princess Cinema of Milwaukee*, 96 Wis. 2d 646, 656 (1980))

Lack of Notice. This concern deals with whether the law is written in a way to provide sufficient warning to the citizen: "A vague statute [is one that] through the use of language . . . is so vague as to allow the inclusion of protected speech in the prohibition or to leave the individual with no clear guidance as to the nature of the acts which are subject to punishment

Coates v. City of Cincinnati, 402 U.S. 611, 614 (1971)

A law is unconstitutionally vague if "no standard of conduct is specified at all

1) Arbitrary Enforcement. Another problem with some laws is that the language allows police, prosecutors, judges, and juries to differ in the application of the law to a degree that leads to arbitrary results

City of Madison v. Baumann, 162 Wis. 2d 660 (1991)

"[L]egislatures [must] set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent 'arbitrary and discriminatory enforcement'"

City of Milwaukee v. KF, 145 Wis. 2d 24, 34–35 (1988)
Indiana Right to Life Victory Fund v. Morales, 66 F.4th 625, 630 (7th Cir. 2023)

B. Not everyone can challenge a law as vague, even though the law may be vague. To be entitled (have "standing") to bring this type of challenge, the defendant's own conduct must be such that it was not clearly prohibited. (Most vague laws will have certain conduct that is clearly prohibited and other conduct that is not clearly prohibited.) Conduct clearly prohibited is often referred to as "core conduct." Standing is required even when the law affects First Amendment rights. Even concerning First Amendment rights, when "courts are wary of the 'chilling effect' that unduly vague statutes can have, a plaintiff must show that the statute at least 'arguably' covers their desired conduct"

C. It is not necessary that a statute or ordinance be written with exact precision

City of Milwaukee v. Wilson, 96 Wis. 2d 11, 16 (1982);
City of Oshkosh v. Kubiak, 2017 WI App 20, ¶ 11, 374 Wis. 2d 337

1) It is not vague so long as it is "sufficiently definite so that potential offenders … are able to discern when the region of proscribed conduct is neared," and those enforcing or applying it are not relegated to creating their own standards of guilt

Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 498 (1982);
City of Oshkosh v. Kubiak, 2017 WI App 20, ¶¶ 11,12, 374 Wis. 2d 337

2) The degree of vagueness the Constitution tolerates depends on the nature of the enactment. Civil ordinances are reviewed more deferentially than criminal statutes

D. Examples of laws that have been challenged as vague

1) *Coates v. City of Cincinnati*, 402 U.S. 611 (1971). An ordinance prohibiting persons from assembling on a sidewalk in a manner annoying to other persons was unconstitutionally vague

2) *City of Madison v. Baumann*, 162 Wis. 2d 660 (1991). Madison's noise ordinance, prohibiting "making any noise tending to unreasonably disturb the peace and quiet of persons in the vicinity thereof," was found not to be vague

3) *County of Jefferson v. Renz*, 222 Wis. 2d 424 (Ct. App. 1998), *rev'd on other grounds*, 231 Wis. 2d 293 (1999). Illegal muffler statute is not vague, although it uses the terms "excessive" and "unusual" to describe noise

4) *State v. White*, 180 Wis. 2d 203 (Ct. App. 1993). Requirement that a parent cause a child to "attend school regularly" is not unconstitutionally vague

5) *State v. Givens*, 28 Wis. 2d 109 (1964). Disorderly conduct statute held not to be vague

6) *State v. Mahaney*, 55 Wis. 2d 443, 447-450 (1972). "Misconduct on public grounds" statute held to be unconstitutionally vague

7) *City of Oshkosh v. Kubiak*, 2017 WI App 20, 374 Wis. 2d 337. "Organizer" was held not unconstitutionally vague in an ordinance requiring a permit for special events

6. Substantive Due Process

A. When a legislative body decides to regulate the conduct of its citizens, it is said to be exercising the "police power"

State v. Interstate Blood Bank, Inc., 65 Wis. 2d 482 (1974)

B. The "police power" is the "inherent power of government to promote the general welfare. . . It covers all matters having a reasonable relation to the protection of the public health, safety, or welfare"

C. A legislative body may, for example:

1) Forbid conduct of a particular type of business

2) Regulate a business so as to abate evils deemed to arise from its pursuit

3) Tell us how to drive, what time at night we must be in our homes (particularly during emergencies), that our animals have to be licensed and at what age we can frequent taverns

Bisenius v. Karns, 42 Wis. 2d 42, 54 (1969)

D. Once within the area of proper exercise of police power, it is for the legislative body, not the court, "to determine what regulations, restraints, or prohibitions are reasonably required to protect the public safety"

Bisenius v. Karns, 42 Wis. 2d 42, 54 (1969)

E. "Only the abrogation of a basic and substantial individual liberty would justify judicial intervention to set aside the legislative enactments"

B. Schwartz, Constitutional Law 165 (1972)

F. It has been said that "[s]ubstantive due process has been erected by the [U.S.] Supreme Court as the essential bulwark against arbitrary governmental action"

G. The test to be met in this area has been stated to be twofold

1) Is the object of the legislation a real and proper one?

State v. Smet, 2005 WI App 263 288 Wis. 2d 525

2) If so, do the means chosen have a reasonable and rational relationship to the purpose or object of the enactment

H. Examples of areas where the Wisconsin Courts have applied substantive due process principles

1) *Bisenius v. Karns*, 42 Wis. 2d 42 (1969). Requirement that motorcyclists wear protective helmets

2) *State v. Smet*, 2005 WI App 263, 288 Wis. 2d 525. Prohibition of operating motor vehicle with detectable amount of restricted controlled substance

3) *State v. McManus*, 152 Wis. 2d 113 (1989). Punishing operation of a motor vehicle with a breath alcohol concentration of 0.1 grams or more of alcohol in 210 liter of driver's breath

4) *State v. Lopez*, 207 Wis. 2d 413 (Ct. App. 1997). Enhancing penalties where controlled substances are sold within 1,000 feet of a park

7. Equal Protection/Selective Prosecution

A. Unequal enforcement of the law or (selective prosecution)

State ex rel O'Neil v. Town of Hallie, 19 Wis. 2d 558, 567 (1963) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 373 (1886))

1) If an ordinance is enforced "with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights," then the Equal Protection Clause is violated

Vill of Menomonee Falls v. Michelson, 104 Wis. 2d 137, 145 (1981)

2) A challenger must show that there is an intentional, systematic, and arbitrary discrimination

State ex rel Cities Service Oil Co v. Board of Appeals, 21 Wis. 516, 544 (1963)

3) Proof that enforcement of an ordinance is selective does not, in and of itself, establish a constitutional violation

4) For example, selective enforcement might be justified where:

Vill of Menomonee Falls v. Michelson, 104 Wis. 2d at 145–46 (citing *People v. Utica Daws Drug Co*, 225 NYS2d 128, 136 (1962))

   a. The meaning or constitutionality of a law is in doubt and a test case is needed to clarify the law or test its validity

   b. A striking example or a few examples are thought necessary

      - In order to deter other violators

      - As part of a bona fide rational pattern of general enforcement

County of Kenosha v. C&S Management, 223 Wis. 2d 373 (1999)

5) A different analysis applies where a defendant alleges that discriminatory enforcement is based on either a prohibited standard, such as religion or race, or the exercise of a protected statutory or constitutional right, such as free speech

   a. If the defendant can make a prima facie case to the court, the defendant is then entitled to a full evidentiary hearing on the issue

   b. To make such a case, the defendant must persuade the court that he or she was singled out for prosecution while others similarly situated were not (discriminatory effect) and the selection of the defendant was made due to race, religion, exercise of free speech, etc. (discriminatory purpose)

State v. Kramer, 2001 WI 132 248 Wis. 2d 1009

   c. **IMPORTANT**: a successful defense of unequal enforcement results in the case being dismissed even if defendant is found guilty of underlying charge

B. Unequal Classifications

Village of Oregon v. Waldofsky, 177 Wis. 2d 412, 418 (Ct. App. 1993)
Nankin v. Village of Shorewood, 2001 WI 92, 245 Wis. 2d 86

1) A legislative body "may designate that different treatment be accorded to persons in different categories or classifications, as long as the classification has a reasonable basis and rests upon some ground of difference that bears a fair and substantial relation to the subject of the legislation, to the end that all persons who are similarly situated will be treated alike"

Milwaukee Brewers v. DHSS, 130 Wis. 2d 79, 99 (1986)

2) "The basic test is not whether some inequality results from the classification but whether there exists a rational basis to justify the inequality of the classification"

Milwaukee Brewers v. DHSS, 130 Wis. 2d 79, 99 (1986)

3) "Any reasonable basis for the classification will validate the statute. A statute [or ordinance] will be declared violative of equal protection only when the [legislative body] has made an irrational or arbitrary classification, one that has no reasonable purpose or relationship to the facts or a proper state policy"

Ferdon ex rel Petrucelli v. Wisconsin Patients Comp Fund, 2005 WI 125 284 Wis. 2d 583

4) However, the Wisconsin Supreme Court has observed that a court is required "to conduct an inquiry to determine whether the legislation has more than a speculative tendency as the means for furthering a valid legislative purpose," described as "rational basis with teeth"

State v. Annala, 168 Wis. 2d 453 (1992)

5) There is a different test when the classification that is challenged involves a "suspect class" or a "fundamental right" has been impaired

Ben-Shalom v. Marsh, 881 F2d 454, 464 n.8 (7th Cir 1989)

6) "Suspect classes" are those in which the classification is based on race, alienage, national origin, gender or illegitimacy

Shapiro v. Thompson, 394 U.S. 618 (1969)

7) "Fundamental rights" are personal rights protected by the Constitution, such as right: of privacy, to interstate travel, to vote, and freedom of association

City of Cleburn, Texas v. Cleburn Living Center 473 U.S. 432 (1985)

8) Where the classification involves race, alienage, or national origin, or where the law impinges on a fundamental right, the law must be subjected to "strict scrutiny" and will be sustained only if suitably tailored to serve a compelling state interest

United States v. Virginia, 518 U.S. 515 (1996)
City of Cleburn, Texas v. Cleburn Living Center, 473 U.S. 432 (1985)

9) When the classification involves gender or illegitimacy, the law will fail unless substantially related to a sufficiently important governmental interest

10) Examples of areas in which the Wisconsin courts have applied equal protection principles:

City of Kenosha v. Leese, 228 Wis. 2d 806 (Ct. App. 1999)
Village of Oregon v. Waldofsky, 177 Wis. 2d 412, 418 (Ct. App. 1993)

a. Allowing appellants, but not appellees, from municipal court judgment to demand a jury trial

State v. Hezzie R, 219 Wis. 2d 849 (1998)

b. Denying juveniles the right to a jury trial in delinquency proceedings

State v. Jorgensen, 2003 WI 105 264 Wis. 2d 157

c. Allowing extreme variations in OWI sentencing among judicial districts

State v. LaPlant, 204 Wis. 2d 412 (Ct. App. 1996)

d. Creating a rule which regulates the conduct of landlords and not tenants

City of Wausau v. Jusufi, 2009 WI App 17 315 Wis. 2d 780

e. Exemption in restaurant smoking regulation for "private clubs"

8. Your Decision

A. Determining if the decision should be oral or written

1) An oral decision will be less work and will resolve the case more quickly. If you choose this method, be certain to record the decision so an audio recording is available in the (likely) event of an appeal

2) A written decision, while more work, will provide a more clear record of what you did and why. The decision does not have to be lengthy; often the entire decision can be set forth in several pages. Examples of decisions are in 12-A and 12-B

B. Writing the decision

1) Set a firm deadline for completing the decision

SCR 60.04(1)(g)3.

2) Feel free to submit a draft of your decision to another judge for review

C. The Decision

1) Set forth a statement of the issue to be resolved

2) Present a clear, balanced statement of facts in as much detail as necessary to support your conclusions

3) Discuss "the law" as it relates to the case

4) Evaluate how this body of law leads you to the decision you have made

5) State your conclusions

STATE OF WISCONSIN MUNICIPAL COURT CITY OF MILWAUKEE

CITY OF MILWAUKEE,

Plaintiff,

-vs-

VICTOR J. PEREZ, Case Number 01135383

Defendant.

MEMORANDUM DECISION

I. FACTS

This case involves a charge that defendant violated §346.94(16), Stats., incorporated into the Milwaukee Code of Ordinances by §101-3.

On November 2, 2001, at approximately 1:44 p.m., defendant's vehicle was observed on S. Cesar Chavez Drive by a Milwaukee police officer who noted the high volume of the music coming from the vehicle's sound system. The officer was unable to make a traffic stop but, after obtaining the license plate number of the vehicle, the officer commenced a prosecution for owner's liability under §346.945, Stats.

At trial of the case it developed that defendant himself had been driving the vehicle at the time. After weighing the facts before him the assistant city attorney moved to amend the charge to a violation of §346.94(16) and that motion was granted. At the conclusion of the evidence, I determined that the music volume coming from the vehicle was sufficient to constitute a violation of the ordinance. However, I expressed

to the parties a concern that the content-based structure of the ordinance appeared to implicate the First Amendment to the United States Constitution. I asked the parties to brief the issue. The City subsequently filed a brief. Defendant, appearing pro se, did not.[1]

II. DISCUSSION

The statute at issue, §346.94(16), reads as follows:

Radios or other electric sound amplification devices.

(a) Except as provided in s. 347.38(11), no person may operate or park, stop or leave standing a motor vehicle while using a radio or other sound amplification device emitting sound from the vehicle that is audible under normal conditions from a distance of 75 or more feet, unless the electric sound amplification device is being used to request assistance or warn against an unsafe condition.

(b) This subsection does not apply to any of the following:

1. The operator of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm.

2. The operator of a vehicle of a public utility, as defined in s. 11.40(1)(a).

3. The operator of a vehicle that is being used for advertising purposes.

4. The operator of a vehicle that is being used in a community event or celebration, procession or assemblage.

5. The activation of a theft alarm signal device.

6. The operator of a motorcycle being operated outside of a business

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[1] I notified the Attorney General of Wisconsin that the issue of constitutionality had been raised. By letter of July 25, 2002, his office informed me that he had chosen not to appear in the matter.

or residence district.

7. A local authority that has enacted an ordinance in conformity with s.349.135.

A party challenging a legislative provision such as this one must establish its unconstitutionality beyond a reasonable doubt. State v. McManus, 152 Wis.2d 113, 129 (1989). As a result, any doubt which exists as to the enactment's validity must be resolved in favor of constitutionality. State v. Carpenter, 197 Wis.2d 252, 263-64 (1995). However, where a law has the effect of infringing on First Amendment rights, the burden shifts to the party defending the law. State v. Thiel, 183 Wis.2d 505, 523 (1994).

The First Amendment provides, in part, that "Congress shall make no law. . . abridging the freedom of speech. . ." This prohibition is applicable to the State and City through the Due Process Clause of the 14th Amendment. Lovell v. Griffin, 303 U.S. 444 (1938). An initial issue to be resolved is whether the music emitted from defendant's car qualifies as speech protected by the First Amendment. The answer is found in City of Madison v. Baumann, 162 Wis.2d 660 (1991). There, defendants were prosecuted for violating an anti-noise ordinance for playing music and singing in a park late at night. The city argued that the ordinance was directed at noise, not speech, and therefore was not subject to a First Amendment challenge.

The Supreme Court disagreed. Music, the Court stated, ". . .by definition is to be accorded the presumption of the freedom of speech given by the First Amendment." Id., 162 Wis.2d at 670. The Court went on to say: "The courts of this country uniformly recognize the protected First Amendment aspects of music - all music." See also, Ward

v. Rock Against Racism, 491 U.S. 781, 790 (1989).

Thus, because defendant's right to play music is protected by the First Amendment, the burden shifts to the City to justify the restrictions imposed on him.

It is clear that the City may enact reasonable standards to regulate defendant's expression. Id., 491 U.S. at 791. However, it is equally clear that the restrictions must be content - neutral, that is, they must be capable of being "justified without reference to the content of the regulated speech." Clark v. Community for Creative Non-Violence, 468 U.S. 288, 293 (1984). Where content becomes the basis for a legislative restriction, the proponent must meet a very stringent test since the First Amendment guarantees nothing if not the free expression of individual views.

The regulatory scheme set forth in §346.94(16) is patently content-based. A police officer, in assessing whether the sound coming from more than 75 feet away is a violation, must first determine what is being communicated. If the message consists of advertising, the driver is exempt from prosecution under §346.94(16)(b)3. Indeed, the advertising could consist of music, as much advertising does, and could be at a volume exceeding 75 feet but, because of the content of the music, it could not be the subject of prosecution. [2] Thus, the City's argument, City's Brief, p. 5, that the statute "is about noise and volume of noise, not about the message being conveyed" is misplaced.

Content-based restrictions, like those in sec. 346.94(16), are presumptively unconstitutional. R.A.V. v. City of St. Paul, 505 U.S. 377, 382 (1992). To regulate

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[2] Interestingly, the statutory exception for public utility vehicle workers would appear to allow them to play non-advertising music at a volume that exceeds the prescribed limit. And motorcycle riders get a free pass outside of certain prescribed districts.

content-based speech in a public forum, the City must show that such regulation serves a compelling interest, is narrowly drawn, and uses the least restrictive means to further the articulated interests. Perry Education Association v. Perry Local Educators Association, 460 U.S. 37, 44 (1983); Sable Communications v. Federal Communications Commission, 492 U.S. 115, 126 (1989.) This test is nearly impossible to meet and has been described as "... the most demanding test known to constitutional law." City of Boerne v. Flores, 521 U.S. 507, 534 (1997).

Here, the City has failed to convince me that the statute in question meets the test. The City argues that the interests served include traffic safety and the elimination of the disruption caused by noise pollution. City's Brief, p. 6. These are certainly laudable interests. However, they can hardly be considered compelling interests when the City has, through content-based exceptions, allowed them to be subverted by advertisers, motorcyclists, and public utility workers. Nor can the restrictions be considered narrowly drawn when they prohibit communications about the perils of war but allow the same about the opening of a new car wash.

This decision is consistent with rulings in two recent cases. In Illinois v. Jones, 721 N.E.2d 546, 188 Ill.2d 352 (Ill. 1999), the Illinois Supreme Court affirmed a decision of its court of appeals which found unconstitutional a statute nearly identical to sec. 346.94(16). The Illinois law prohibited sound which could be heard at a distance of 75 or more feet from an automobile, but like Wisconsin provided an exception for "vehicles engaged in advertising." The Illinois court found the statute in violation of the First Amendment, holding that it was content-based and failed to serve any compelling state interest.

In Deida v. City of Milwaukee, 176 F.Supp.2d 859 (E.D. Wis. 2001), an ordinance was challenged which prohibited the placement of pamphlets on automobiles. The ordinance contained an exception for educational materials related to the parking privileges of disabled persons. The District Court found that the law clearly implicated the First Amendment due to its restriction on the ability to communicate a message. It further ruled that the exception for one type of message made the ordinance content-based and that the City of Milwaukee failed to carry its burden of demonstrating that its ordinance served a compelling governmental interest.

The decision in Jones, while not controlling here, sets forth the proper analysis for evaluating the constitutionality of an ordinance virtually identical to that challenged in this case. And the ruling in Deida underscores the significance of a determination that a restriction is content-based, and the enormous difficulty thereafter in justifying it.

III. CONCLUSION

For the reasons set forth above, I find that sec. 346.94(16), Stats., as adopted by sec. 101-3, Milwaukee Code of Ordinances, violates the First Amendment to the United States Constitution. This case is therefore ordered dismissed.

Dated at Milwaukee, Wisconsin, this 2d day of June, 2003.

BY ORDER OF THE COURT:

Honorable James A. Gramling, Jr.

Municipal Judge, Branch Three

STATE OF WISCONSIN **WAUSAU MUNICIPAL COURT** **MARATHON COUNTY**

CITY OF WAUSAU,
Plaintiff

vs. **Citation No. N 274090 & N 680391**

ZACK S. JUSUFI
Defendant

DECISION

BACKGROUND

Defendant Jusufi was charged with two city ordinance violations for August 22, 2005, and August 25, 2005, as a restaurant owner with non-enforcement of the city ordinance prohibiting smoking inside restaurants contrary to §9.040.060 Wausau Municipal Code (WMC). Prior to the scheduled trial Jusufi filed a motion challenging the constitutionality of the ordinance on grounds of Equal Protection under the Fourteenth Amendment of the United states Constitution and Article I, Section 1 of the Wisconsin Constitution. The ordinance contains an exception from its restrictions for "Private Clubs." §9.040.020(2) WMC. "Private Clubs" are defined in § 9.040.010(c) WMC as follows:

> "Private club" means an organization, whether incorporated or not, which is the owner, lessee or occupant of a building or portion thereof used for club purposes, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent or athletic purpose but not for pecuniary gain and which only sells alcohol beverages incidental to its operation. The affairs and management of the private club are conducted by a board of directors, executive committee or similar body chosen by the members at an annual meeting. The private club has established bylaws and/or a constitution to govern the club's activities. The private club has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C.A. Section 501. When a private club is open to the public, it does not meet this definition.

Jusufi states that the creation of this classification for an exception without rational basis and therefore violates the right to equal protection under the law.

The court set the matter for a briefing schedule that was short under the assumption, rightly or wrongly, the parties had researched this issue as either a precursor to filing the motion or advising the city during consideration of the ordinance. The court found the need for further research itself. Thus there was greater time for the court to research and consider the arguments for this opinion than the parties may have found for their own briefs. The court greatly appreciates the prompt effort by both parties.

ANALYSIS

I. PROCEDURAL CONSIDERATIONS

Municipal Courts have the authority to hear and declare whether city ordinances are constitutional. *Milwaukee v. Wroten,* 160 Wis. 2d 207, 466 NW 2d 861 (1991). Defendant began his argument with a conflicting statement affecting his ability to raise this issue. He stated in his brief, "While the defendant meets all the requirements of the private club definition except the exemption from income tax, his motion to speak speaks to the entire classification." Courts are not to rule on constitutional issues unnecessarily. *State v. Fisher*, 211 Wis.2d 665, 668 n. 2, 565 N.W.2d 565 (Ct.App.1997). In *Schwittay v. Sheboygan Falls Mutual Insurance Co.,* 2001 WI App 140, ¶ 16 n. 3, 246 Wis.2d 385, 630 N.W.2d 772, the court of appeals found that requiring standing to assert a constitutional challenge "assures that [the court does] not decide a constitutional issue unless it is essential to the determination of the case before [it]."

Jusufi's assertion raises the threshold issue of if he meets all the elements of the exception but one, whether he has standing to challenge the entire exception, or does he have standing only to address the income tax exemption criterion of the ordinance's nonprofit exemption he admits not meeting. To have standing the party must have a personal stake in the outcome of the action. *Mast v. Olsen*, 89 Wis.2d 12, 16, 278 N.W.2d 205 (1979). Neither Brief addressed the standing issue.

Considering the juncture of this case is after the charge had been made, before trial and that the city bears the burden of proving every element of the ordinance to establish a violation, then Jusufi does have a personal stake since there is an exemption that exists which may or may not apply to him. He may have very well waived the right to assert that defense by his admission in the motion of no tax exempt status, but the court makes no determination in that regard at this time. The Court concludes there is standing to assert the constitutional challenge, because there is a classification that brings some restaurants into the ordinances restriction, but others are excluded. Whether the defendant meets the criteria of an excluded restaurant is a factual matter for trial. It is not required for standing to raise a motion challenging constitutionality based on Equal Protection prior to trial.

II. EQUAL PROTECTION

Jusufi cited a recent Wisconsin Supreme Court summary of the process for considering a constitutional challenge based on equal , but omitted many relevant parts when he cited that summary. The omitted quote is:

> We presume that the statute is constitutional and indulge "every presumption to sustain the law if at all possible...." [*Aicher v. Wis. Patients Comp. Fund*, 2000 WI 98, ¶ 18, 237 Wis.2d 99, 613 N.W.2d 849.] The burden is on the party challenging the statute to prove that the statute is unconstitutional beyond a reasonable doubt. *Id.* at ¶ 19. Any doubt must be resolved in favor of the constitutionality of the statute. *Id.* at ¶ 18. …
>
> ¶ 11 To prevail [on challenges the constitutionality of a law], he must show that the statute unconstitutionally treats members of similarly situated classes differently. *Aicher,*

2000 WI 98 at ¶ 56, 237 Wis.2d 99, 613 N.W.2d 849. In cases, like here, where the statutory classification does not involve a suspect class or a fundamental interest, we will sustain the classification if there exists any rational basis to support it. *Milwaukee Brewers v. DHSS,* 130 Wis.2d 79, 98, 387 N.W.2d 254 (1986). A statute violates equal protection only when "the legislature has made an irrational or arbitrary classification, one that has no reasonable purpose or relationship to the facts or a proper state policy." *Id.* at 99, 387 N.W.2d 254. Any doubts must be resolved in favor of the reasonableness of the classification. *State v. Hezzie R.,* 219 Wis.2d 848, 894, 580 N.W.2d 660 (1998).

¶ 12 " 'The fact [that] a statutory classification results in some inequity ... does not provide sufficient grounds for invalidating a legislative enactment.' " *Id.* at 893-94, 580 N.W.2d 660 (quoting *State v. McManus,* 152 Wis.2d 113, 131, 447 N.W.2d 654 (1989)). Indeed, " '[e]qual protection does not deny a state the power to treat persons within its jurisdiction differently....' " *Id.* at 893, 580 N.W.2d 660 (quoting *McManus,* 152 Wis.2d at 131, 447 N.W.2d 654). However, "[t]he basic test is not whether some inequality results from the classification but whether there exists a rational basis to justify the inequality of the classification." *Milwaukee Brewers,* 130 Wis.2d at 99, 387 N.W.2d 254. In determining whether a rational basis exists, we look first to determine whether the legislature articulated a rationale for its determination. *See id.* at 99- 101, 387 N.W.2d 254. If we cannot identify any such articulated rationale, it is the court's obligation to construct one. *Id.* at 101, 387 N.W.2d 254. *Nankin v. Village of Shorewood,* 245 Wis.2d 86, 97-98, 630 N.W.2d 141, 146 –147 (2001).

Jusufi correctly points out there is no legislatively articulated reason for exempting private clubs. However, that means it is incumbent on the city to identify the rationale, and if they do not, then it is the duty of the court. Defendant has not addressed whether there is a valid legislative purpose for the entire ban on smoking in restaurants. The court believes that risks of smoking and second hand smoke to restaurant patrons and employees has been accepted by omission as a valid legislative purpose by both parties. The objection is limited to the claim that not applying the ordinance to all holders of a restaurant license denies equal protection.

This claim is not novel. Justice Douglas observed, "The problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. Tigner v. Texas, 310 U.S. 141. Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. Williamson v Lee Optical, 346 U.S. 483, 489 (1955)."

The city states private clubs were excepted from the ordinance because they are not open to the general public. In *Rossi v State,* 133 Wis. 2d 341, 355, 396 N.W. 2d 801, 807 (1986), the Wisconsin Supreme Court considered whether the Wisconsin Clean Air Act, which prohibits smoking in certain buildings and areas, denied equal protection because several types of buildings were exempted. The Wisconsin Supreme Court said:

Section 101.123(2)(a)(10), Stats., prohibits smoking in government buildings. Nonsmokers, as government employees or members of the public, may not avoid these buildings without great inconvenience. Smoking is similarly prohibited in other areas

that the public may not easily avoid, such as public conveyances, hospitals, and public waiting rooms. Sec. 101.123(2)(a). The smoking ban does not apply, in contrast, to areas that nonsmokers may easily avoid, such as privately owned and occupied offices, private halls, small restaurants, and bowling alleys.

The city's rationale for the private club distinction is consistent with the *Rossi* rationale that the public can choose to avoid a private club that permits smoking, but not so as to other restaurants.

There is the tax exempt status criterion that is an even narrower distinction defining the class that is exempt form the restaurant smoking ordinance. The city argues it intends to avoid a sham exploitation of a private club as utilized in *Taverns for Tots v City of Toledo,* 299 F. Supp. 785 (W.D. Ohio 2004). In that case a group formed a private club so as to meet Toledo's exemption for private clubs. An action was filed for injunctive relief to prohibit the city from enforcing the ordinance against member restaurants and taverns and by the city to prohibit the club from permitting smoking at its "events." The federal district court found it not likely it would find Tavern for Tots a bona fide nonprofit under the ordinance, and denied an injunction against the city enforcing the ordinance. The case is instructive not as precedent, since it was not a final determination, but as justification for the ordinance narrowing of the class of exemptions to those that clubs that have been determined to be a tax exempt non-profit by the IRS criterion to avoid similar sham assertions.

It remains to determine whether the broad exemption of private clubs, and as narrowed to tax exempt ones, has a rationale basis for Equal Protection purposes. *Nankin v. Village of Shorewood* , *Id.,* set forth the criteria as follows:

1) All classification[s] must be based upon substantial distinctions which make one class really different from another.
(2) The classification adopted must be germane to the purpose of the law.
(3) The classification must not be based upon existing circumstances only. [It must not be so constituted as to preclude addition to the numbers included within the class].
(4) To whatever class a law may apply, it must apply equally to each member thereof.
(5) That the characteristics of each class should be so far different from those of other classes as to reasonably suggest at least the propriety, having regard to the public good, of substantially different legislation. *Id. at 111.*

That a private club by its nature is avoided by the general public makes a private club different from a public restaurant that by law cannot exclude patrons, except when warranted by improper conduct. (See, *Heart of Atlanta Hotel, Inc. v. United States*, 279 U.S. 241 (1964), which found a private hotel and restaurant could not exclude patrons based on race.) The non profit status is a substantial distinction in that it is one recognized in many areas of the law and most significantly, in the IRS code. Using the *Rossi* approved rationale that the public can avoid certain private areas, the distinction here is more substantial, because the clubs where smoking and food service still exist present a brighter line of demarcation. Patrons would well know whether they are entering a private club. The sham issue seen in the *Toledo* case is avoided by the clearer distinction for the various criteria for a private nonprofit club.

The classification is germane to the law in that it prohibits tobacco smoke exposure in those

areas most available to the dining public and minors, but limiting the application that are less public and the members may decide enjoy tobacco or not be protected from second hand smoke. Understanding that the distinction exists based on the legislative determination that these clubs need not have the protection to the proportion of public restaurants, the exemption is not based solely on existing circumstances. The members of the excepted class can change. The ordinance applies equally to all restaurants within its restrictions. Lastly, each class is different enough to suggest different restrictions. The public can avoid private club restaurants to be protected from tobacco smoke, but will be more challenged to find a public restaurant free of tobacco smoke.

Jusufi in his reply brief asserted that the city had no answer to the criteria set forth in *Nankin.* He would have been better served if he paid attention from that same case that it was his burden to prove beyond a reasonable doubt that there is no rational basis for the classification. *State v. Rossi* is still good law which this court must follow, and Jusufi has not met his burden to show that the rational basis enunciated to that limited smoking ban to certain areas does not reasonably apply to the Wausau ordinance in equal measure. Justice Douglas said it better: "But the law need not be in every aspect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and it might be thought the particular legislative measure was a rational way to correct it." *Williamson at 487-488.*

The Motion to declare the ordinance unconstitutional and dismiss the citations in this case is DENIED.

Dated at Wausau, Wisconsin this 18th day of July, 2006.

BY THE COURT:

____

PHILIP J FREEBURG,
Municipal Court Judge
City of Wausau, Wisconsin

13: JUDGMENT

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1. Dismissal

A. Basis for dismissal

1) The court lacks jurisdiction over the person or subject

800.01(2)

a. Personal jurisdiction over the defendant may be lacking because of improper arrest, improper service of citation/complaint, service upon the wrong person, or no venue (e.g., underage drinking offense occurred outside municipal limits)

b. Subject matter jurisdiction may be lacking because the defendant is charged with a criminal offense or an offense for which the municipality has not adopted an ordinance

- The Uniform State Traffic Deposit Schedule (USTDS) lists those traffic offenses that are non-criminal, forfeiture actions, and thus within the municipal court's jurisdiction

- All traffic offenses listed in Section II of the USTDS are crimes, and therefore outside of the municipal court's jurisdiction

2) The citation or complaint is materially defective

a. A materially defective citation/complaint is one that

- Can mislead the defendant; e.g., citation describes the offense as "speeding" but shows the statute for reckless driving

- Is incomplete; e.g., speeding ticket neglects to reflect how fast the defendant was travelling

b. A citation reflecting the wrong birth date, license plate number, color of the car, and the like is not materially defective and should not be dismissed

B. Types of dismissal

1) "With prejudice" means the prosecution is legally barred from recharging the defendant with an offense arising out of the same incident

a. Example: dismissal based on lack of subject matter jurisdiction

b. Example: dismissal after a witness has been sworn in

c. See Chap. 5 (Pretrial Motions and Procedures), Sec. 2.C.

2) "Without prejudice" means the prosecution may recharge the defendant with an offense based upon the same incident

C. Assessing costs or "terms" upon dismissal

63 Op. Atty. Gen. 328 (1974)

1) Courts may not dismiss traffic complaints upon payment of penalty and costs, or costs alone

2) Court costs may only be imposed if specifically authorized by statute

3) There is no statutory authority for the payment of costs, whether called costs or "terms," without a conviction

2. Default Judgment

A. Failure to appear at the initial appearance

800.035(8)

1) If the defendant has made a deposit in the amount set for the violation, the court may enter a default judgment

   a. The defendant is deemed to have tendered a plea of no contest and submits to a forfeiture not exceeding the amount of the deposit

      - The court may reject the plea and issue a summons
      - If the plea is accepted, the court, notwithstanding, may summons the defendant into court to determine if restitution should be ordered
      - If the defendant does not respond to the summons, the court may issue a bench warrant

   b. If the defendant appears, the court must allow the defendant to withdraw the "deemed" no contest plea

800.035(9)

2) If the defendant has not made a deposit in the amount set for the violation, the court may enter a default judgment if proof of jurisdiction is found

   a. Proof of jurisdiction exists if the defendant

      - 800.01(2)(a) Is served with a citation/complaint personally or by substitute service as provided under § 801.11(1)(a) to (c), (5), and (6)
      - 800.01(2)(b) Is arrested and brought before the court personally
      - 800.01(2)(c) Voluntarily appears before the court as provided by law
      - 800.01(2)(d) Is found to have acknowledged receipt of the citation or complaint
      - 800.01(2)(e) The citation/complaint was sent by first class mail

800.035(9)

3) In the alternative, the court may issue a summons or warrant

   a. If a warrant is issued, the defendant may not be detained for more than 48 hours prior to the initial appearance

800.09(1g)

4) The court may defer payment of any judgment or provide for installment payments

B. Failure to appear at a pretrial conference

800.045
800.035(8)

1) If the defendant has made a deposit in the amount set for the violation, the court may proceed in the same manner as if the defendant did not appear at the initial appearance

800.045
800.035(9)

2) If the defendant has not made a deposit in the amount set for the violation, the court may proceed in the same manner as if the defendant did not appear at the initial appearance

800.08(5)

C. Failure to appear for trial

1) If the defendant fails to appear personally or by an attorney you may find the defendant guilty and enter default judgment

800.093(8)

2) Notwithstanding the default judgment, the court may summons the defendant into court to determine if restitution should be ordered

D. Court's duty upon entering judgment

800.09(1g)

1) The court may defer payment of any judgment or provide for installment payments

800.09(1g)

2) The court must notify the defendant orally and in writing of the amount due, including any restitution, the date by which it must be paid, and the possible consequences of failure to pay

800.09(1g)
See Ch. 3 (Defendants' Rights), Sec. 3

3) The court must also inform the defendant orally and in writing that if he or she is unable to pay the judgment because of poverty, as that term is used in § 814.29(1)(d), he or she may request community service in lieu of payment of the judgment

4) If the defendant is not present when judgment is rendered, then the court shall mail all of the above information to defendant

Recommendation

The notice should tell the defendant that he or she may arrange for payment by installments by contacting the court by telephone or in person

3. Judgment After Trial

A. Burden of proof

800.08(3)
Wis JI–Civil 205

1) The defendant can be found guilty only if the evidence is clear, is satisfactory, and convinces the judge to a reasonable certainty. Clear, satisfactory, and convincing evidence is evidence when weighed against that opposed to it clearly has more convincing power. It is evidence that satisfies and convinces you

2) The burden of proof is on the municipality

3) After all the evidence has been received, you must determine whether or not the municipality has met its burden of proof and make a finding of not guilty or guilty

B. Not guilty

a. Upon a finding of not guilty, you need take no further action except to dismiss the case and return any deposit made by or for the defendant

Recommendation

b. You should explain the reasons for your decision

C. Guilty

a. Upon a finding of guilty, you must follow all the steps outlined above in 2.D. If the defendant is not present in court, then the court shall mail all of the same information to defendant

4. Penalties upon Conviction

A. Forfeitures/court costs/surcharges and witness fees

1) The forfeiture cannot be less nor more than the amount set forth in the ordinance

a. In traffic cases the court is bound by the limits set forth in the statutes

b. In non-traffic and other ordinances the court is bound by the limits set by the municipality

814.65
Appendix 4

2) Whenever the court imposes a forfeiture for a violation of a municipal ordinance, the following must be added:

a. Court costs—§ 814.65(1)

b. Penalty surcharge—§ 757.05(1)

c. Jail surcharge—§ 302.46(1)(a)

d. Crime lab surcharge—§ 165.755(1)(a)

e. Domestic abuse surcharge—§ 973.055(1)

- Must be added to any forfeiture when the violation involves an act by an adult person against a spouse or former spouse, an adult with whom the adult person resides or formerly resided, or against an adult with whom the adult person has created a child and the violation is of a local ordinance that conforms to:

§ 940.201 Battery or threat to witness
§ 941.20 Endangering safety by use of dangerous weapon
§ 941.30 Recklessly endangering safety
§ 943.01 Criminal damage to property
§ 943.011 Damage or threat to property of witness
§ 943.14 Criminal trespass to dwellings
§ 943.15 Entry onto construction site or into locked building, dwelling or room without consent
§ 946.49 Bail jumping
§ 947.01 Disorderly conduct
§ 947.012 Unlawful use of telephone
§ 947.0215 Unlawful use of computerized communication systems

OR

The defendant violated a municipal ordinance conforming to § 813.12 (Domestic abuse restraining order or injunction)

814.65
938.37(3)

f. Witness fees (except police officers and municipal employees) may be assessed against all defendants in traffic cases and against defendants age 17 and over in non-traffic cases

814.65(4m)

g. Blood test fee in OWI cases

- If the defendant is required to appear in municipal court and the court finds the defendant guilty of violating § 346.63, the court shall impose and collect from the defendant any costs charged to or paid by a law enforcement agency for the withdrawal of the defendant's blood

- If at the time the court finds that the defendant committed the violation, the law enforcement agency has not paid or been charged with the costs of withdrawing the defendant's blood, the court shall impose and collect the costs the law enforcement agency reasonably expects to be charged for the withdrawal, based on the current charges for this procedure

- The court shall disburse the amounts it collects under this subsection to the law enforcement agency that requested the blood withdrawal

- The court may not impose on the defendant any cost for an alternative test provided free of charge as described in § 343.305(4)

B. Exceptions to costs/surcharges

814.65(1)
See Appendix 4
State v Carter,
229 Wis. 2d 200
(Ct. App. 1999)

1) If you impose a zero forfeiture, you must assess municipal court costs, but you may not assess any surcharges

814.65
165.755(1)(b)
302.46(1)(a)
757.05(1)(a)

2) **Only** court costs may be added to parking violations

814.65(1)

3) *No* court costs, fees, or surcharges may be added to

a. Seat belt cases, § 347.48(2)

b. Failure to carry proof of vehicle insurance, § 344.62(2)

c. Handicapped parking violations, § 343.51(1m)(b)

800.093

5. Restitution—Non-Traffic

A. General provisions

800.09(1j)

1) Community service work may be in lieu of restitution only if agreed to by the person to whom restitution is owed

800.093(7)

a. Any restitution made by community service will 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

b. Nothing in the statutes prohibits a court from entering a judgment that includes both monetary payment of restitution and an order of community service in lieu of forfeiture and add-ons

800.09(1d)

2) If a judgment includes restitution, the court must apply any payment received to satisfy the restitution first

800.093(6)

3) 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

800.093(5)(c)
800.093(6)

4) The court must order that all restitution to victims be made before restitution to any insurer, surety or other person who has compensated a victim for a loss

800.093(6)

5) 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

a. If the court specifies that two 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

800.093(5)(c)

6) The court, if it determines that justice so requires, may order restitution to reimburse any insurer, surety or other person who has compensated a victim who would qualify for restitution

State v Storlie, 2002 WI App 163 256 Wis. 2d 500

7) Municipal courts may not order restitution for normal costs of law enforcement

B. Restitution from juveniles

See Juvenile Chapter for options

C. Restitution from adults

800.093(1)

1) The municipal court, in addition to ordering any payment authorized by law, may order a defendant to make full or partial restitution 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

346.65(2r)

      - Sec. 346.63 (OWI/BAC/OCS)—this is the only traffic violation that can give rise to a restitution claim in municipal court

800.093(1)(b)

   b. The violation resulted in damage to property, theft, or death or physical injury to a person other than the defendant

800.093(2) 799.01(1)(d)

2) The court may not order a defendant to pay more than the limit set for small claims court actions (currently $10,000) including property damage, personal injury & special damages

800.093(3)

D. Property damage

If the violation resulted in damage to or loss or destruction of property of another person, the restitution order may require that the defendant do one of the following

1) Return the property to the owner or owner's designee

See State v. Stone 2021 WI App 84, 400 Wis.2d 197

2) If return of the property is impossible, impractical or inadequate, pay restitution. The court may choose one of three options in determining the proper restitution amount:

   a. The reasonable repair cost;

   b. The reasonable replacement cost;

   c. Or the greater of the following:

      - The value of the property on the date of its damage, loss, or destruction; or

      - 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

943.50(1)(b)

3) The value of retail merchandise shall be the merchant's stated price

800.093(4)

E. Personal injury

1) If the violation resulted in physical injury, the restitution order may require that the defendant do one or more of the following

   a. Pay an amount equal to the income loss due to the offense and the cost of necessary medical and related professional services and devices relating to physical, psychiatric or psychological care and treatment. May not include an award for pain and suffering

   b. 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

800.093(5)

F. Special damages

1) The restitution order may require that the defendant do one or more of the following

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

G. Court must hold a restitution hearing

800.093(8)(b)

1) The court may hold the restitution hearing at the time of any court appearance by the defendant, or may summon the defendant to appear

800.093(8)(b)

2) The court may waive the rules of practice, procedure, pleading and evidence at the hearing, except provisions relating to privileged communications and personal transactions or communication with a decedent or mentally ill person

800.093(8)(a)

3) In determining whether to order restitution and the amount thereof, the court must consider all of the following

800.093(8)(a)1.

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

800.093(8)(a)2.

b. The financial resources of the defendant

800.093(8)(a)3.

c. The present and future earning ability of the defendant

800.093(8)(a)4.

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

800.093(8)(a)5.

e. Any other factors which the court deems appropriate

800.093(8)(b)

4) The court must give the victim an opportunity to present evidence and arguments pertaining to the amount of loss suffered as a result of the violation

   a. The victim has the burden of demonstrating the amount of the loss by a mere preponderance of the evidence

800.093(8)(b)

5) The court must give the defendant the opportunity to present evidence and arguments challenging the amount of the loss and his or her ability to pay

   a. The defendant has the burden of demonstrating his or her ability to pay or lack thereof by a mere preponderance of the evidence

6. Possible Consequences If Defendant Fails to Pay

A. Summary of possible consequences

800.095(1)

1) If the defendant fails to pay a monetary judgment, the court may order any one or any combination of orders:

   a. Suspending the defendant's driving privilege,

   b. Imprisoning the defendant,

   c. Assigning the defendant's income to the municipal court, or

   d. Requiring community service

   Exception: the court may not order the suspension of the defendant's operating privileges or order the imprisonment of the defendant if:

800.095(3)(a)

   - A defendant fails to pay restitution, or

800.095(3)(b)

   - Service of the citation/complaint was made by mail, unless the defendant subsequently appeared or was served with a copy of the judgment and note of right to poverty hearing

800.095(3)(c)

   - Failure to pay judgment within 60 days of the judgment, unless the Court finds good cause and orders otherwise

800.09(1g)

2) The court must have informed the defendant of the foregoing possible consequences at the time judgment was entered

B. Suspension of driving privileges

800.095(1)(a)6.

1) Suspension may not be ordered if the judgment was entered solely for a violation unrelated to the violator's operation of a motor vehicle

   a. Exception: Suspension may be ordered if the judgment is against a juvenile under Chapter 938

345.28(1)(c)

   b. Nonmoving traffic offenses (parking citations) are related to the operation of a motor vehicle

800.095(1)(a)
345.47(1)(a)

2) The court may order the suspension of the defendant's operating privileges until the judgment is paid, but not longer than 1 year

800.095(1)(a)2.

   a. The order may be made concurrent or consecutive to any other suspension or revocation

   b. If not specified, DOT must implement the suspension concurrent with any other suspensions or revocations

Note

   DOT will treat as concurrent to each other multiple suspensions issued by the same court on the same day

800.095(1)(a)1.

3) If the defendant pays, the court must notify DOT within 7 days

800.095(1)(a)5.
See Chap. 3 (Defendants' Rights), Sec. 3

4) During the suspension period, the court must consider any request by the defendant to have the order reconsidered based on an inability to pay because of poverty as that term is used in § 814.29(1)(d). If poverty is determined, the court must withdraw the suspension and

   a. Grant the defendant more time to pay, or

   b. Order community service

800.095(1)(a)3m.

5) If the court terminates the suspension because the defendant agreed to a payment plan or community service, the defendant can be re-suspended for failure to perform but only for the time remaining on the initial one-year suspension

800.095(1)(a)3.

6) If the judgment remains unpaid at the end of one year, the court may not enter further suspensions in relation to the outstanding judgment

800.095(1)(a)4.

7) Serving the one-year suspension does not relieve the defendant's obligation to pay the judgment

800.095(1)(b)1.

C. Imprisonment

800.095(1)(b)2.

1) No person shall be imprisoned unless the court makes one of the following findings, that the defendant has:

800.095(1)(b)2.a.
800.095(3)(c)

   a. Either at the time of sentencing or thereafter, the ability to pay within a reasonable time (but not less than 60 days from the judgment unless court finds good cause and orders otherwise) and fails to do so. If the defendant meets the criteria for poverty defined in § 814.29(1)(d), then the defendant shall be presumed to be unable to pay, and the court must either suspend or extend payment of the judgment or order community service

800.095(1)(b)2.b.

   b. Failed, without good cause, to perform the community service as ordered

800.095(1)(b)2.c.

   c. Failed to attend a good cause/poverty/indigency hearing offered by the court to provide the defendant with an opportunity to determine whether he or she has the ability to pay

800.095(1)(b)2.d.

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

800.095(1)(b)1.a.

2) The maximum term that a court may impose is 90 days for any one judgment

800.095(1)(b)1.b.

   a. The term may be concurrent with or consecutive to any other term imposed at any time by any court

800.095(1)(b)1.a.

b. A credit shall be applied against the amount owed of $50 for each day of imprisonment, including imprisonment following an arrest

800.095(1)(b)3.

3) The court must allow work ("Huber") privileges

800.095(2)

4) At any time prior to imprisonment, the defendant may request a review of any findings allowing the court to order imprisonment

938.17(1)(b)

5) The court may sentence a person under 17 years of age to jail, but subject to all of the following:

a. Must be for a traffic-related violation

b. Must be for failure to pay a forfeiture

938.17(1)(b)

c. The "jail" is a juvenile detention facility

NOTE: Whether juvenile will be placed in a juvenile detention facility may be subject to whether sheriff will accept juvenile and/or whether there is space available.

Recommendation

It is strongly recommended that you not incarcerate a juvenile

See form at p. 13-A

D. Assignment of income

800.095(1)(c)2.

1) The court may order the assignment of up to 25% of the defendant's wages, salaries, commissions, earnings, workmen's compensation, nonexempt pension benefits, or lottery prizes or other money due or to be due, to be assigned for payment of unpaid forfeitures, costs, fees, surcharges, or restitution

800.095(1)(c)7.

2) The order is not subject to spousal signature, time limits or other limitations set forth in § 241.09, Wage Assignments

800.095(1)(c)5.

3) The notice required to be given by the court to a person from whom the defendant receives or will receive money 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

800.095(1)(c)3.

4) Upon entering the order for assignment, unless the court finds that income withholding is likely to cause the defendant irreparable harm, implementation of the order requires the court to 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

   a. The notice shall require the person to inform the court about any prior assignments by another municipal court or under § 778.30(1) or § 973.05(4) the person received relating to the same defendant

   b. The notice must include a form upon which the person may designate from whom the prior assignment was received

800.095(1)(c)7.

   c. The person must return the form to the court within ten days after receipt of the notice

565.30(5r)(a)

5) Annually, the administrator of the state lottery must provide each municipal court with a list of the winners or assignees, since the date of the latest list of a lottery prize, that is payable in installments

800.095(1)(c)4.

   a. If the court determines that a person on the list may be subject to an assignment order, the court may send notice of the order to the administrator, including the name and address of the defendant and the amount owed

   b. The court must notify the administrator when the assignment has been satisfied

6) The person receiving the order

800.095(1)(c)6.

   a. May deduct an amount equal to the person's disbursements, not to exceed $3.00, for each payment made to the court

800.095(1)(c)7.

   b. Must withhold the amount specified in the notice (not to exceed 25%) from any money that person pays to the defendant later than one week after receipt of the notice

      - The person must send the amount withheld to the municipal court within 5 days thereafter

- If the person has received a prior assignment, the person must keep the last assignment and implement it after the prior assignment(s) is paid in full

800.095(1)(c)8.

7) If the person receiving the notice fails to withhold or send the money to the municipal court, the person may be proceeded against

   a. Under the principal action under § 800.12 for contempt

   b. Under ch.788 (Collection of Forfeitures) and required to forfeit not less than $50 nor more than 1% of the amount not withheld or sent

800.095(1)(c)9.

8) If an employer who receives a notice fails to notify the municipal court within 10 days after an employee is terminated or temporarily or permanently leaves the employer's employment, the employer may be proceeded against under the principal action under § 800.12 for contempt

800.095(1)(c)11.

9) An employer who uses an assignment as a basis for the denial of or discharge from employment or any disciplinary action against an employee may be fined not more than $500 and may be required to reinstate with full back pay to the employee

Recommendation

The notice should include information to the person as to his responsibilities and the consequences of not meeting them

E. Community service

800.09(1j)

1) The court may order the defendant to perform community service work in lieu of making restitution or paying the forfeiture

   a. Community service work may be ordered in lieu of restitution only if agreed to by the person to whom restitution is owed—See the "Restitution, General provisions" section in this chapter for more, related information

b. The work may be for a public agency (e.g., street department, school system) or nonprofit charitable organization (e.g., church, Elks Club) that agrees to accept the work

104.035(1)

c. The number of hours ordered may not exceed the number determined by dividing the amount owed by the minimum wage for adults; currently $7.25/hour

2) The court must ensure that

a. The defendant is provided with a written statement of the terms of the community service order and

b. The community service order is monitored

7. Other Court Orders upon Conviction

A. Mandatory court orders upon conviction

349.03(1)
343.30(1q)(a)
343.30(1q)(b)1.
343.30(1q)(b)4m.
346.65(2f)

1) You must revoke a person's operating privilege upon conviction for an OWI/PAC/OCS violation from six to nine months

349.03(2m)
343.30(1p)

2) You must suspend a person's driver license for three months upon conviction for an "Absolute Sobriety" violation

125.07(4)

3) You must suspend a juvenile's license as authorized by § 343.30(6)(b) upon conviction for second and subsequent violations, within a 12-month period, of an underage drinking ordinance involving a motor vehicle

341.04(3)(c)

4) For unregistered vehicles, in addition to any forfeiture imposed, the court is required to order the defendant to apply for registration

343.30(1n)
346.57(4)(gm), (h)

5) If speed is at least 25 mph over a non-posted 55 mph speed limit or a posted 65 or 70 mph speed limit, the court must order a 15-day suspension

NOTE:

Your authority to suspend a person's privilege to operate a motor vehicle in Wisconsin applies to Wisconsin and out-of-state residents

B. Discretionary court orders upon conviction

343.30(1)

1) You may suspend a defendant's operating privilege for a period not to exceed one year for violating state traffic laws or any local ordinance enacted under Ch. 349

Recommendation

It is recommended that this tool be used sparingly and only in cases of extremely dangerous violations or drivers

343.30(6)(b)2. & 3.

2) You may suspend the operating privilege of a person who is not of legal drinking age for violation of § 346.93, underage person possessing alcohol beverage in motor vehicle, for not more than one year, not more than two years on a second or greater offense

125.07(4)

3) You may suspend a juvenile's license as authorized by § 343.30(6)(b) for violations of an underage drinking ordinance

C. Point Reduction & Boating Safety Course

Trans 101.07

1) If the object is to have the defendant avoid a suspension that would result from pending charges, you must delay entering conviction on those charges until the defendant has completed the school

   a. A person's point record will be reduced by the number of points accumulated up to three if DOT is furnished with certification that the person has satisfactorily completed traffic safety school

   b. The traffic school can be used for point reduction purposes only once in a three-year period

30.80(2m)

2) In violations of a boating ordinance adopted in conformity with § 30.68, in addition to the forfeiture, you must order the defendant to obtain a certificate of satisfactory completion of a boating safety course

8. Reopening Judgments

A. General provisions

800.115(5)

1) Upon receiving a motion, the court may:

   a. Enter an order denying the motion for failure to state grounds upon which relief may be granted

   b. Schedule a hearing on the motion

   c. Enter an order based on written submissions from the parties

800.115(5)

2) Upon a motion made by the court, the court must provide notice to all parties and schedule a hearing on the motion

800.115(3)

3) The parties may stipulate and the court may approve the reopening of a judgment for any reason

800.13(1)

4) Any hearing on the motion to reopen must be recorded

800.115(4)
345.37(1)(b)

5) The court may impose costs as part of the decision on the motion or as a condition of granting the motion

814.07

   a. The amount may not exceed $300.00

OAG 1-00
(see page 13-B)

   b. The amount may not be imposed by a blanket order, discretion is to be exercised in each case

800.115(4)
814.29(1)(d)

   c. The costs shall be based on the expense associated with the motion and the court shall consider the defendant's ability to pay the costs, including consideration of the poverty standards

800.115(4)

6) No costs may be imposed as a requirement of filing the motion

800.14(1)

7) Either party may appeal from the court's decision on a Motion to Reopen a Judgment

Recommendation

Notify the defendant of the right to appeal the denial of a motion to reopen judgment or the imposition of a fee to reopen

B. Time limits

800.115(1)
345.37
Form Q

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

800.115(2)

2) Any party, including the court on its own motion, may at any time move to reopen the judgment based on any of the following:

   a. Fraud, misrepresentation or other misconduct of the opposing party

City of Kenosha v Jensen,
184 Wis. 2d 91
(CA 1994)

   b. The judgment is void

   c. It is no longer equitable that the judgment should have prospective application

   d. Any other reasons justifying relief from the operation of the judgment

9. Additional Forfeiture Collection Options

66.0115

A. Withholding of city licenses or permits

1) A city, town or village may refuse to issue a license or permit to anyone "who has not paid an overdue forfeiture resulting from a violation of an ordinance of the municipality"

2) The municipality may not refuse to issue a marriage, dog or hunting/fishing license even if the requesting party has an overdue forfeiture

3) The municipality may not refuse to issue a license or permit to a person who is appealing the imposition of the forfeiture

4) Municipalities within a county may compact with each other to refuse to issue a license or permit to any person who has an overdue forfeiture to any municipality that is a party to the agreement

938.343(2)

B. Suspension of hunting or fishing licenses of juveniles

1) A municipal court may order the suspension of either license for a maximum of 2 years if the juvenile has failed to pay a forfeiture to the court within one year of the date on which it was imposed

2) Such a suspension cannot be ordered together with a suspension of the juvenile's driver license. The court must choose one or the other

3) The order suspending a juvenile's hunting or fishing license should be sent to:

   Dept of Natural Resources
   101 S. Webster St.
   P.O. Box 7921
   Madison, WI 53707
   Phone: (608) 266-2621

C. Use of collection companies

800.095(5)

1) The court may employ a collection company to collect judgments under § 755.21

755.21(1), (2) & (3)

2) The agency is to be paid out of the proceeds it collects, and the amount received by the court is to be considered the amount collected for distribution purposes to the state

71.93(2)
71.935

D. Tax Refund Intercept

800.095(6)

1) The court or a collection agency may certify to the Wisconsin Department of Revenue (DOR), the amount of any unpaid forfeiture of $20 or more and the DOR may then deduct the amount of the forfeiture from any income tax refunds owing to the defendant. Municipalities may accomplish this through the use of private collection agencies

2) Link to information on Wisconsin's Tax Intercept Program—
   www.revenue.wi.gov/pages/ise/trip-home.aspx

3) Procedure

   a. Municipality certifies name and Social Security number or driver license number of debtor in an electronic format prescribed by the DOR

b. Within 5 days after certification, the court must notify the debtor of the certification, the basis for it, and the right to appeal

71.935(5)

c. An administration fee will be charged only when money is collected for the municipality. The debtor will be charged by DOR the administrative fee. The fee is currently $5 per intercept

71.93(8)
71.935
800.095(6)

E. State Debt Collection Services (SDC)

1) The DOR has been granted the authority by the legislature to act as the collection agency for debts owed to state, county, or local government agencies

71.935(1)(a)

2) Definition of Debt—Any amount owed to a government agency where the debt has been reduced to a judgment or the debtor has been notified and has been given an opportunity to be heard with regard to the amount owed

3) Requirements of SDC

a. Debt must be a minimum of $50 and delinquent for 90 days with no payment plans in place

b. The debtor must be given notice at least 30 days prior to referral and the debtor must be given an opportunity to be heard regarding the obligation due

c. The court must cease all other collection activity

F. Transfer of unclaimed money

800.095(8)

1) Where the municipality is holding money belonging to a defendant, and that money is unclaimed for more than one year, the court may order the money transferred to pay any unpaid forfeitures

2) Money or property held by the state unclaimed property fund can be claimed in satisfaction of unpaid judgment

71.93(1)(d)
177.24(1)(a)

Claim can be made directly through DOR or as part of an SDC intercept

G. Execution

800.095(7)

1) Municipalities may enforce the judgment of the municipal court (exceeding $10) just as judgments may be enforced in other civil actions

893.42

2) There is a 6-year limitation on the municipality's commencement of an action in circuit court to collect an unpaid municipal court judgment

NOTE:

There is no time limitation on a municipal court's other attempts to collect a judgment.

3) Procedure

806.10
806.12
806.14

a. A transcript of the judgment must be filed with the clerk of circuit court for placement on the judgment and lien docket

- The transcript should be filed in the defendant's county of residence if an effort will be made to garnish bank accounts or paychecks, or in the county where real estate is owned (if different from county of residence) if a lien is being created on the defendant's real property

b. The docketing of the judgment becomes an automatic lien on real estate owned by the defendant in the county of filing

c. The municipality can proceed to garnish earnings or accounts through routine collection actions in the circuit court

814.61(5)(bm)

d. The clerk of circuit court shall charge no fee for docketing, issuing executions, or issuing transcripts of judgments for filing in another county, such as a location where the debtor owns real estate

800.14

10. Appeal to Circuit Court

800.14(1)

A. Either party may appeal

800.14(1)

1) Appeal is to the circuit court of the county where the offense occurred

2) Appeal may be taken from a

   a. Judgment

   b. Decision on a motion for relief from judgment

   c. Determination regarding whether the defendant is unable to pay the judgment because of poverty

800.14(1)

3) No appeal may be taken from a default judgment

   a. However, default judgments can be reopened

   b. See Section 8, Reopening Judgments

State v Kelty, 2006 WI 101 294 Wis. 2d 62

4) Defendant may forfeit right to appeal upon plea of no contest or guilty

800.14(1)

B. Written notice; transmittal; stay of judgment

1) The appealing party must give the municipal judge and the other party written notice of the appeal

   a. The written notice must be given within 20 days after judgment

   b. A copy of the notice must be provided to the other party as well as the municipal judge

   c. The notice must be accompanied by the appropriate filing fees

   d. The notice should specify which one of the three available types or methods of appeal is being requested

800.14(2m)

2) The appeal must be transmitted to circuit court within 30 days of perfection. Perfection occurs upon all of the following conditions being met:

   a. Timely notice of appeal has been filed

   b. Timely receipt of any required appeal fees

   c. If a trial was held, 20 days has passed since the notice of appeal was filed

800.14(3)

3) If requirements for appeal are met, the judgment or enforcement of a municipal court order shall be stayed unless otherwise ordered by the municipal court prior to transmittal or the circuit court thereafter

800.14(5m)

C. Waiver of costs to appeal, jury fees, or transcript costs

800.14(5)

A defendant claiming an inability to pay may petition the circuit court for a waiver

800.14(4)
800.14(5)

D. Types of appeal

800.14(5)

1) No trial held. An appeal from a judgment or decision where no trial has been held shall be on the record

800.14(4)(intro)

2) On the record. An appeal from a judgment after a trial has been held shall be on the record unless either party requests a new trial within 20 after the notice of appeal has been filed with the municipal court

800.14(4)(intro)

3) New trial. A new trial shall be without a jury unless:

800.14(4)(a)

a. The case was an OWI/PAC/RCS case and the municipality requests a jury trial within 10 days after the circuit court orders a new trial

800.14(4)(b)

b. The case was not an OWI/PAC/RCS case and either party requests a jury trial within 10 days after the circuit court orders a new trial

4) Jury trial. If either party requests a jury trial, the jury fee must be posted within 10 days after the circuit court orders the new trial

800.14(5)

E. Transmittal of the record

800.14(5)

1) If there is no request for a new trial within 20 days after the notice of appeal has been filed, 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

a. The municipal court must transmit a copy of the entire record to the circuit court, including any electronic recording

b. The circuit court may order the preparation of the transcript by any qualified court reporter at the cost of the appellant

c. The transcript shall be deemed accurate unless determined otherwise by the municipal court, by request of either party or the circuit court

800.14(5)

2) If there is a request for a new trial, the municipal court shall transmit as much of the record as deemed appropriate by the municipal court, but must include a copy of the citation or complaint and the judgment

800.14(6)

F. Disposition upon appeal

1) The disposition of the circuit court must be certified to the municipal court within 30 days of the judgment

814.08(1)

2) Costs are awarded by the circuit court. The party prevailing on appeal may receive costs in some circumstances

800.14(6)

3) If the circuit court disposition requires payment of a forfeiture, the forfeiture and all costs, fees and surcharges shall be payable to the municipal court

11. Expunction

Kenosha Cty v Frett, 2014 WI App 127 359 Wis. 2d 246

A. The court may not expunge convictions

STATE OF WISCONSIN **MUNICIPAL COURT** **__________COUNTY**

IN THE MATTER OF THE OUTSTANDING OBLIGATIONS OF:

____
Debtor

____
Date of Birth

INCOME ASSIGNMENT ORDER FOR UNPAID FORFEITURES AND OTHER FINANCIAL PENALTIES

CASE NO: ______________________________

THE COURT FINDS:

1. The debtor has been ordered by the court to pay fines, forfeitures, restitution, or other court obligations. The obligations have not been timely paid and the amount owed is **$______.**

   The entry of an assignment will not cause the debtor irreparable harm and an assignment should be ordered.

2. The last known address of the debtor is:
   Address:
   City/State/Zip:
   Telephone number:

3. The name and address of the debtor's employer(s) or payor is:
   Name(s):
   Address:
   City/State/Zip:
   Telephone number:

THE COURT ORDERS:

1. You as the employer or other person owing any of the following to the debtor:
   a. commissions,
   b. earnings,
   c. salaries,
   d. wages,
   e. pension benefits,
   f. benefits under Ch. 102 (worker's compensation),
   g. or other money due or to be due the defendant in the future,

   shall pay those monies to the clerk of court for this court until the total amount due has been paid or further order of the court.

2. You shall withhold **<u>25%</u>** of gross income per **<u>paycheck</u>**, to commence on **<u>the next available payroll period</u>**. No more than 25% of the debtor's disposable income may be withheld unless the debtor agrees to have the full amount withheld. Disposable income means the debtor's earnings after deducting social security taxes and federal and state income taxes listed on a debtor's wage statement. This order shall take priority over all other income withholding orders, garnishments, and voluntary wage assignments with the exception of:
   a. any child/family support, maintenance, and orders for health insurance coverage for children;
   b. orders issued by any court under Chapter 13 of Title 11; or
   c. any debt due for any state or federal taxes.

See page 2 of form for further information

If, for each payment under this order, 25% or more of the debtor's disposable earnings are being withheld by the employer/payor under an order for child/family support, no funds may be withheld under this order.

Within five days after each day on which the employer pays money to the defendant, the employer shall send the amount withheld to the clerk of court that provided notice of income assignment.

3. Please make check payable to and remit payment to:

4. You may deduct and retain necessary disbursements not to exceed $3.00 for each payment to comply with this order.

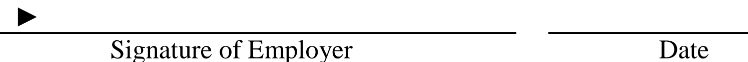
5. If you have already received and are collecting on another assignment for unpaid fines and other obligations from this or another court, then:
   a. Check the box below indicating you have received another assignment(s).
   b. Sign, date, and return a COPY of this form to the clerk of court of this court within 10 days of receiving this notice.
   c. Keep the original of this form and when the prior assignment(s) are paid in full, begin making the payments required by this assignment until the total amount due under this assignment is fully paid.

6. You shall notify the clerk of court within ten days after the employee is temporarily or permanently not being paid.

□ Notice to Court that another assignment(s) has been received.

I am the employer of the debtor and:

- have received and am now paying on another assignment for fines and other court obligations of the debtor;
- understand that I am to return a copy of this form to the clerk of court of this county within 10 days of receiving this assignment; and
- understand that I will retain this assignment and once any other earlier assignment(s) is paid in full, I will then pay this assignment.



► ________________________________ ______________
Signature of Employer Date

BY THE COURT:

Distribution:
1. Original - Clerk of Court
2. Employer/Payor
3. Debtor

____
Honorable
Municipal Court Judge

JAMES E. DOYLE
ATTORNEY GENERAL

Burneatta L. Bridge
Deputy Attorney General
114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857

January 28, 2000

OAG 1-00

Mr. J. Denis Moran
Director of State Courts
Supreme Court of Wisconsin
119 Martin Luther King Jr. Blvd., Room LL2
Madison, WI 53703

Dear Mr. Moran:

You ask my opinion concerning whether circuit courts may, by blanket order, allow motion costs under Wis. Stat. § 814.07 on all motions brought to open a judgment entered on a forfeiture action under Wis. Stat. § 345.37.

A COURT MAY NOT BY BLANKET ORDER IMPOSE WIS. STAT. § 814.07 COSTS ON ALL WIS. STAT. § 345.37(1)(b) MOTIONS.

Wisconsin Stat. § 814.07 costs may be allowed on a motion "in the discretion of the court or judge." Discretion "contemplates a process of reasoning." *McCleary v. State*, 49 Wis. 2d 263, 277, 182 N.W.2d 512 (1971). Wisconsin Stat. § 345.37(1)(b) specifies criteria a court must evaluate when considering a motion to open the judgment. The court must determine whether the failure to appear was due to mistake, inadvertence, surprise or excusable neglect. The process of discretion depends "on facts that are of record or that are reasonably derived by inference from the record and a conclusion based on a logical rationale founded upon proper legal standards." *McCleary*, 49 Wis. 2d at 277.

State v. Smith, 203 Wis. 2d 288, 299, 553 N.W.2d 824 (Ct. App. 1996) is instructive. It involved a trial court's blanket ruling rejecting prior conviction evidence for impeachment purposes under Wis. Stat. § (Rule) 906.09. The trial court did not individualize to each witness its analysis of the factors to be weighed in the balancing test under Wis. Stat. § (Rule) 906.09(2) to determine whether the probative value of the prior conviction evidence was substantially

outweighed by the danger of unfair prejudice. The *Smith* court found that a "blanket ruling, while expedient and consistent, fails to show a consideration of the proper factors with respect to each witness, and thus, is an erroneous exercise of discretion." *Smith,* 203 Wis. 2d at 299, citing *McCleary,* 49 Wis. 2d at 277-78. *See also State v. Martin,* 100 Wis. 2d 326, 302 N.W.2d 58 (Ct. App. 1981).

Imposing costs by blanket order without an inquiry into the facts of each case as applied to the criteria of Wis. Stat. § 345.37(1)(b), would therefore be a failure to exercise the discretion called for in Wis. Stat. § 814.07.

In sum, Wis. Stat. § 814.07 costs may not be imposed by blanket order.

Sincerely,

James E. Doyle
Attorney General

JED:SJN:ajl

CAPTION: Wisconsin Stat. § 814.07 motion costs on motions brought to open a judgment entered on a forfeiture action under Wis. Stat. § 345.37 may not be imposed by blanket order.

14: POVERTY AND INDIGENCY HEARINGS

1. Initial Appearance 14-1
2. Written Notice 14-1
3. Scheduling an Indigency Hearing 14-1
4. Poverty Determination 14-2
5. Possible Dispositions 14-2
6. Request for an Indigency Hearing After License Suspension for Failure to Pay 14-3
7. Findings That Must Be Made Before the Court Can Issue an Order for Imprisonment (Commitment) 14-3
8. Constitutional Concerns 14-4
9. Request for Final Review of Findings Prior to and upon Imprisonment 14-4

Federal Poverty Guidelines 14-A

1. Initial Appearance

800.035(2)(a)4.

A. The court shall inform defendants that if he or she cannot pay the forfeiture, costs, fees, or surcharges due to poverty he or she can request an installment plan, community service, or a stay of the judgment

800.035(2)(d)

B. If the defendant pleads guilty or no contest, the court may render judgment and then make a poverty determination

2. Written Notice

800.09(1g)

A. The court shall inform the defendant in writing that he or she can request an installment plan, community service, or a stay of the judgment

B. This notice should be included in all default judgment or payment due notices

See FORM S

3. Scheduling an Indigency Hearing

A. Notice to the defendant by summons or warrant is no longer required. The court may do so in any form that is reasonably certain to reach the defendant

B. The hearing is limited to 2 issues: whether the defendant's failure to pay was due to good cause or poverty

4. Poverty Determination

814.29(1)(d)

The court shall make a finding of poverty if any of the following are proven:

A. The defendant receives any means-tested assistance including but not limited to W-2, SSI, food stamps, and veterans benefits

B. The defendant's inability to pay is due to such circumstances as household size, income, assets, and debts

C. The defendant's income is below the Federal Poverty Guidelines (See Guidelines at end of chapter).

D. The defendant is represented by an attorney through a legal services program for indigent persons

5. Possible Dispositions

800.095(4)

A. If the court finds that the defendant has shown good cause or is in poverty, it may do any of the following:

1) Set up an installment plan

2) Modify, suspend, or permanently stay the judgment

3) Order the defendant to satisfy the judgment by community service

   a. The court may order that it be completed at 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

   b. The number of hours of community service ordered is determined by dividing the amount of the judgment by at least the minimum wage

   c. The court shall provide the defendant with a written notice of the terms of the community service and shall monitor the order

d. The court may also order community service in lieu of restitution if agreed to by the person seeking restitution

800.095(5)–(8)
See Chap. 13
(Judgment)

B. The court may enforce the judgment by any of the following:

1) Tax intercept (TRIP)

2) State Debt Collection (SDC)

3) Collections

4) Filing a civil judgment in circuit court

5) Wage assignment

6) Transfer of any money or property belonging to the defendant that the municipality is holding which is unclaimed by the defendant for more than 1 year

6. Request for an Indigency Hearing After License Suspension for Failure to Pay

800.095(1)(a)5.

A. If a defendant's operating privilege has been suspended for failure to pay, they may request the court to reconsider the suspension based on their inability to pay. If the court determines that the defendant's inability to pay is because of poverty, it shall withdraw the suspension and provide more time to pay or may order community service

B. If a defendant defaults on new pay plan or fails to perform community service, the court may enter another suspension. If it does, the length of the new suspension will be reduced by the amount of time that was served on the original suspension

800.095(1)(b)2.a.–d.

7. Findings That Must Be Made Before the Court Can Issue an Order for Imprisonment (Commitment)

No defendant may be imprisoned unless the court makes one of the following findings:

A. That the defendant has the ability to pay a judgment within a reasonable time period

B. **That the defendant failed, without good cause, to perform community service**

C. **That the defendant failed to attend an indigency hearing**

D. **That the defendant failed, without good cause, to complete a court-ordered alcohol or drug treatment program that was in lieu of a forfeiture**

8. Constitutional Concerns

Pedersen v Blessinger, 56 Wis. 2d 286 (1972)

On equal protection grounds, the 14th Amendment bars a court from imprisoning a defendant who is unable to pay due to poverty

Recommendation

This constitutional limitation should be considered whenever a defendant who is imprisoned for failure to pay or is the subject of an active commitment makes a request for an indigency hearing. In most cases, such requests should be granted even though the commitment was properly issued pursuant to one of the factors in Section 7

9. Request for Final Review of Findings Prior to and upon Imprisonment

800.095(2)

A. **At any time prior to and upon imprisonment, a defendant may request a review of findings made under § 800.095(1)(b)2.**

B. **The findings that would be relevant to such a review are whether the defendant still has the ability to pay or whether the defendant's failure to do community service or complete an assessment was for good cause**

C. **The decision to hold such a hearing is within the discretion of the court but is strongly recommended**

2024 HHS POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES	
PERSONS IN FAMILY/HOUSEHOLD	POVERTY GUIDELINE
1	$15,060
2	$20,440
3	$25,820
4	$31,200
5	$36,580
6	$41,960
7	$47,340
8	$52,720
For families/households with more than 8 persons, add $5,380 for each additional person.	

Source: https://www.govinfo.gov/content/pkg/FR-2024-01-17/pdf/2024-00796.pdf

15: PERFORMING A MARRIAGE

1. Authority to Perform Marriage Ceremonies........................ 15-1
2. Legal Requirements to Obtain License 15-2
3. Requirements for a Legal Marriage 15-2
4. Officiating at a Wedding 15-3

WI Ethics Commission Opinion—Officiating at a Wedding 15-A

Marriage Certificate Worksheet & Instructions................. 15-B

Sample Marriage Ceremonies 15-C
.... 15-D
.... 15-E
....15-F
.... 15-G
.... 15-H

1. Authority to Perform Marriage Ceremonies

765.16(1m)(f)

A. Every municipal court judge has the power to perform marriages

765.16

B. Your authority to perform marriages exists anywhere in Wisconsin

765.16(1m)

C. The requirements for a marriage are:

1) A valid marriage license has been issued

2) The parties make a mutual declaration to be married

3) There are two competent adult witnesses to the marriage besides the officiating person (you)

   a. One competent adult witness is sufficient if one of the parties is serving on military active duty

765.12(2)

D. It is your duty to determine that the parties presenting themselves to be married are the parties named in the license

765.12(2)

E. If you are aware of any legal impediment to the marriage, you must refuse to perform the ceremony

Obergefell v Hodges, 135 S. Ct. 2584 (2015)

F. While the statutes refer to the parties as husband and wife, licenses must be issued to all otherwise eligible couples, regardless of gender

Judicial Conduct Advisory Opinion 15-1

G. A judge may not decline to officiate a marriage between 2 individuals of the same gender on religious or personal grounds, although a judge may decline to perform all marriages

2. Legal Requirements to Obtain License

765.02

A. To be legally able to marry, a person must be competent and 18 years or older, or between the ages 16 and 18 with consent of parents, guardian, custodian, or parent having the actual care, custody, and control of the person

765.09(3)

B. Persons applying for a marriage license must produce a certified copy of their birth record or other proof of identification satisfactory to the county clerk

765.03(1)

C. No marriage may be contracted between married persons or persons nearer of kin than 2nd cousins, except as provided in § 765.03

765.03(2)

D. No marriage may be contracted between persons divorced for less than six months

765.05

E. The license may be issued by any county clerk in the State

765.12(2)

F. The marriage license is valid for 60 days and is valid anywhere in the State

765.08(2)

G. No marriage license will be issued within three days after application, except at the discretion of the county clerk and with the payment of an additional fee

3. Requirements for a Legal Marriage

765.12(2)

A. The marriage must take place within 60 days of the date the marriage license was issued

Sample at 15-B

B. When officiating at a marriage, you must complete the original Marriage Certificate Worksheet

765.16

1) Witnesses signing certificate as witnesses to ceremony must be competent **adults** (18 or older)

765.19

2) You shall return the Marriage Certificate Worksheet to any register of deeds in any county within three days after the marriage

   a. Never give the worksheet to the parties to file

3) Failure to file the marriage certificate worksheet puts the married couple at considerable risk of not being able to prove they are married. This is especially serious when one spouse dies and the other applies for insurance or government benefits, such as Social Security

765.30(4)(a)

4) Failure to properly file is a misdemeanor

4. Officiating at a Wedding

See sample ceremonies at end of chapter

A. After determining that the couple has a valid marriage license, you may ask their preference for the content of the marriage ceremony. Some issues to consider are:

1) Before the ceremony you should talk to the couple about what they want in the ceremony

2) If you use a standard ceremony, you may want to ask the couple if they would like you to change it to suit the occasion

3) You may want to refer the couple to the internet where they can find different marriage ceremonies from which to get ideas

4) Some couples may not want to exchange rings

5) The reading of the ceremony should be clearly spoken and understandable to all involved

B. You may accept payment for officiating at a marriage, at any place other than a courthouse, provided the payment does not exceed a reasonable amount that a member of the clergy might receive under like circumstances

C. The DOT would appreciate your assistance by advising persons to complete any name and/or address change as soon after the marriage as is practicable

D. At the end of this chapter you will find sample standard marriage ceremonies. You may use one of these or any version the parties prefer. However, the ceremony must include a mutual declaration of the 2 parties to be joined in marriage

Wisconsin Ethics Commission

For Judges

Officiating At A Wedding

A judge should refuse to accept a payment, even if unsolicited, for officiating at a marriage at a courthouse, regardless of the hour at which the marriage is performed. When a judge is offered a payment for officiating at a marriage at a courthouse, the judge should decline it or suggest that it be paid instead to a local charity.

When a monetary payment or honorarium is pressed upon a judge under these circumstances, the judge may accept the payment for transmittal to the appropriate county treasurer or to the director of state courts for deposit. If transmittal to the county treasurer or director of state courts is not practical, the judge may accept the payment for contribution to a charitable organization.

The Ethics Code provides no obstacle to a judge's accepting a payment for officiating at a marriage any place other than a courthouse provided the payment does not exceed a reasonable amount that a member of the clergy might receive under like circumstances and provided the payment could not reasonably be expected to influence the judge's exercise of judicial duties.

The Ethics Code does not require a judge, on his or her Statement of Economic Interest, to report a payment received for officiating at a wedding.

WISCONSIN MARRIAGE LICENSE

CANNOT BE USED AS PROOF OF MARRIAGE

License No. _______________

GROOM	1. CURRENT NAME - First	Middle	Last	Suffix
BRIDE	2. CURRENT NAME - First	Middle	Last	Suffix

WE HEREBY CERTIFY THAT THE INFORMATION PROVIDED IS CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF AND THAT WE ARE FREE TO MARRY UNDER THE LAWS OF THIS STATE.

3. GROOM'S SIGNATURE (SIGN BEFORE CEREMONY) ▶	**4. BRIDE'S SIGNATURE (SIGN BEFORE CEREMONY)** ▶

THE ISSUANCE OF THIS LICENSE SHALL NOT BE DEEMED TO REMOVE OR DISPENSE WITH ANY LEGAL DISABILITY, IMPEDIMENT, OR PROHIBITION RENDERING MARRIAGE BETWEEN THE PARTIES ILLEGAL. THIS LICENSE IS VALID FOR 60 DAYS AFTER THE DATE ISSUED BY THE COUNTY CLERK.

5. ISSUED BY COUNTY CLERK \ DEPUTY	6. DATE ISSUED	7. ISSUING COUNTY

THE INFORMATION ABOVE CANNOT BE CHANGED OR ALTERED. IF THERE ARE ERRORS, CONTACT THE COUNTY CLERK WHERE THE LICENSE WAS ISSUED.

WISCONSIN MARRIAGE CERTIFICATE WORKSHEET

THE OFFICIANT SHOULD REVIEW THE INFORMATION BELOW FOR COMPLETENESS AND ACCURACY. CROSS-OUTS AND CORRECTIONS ARE ALLOWED.

OFFICIANT

8. DATE OF MARRIAGE	9. COUNTY OF MARRIAGE	10. CITY, VILLAGE, OR TOWN OF MARRIAGE ☐ City ☐ Village ☐ Town

11. OFFICIANT SIGNATURE I certify that the above-named persons were married before me on the above-mentioned date. **SIGNATURE** ▶	12. OFFICIANT NAME (Print or type)

13. OFFICIANT MAILING ADDRESS (Street or PO Box, City, State, Zip Code)	14. OFFICIANT PHONE	15. OFFICIANT EMAIL

16. ADULT WITNESS 1 TO CEREMONY (Sign and Print Name)

SIGNATURE ▶ **PRINT NAME** ▶

17. ADULT WITNESS 2 TO CEREMONY (Sign and Print Name) ☐ Check box if either party is serving on Active Duty in the U.S. armed forces and 2nd witness not required

SIGNATURE ▶ **PRINT NAME** ▶

THIS DOCUMENT MUST BE FORWARDED TO ANY WISCONSIN REGISTER OF DEEDS WITHIN THREE (3) DAYS OF MARRIAGE.

THE MAXIMUM PENALTY FOR NONCOMPLIANCE IS TWO HUNDRED DOLLARS ($200) OR THREE (3) MONTHS IMPRISONMENT, OR BOTH, PER WIS. STAT. § 765.30(4)(a).

Go to https://wrdaonline.org to obtain the address of the appropriate Register of Deeds.

WISCONSIN
DEPARTMENT OF HEALTH SERVICES
Division of Public Health
P-01060 (07/2022)

INFORMATION FOR MARRIAGE APPLICANTS AND OFFICIANTS

- Applicants or officiants who have questions or concerns regarding the officiant's authority to perform marriages in Wisconsin should seek legal counsel. Information as to the validity of any specific religious organization or any ordination process is not available from the County Clerk's Office or from the State Vital Records Office.
- A marriage may be validly contracted in Wisconsin only after a marriage license has been issued by a county clerk, and only when the mutual declarations of the two parties to be joined are made before an authorized officiating person and in the presence of at least two competent adult witnesses other than the officiating person. If one of the parties is serving on active duty in the military, only one adult witness is required.
- The Wisconsin Marriage License/Marriage Certificate Worksheet has two sections: the marriage license, which is completed by the County Clerk; and the marriage certificate worksheet, which is completed by the officiant. Applicants must sign the marriage license section before the ceremony, preferably in the County Clerk's Office.
- It is permissible to make and keep a copy of the Wisconsin Marriage License/Marriage Certificate Worksheet.
- If the Wisconsin Marriage License/Marriage Certificate Worksheet is misplaced or ruined, contact the issuing County Clerk's Office immediately for instructions. Counties may charge a fee to replace the document.
- **The couple will not automatically receive a certified copy of the Original Certificate of Marriage.** Upon registration of the Wisconsin Marriage License/Marriage Certificate Worksheet, the couple may purchase certified copies of their Original Certificate of Marriage from any Wisconsin County Register of Deeds office or from the State Vital Records Office. Certified copies of the Original Certificate of Marriage may be needed for proof of name change, proof for insurance coverage, overseas travel, and other legal purposes. It is illegal to make copies of the Original Certificate of Marriage.
- Corrections to fields completed by the officiant can be made on a registered certificate and do not require a court order if the request is received by the State Vital Records Office within 365 days of the marriage. The Officiant Amendment Request form is available from the Register of Deeds office, the State Vital Records Office, or on the web at https://www.dhs.wisconsin.gov/forms/f01481.pdf.
- Corrections to the couple's information can be made on a registered certificate if the request is received by the State Vital Records Office within 365 days of the marriage. Contact the County Clerk's Office in the county where the marriage license was issued for information on requesting an amendment.
- For information on Alcohol and Drug Use during Pregnancy: https://www.cdc.gov/pregnancy/during.html
- For Wisconsin laws and penalties on marriage: http://docs.legis.wisconsin.gov/statutes/statutes/765

OFFICIANT INFORMATION

- Officiants must ensure the parties have a valid Wisconsin marriage license to marry before performing the marriage ceremony.
- The officiating person shall determine the parties presenting themselves to be married are the parties named on the marriage license.
- An officiant must be at least 18 years old.
- It is permissible to have two officiants perform a marriage ceremony.
- **The completed Wisconsin Marriage License/Marriage Certificate Worksheet must be returned to any County Register of Deeds in Wisconsin for registration within three days after the date of the marriage**.

See Reverse Side for Officiant Instructions for Completing the Wisconsin Marriage License/Marriage Certificate Worksheet

WISCONSIN
DEPARTMENT OF HEALTH SERVICES
Division of Public Health
P-01060 (07/2022)

INSTRUCTIONS FOR OFFICIANTS

FOR COMPLETING THE WISCONSIN MARRIAGE LICENSE/MARRIAGE CERTIFICATE WORKSHEET

- Officiants must ensure all items are completed correctly in the Officiant section of the Wisconsin Marriage License/Marriage Certificate Worksheet (F-05060) for any marriage ceremony performed in Wisconsin.
- Cross-outs and clearly written corrections are allowed.
- All signatures must be original; stamped signatures are prohibited.

Review, correct, or complete all items legibly and accurately.

8. **DATE OF MARRIAGE** (MM/DD/YYYY)
   Review and correct, if necessary, the month, day, and year the marriage was performed.

9. **COUNTY OF MARRIAGE**
   Review and correct, if necessary, the name of the county where the marriage ceremony was performed. The county must be a Wisconsin county.

10. **CITY, VILLAGE, OR TOWN OF MARRIAGE**
    Review, correct, or print the city, village, or town where the ceremony occurred. Do not use unincorporated places. Mark the appropriate box for "City," "Village," or "Town." NOTE: If a couple will be married in a moving conveyance, the place of marriage is where the couple exits the conveyance after the ceremony.

11. **OFFICIANT SIGNATURE**
    Sign in the space provided. If there are two Officiants, both may sign. When the marriage is performed by the two parties themselves, both parties sign as Officiants.

12. **OFFICIANT NAME** (Print or Type)
    Review, correct, or print the Officiant name. If there are two Officiants, both names may be printed. When the marriage is performed by the two parties themselves, print both parties' names.

13. **OFFICIANT MAILING ADDRESS** (Street, City, State, Zip Code)
    Review, correct, or print the mailing address, including ZIP Code, of the Officiant. If there are two Officiants, both addresses may be printed. This address should identify where business mail is to be sent in the event a Register of Deeds has a question about this record.

14. **OFFICIANT PHONE**
    Review, correct, or print the phone number of the Officiant. If there are two Officiants, both phone numbers may be printed.

15. **OFFICIANT EMAIL**
    Review, correct, or print the email address of the Officiant. If there are two Officiants, both email addresses may be printed.

16. **ADULT WITNESS 1 TO CEREMONY** (Sign and Print Name)
    A competent adult (at least 18 years old) witness must sign and print their name in the space provided.

17. **ADULT WITNESS 2 TO CEREMONY** (Sign and Print Name)
    A second competent adult (at least 18 years old) witness must sign and print their name in the space provided. If either party indicated active-duty military, a second witness is not required. Enter "NOT REQUIRED" in the Witness 2 Name field, if applicable.

MARRIAGE CEREMONY

The ceremony can be shortened by dropping out the part where the parties repeat the vows themselves. It can be lengthened by adding a longer introduction regarding the nature of marriage.

"Family and friends of _________________ and ________________ , we are here because the two of you have decided to join your lives. You come here with precious gifts – mature understanding, your love, your hopes and dreams, your trust in one another, and your faith in life's meaning and purpose, resolved to share life's experiences in enduring love and loyalty.

The decision has been made in your hearts and minds, and we are here to witness the public expression of the commitments you have made privately to each other.

Marriage is a relationship not to be entered into lightly or thoughtlessly, but reverently, soberly, with deep purposes and in the spirit of enduring love.

Much is required of you both. Knowing this, does each of you wish to proceed with this marriage?

_______________________, will you take ______________________ as your wife, to live with her in the honorable relation of marriage? Will you love her, comfort her, honor and keep her in sickness and in health, in sorrow and in joy, and will you live for her, before all others, as long as you both shall live?

-- I will --

_______________________, will you take ______________________ as your husband, to live with him in the honorable relation of marriage? Will you love him, comfort him, honor and keep him in sickness and in health, in sorrow and in joy, and will you live for him, before all others, as long as you both shall live?

-- I will --

_______________________, will you then repeat after me?

I, ______________________, take you, ___________________, to be my wife, to live with you from this day forward, for better, for worse, in plenty and in want, in strength and in weakness, to love and to cherish, so long as we both shall live.

_______________________, will you then repeat after me?

I, ______________________, take you, __________________, to be my husband, to live with you from this day forward, for better, for worse, in plenty and in want, in strength and in weakness, to love and to cherish, so long as we both shall live.

You have told me that you wish to exchange rings as a token of the commitments you are making to each other.

_____________________, will you take the ring that you have brought and place it on _____________________'s finger and repeat after me: "With this ring, I pledge you my love."

Now please join hands as a symbol of your union.

_______________________, and _____________________, having declared in the presence of these witnesses that you take one another as husband and wife and having symbolized your marriage by the joining of hands and the giving and acceptance of rings, now therefore, by virtue of the authority vested in me, I do now declare in the presence of these witnesses that you are husband and wife.

And let me express to both of you the warm, good wishes and congratulations of all who are here".

MARRIAGE CEREMONY

We are gathered here today in the presence of these friends and witnesses, to join _______________ and _______________ in the bonds of matrimony.

Marriage is a civil contract whereby the parties are bound each to the other by solemn vows and promises. The essential feature of this contract is that the parties do promise and agree in the presence of at least two witnesses to become husband and wife.

Since you desire to enter into the state of matrimony, which requires your free, sincere and mutual consent, it will be necessary that you publicly, in the presence of these witnesses, make manifest the sincere intent you both have.

In addition to the civil contract, there goes with marriage a sacred relationship that makes it something more than a mere civil contract.

Embodied within the contract you are about to make, there is contained love, mutual help, respect, companionship, and protection of each other.

While marriage brings happiness and many joys, satisfactions and privileges, it also entails many fears, anxieties and responsibilities. The more these can be mutually shared with each other, the more patient and sympathetic and considerate each is with the other, the happier and more satisfactory the mutual relation becomes. _______________ and _______________, do you wish this contract to be fulfilled?

Will you now join right hands:

(To the groom) _______________, you now take this woman whose hand you hold to be your lawful wedded wife, hereby promising to love, cherish and protect her, in sickness and in health, for richer or poorer, and forsaking all other women, you will provide for and support her in all things as the laws of the state require, so long as you both shall live. Do you thus covenant and agree? If so, answer, I do.

(To the bride) _______________, you now take this man whose hand you hold to be your lawful wedded husband, hereby promising to love, cherish and protect him, in sickness and in health, for richer or poorer, and forsaking all other men, you will provide for and support him in all things as the laws of the state require, so long as you both shall live. Do you thus covenant and agree? If so, answer, I do.

Do you wish to bind these promises with a ring(s)?
Now will you place the ring upon the third finger of your bride and repeat after me:

> With this ring, I thee wed, and pledge my fidelity until death do us part.
> This gold and silver I give to thee and with all my worldly goods I do thee endow.

(If a double ring ceremony, then repeat the above to the bride).

The ring(s) is (are) a symbol of fidelity and love for each other. As the ring(s) is (are) round and without end, so may your trust, your love, your affection, and help, each for the other, be continuous and without end all your lives. You having, by the exchange of mutual vows in the presence of family and friends (witnesses) assembled here, united yourselves within the bonds of marriage.

Therefore, by virtue of the authority vested in me by the statutes of the State of Wisconsin, and in the presence of these witnesses, I do pronounce you husband and wife.

You may now kiss the bride.

CONGRATULATE BOTH THE BRIDE AND THE GROOM.

MARRIAGE CEREMONY

INTRODUCTORY REMARKS

Family and friends, and in particular, **Bride's name** and **Groom's name**:

We are here on this DATE day of MONTH, YEAR, because the two of you have decided to join your lives. You have come here with precious gifts: your love, your hopes and dreams, and your trust in one another.

You have resolved to share your lives in enduring love, and to be ever loyal to one another in all things. Those decisions have been made in your hearts and in your minds; and we are here today to witness the public expression of those commitments that you have made privately, to each other.

You know that marriage is a relationship to be entered into not lightly or without thought, but reverently and soberly, with deep purposes and in the spirit of enduring love. You know, also, that much will be required of you both.

And knowing this, do each of you wish to proceed with this marriage? If so, please answer, "We do".

MUTUAL DECLARATIONS

His Full Name, will you take **Her Full Name** as your wife, to live with her in the honorable relationship of marriage; will you love her, comfort her, honor and keep her in sickness and in health, in sorrow and in joy; and will you live for her, before all others, so long as you both shall live? If so, please answer, "I will".

Her Full Name, will you take **His Full Name** as your husband, to live with him in the honorable relationship of marriage; will you love him, comfort him, honor and keep him in sickness and in health, in sorrow and in joy; and will you live for him, before all others, so long as you both shall live? If so, please answer, "I will".

REPEATING THE VOWS

Now, then, **His First Name**, please repeat after me: I, **His Full Name**, take you, **Her Full Name**, to be my wife, to live with you from this day forward, for better or for worse, in plenty and in want, in strength and in weakness, and to love and to cherish you, so long as we both shall live.

And, **Her First Name**, will you please repeat after me: I, **Her Full Name**, take you, **His Full Name**, to be my husband, to live with you from this day forward, for better or for worse, in plenty and in want, in strength and in weakness, and to love and to cherish you, so long as we both shall live.

EXCHANGE OF RINGS

His First Name and **Her First Name**, you have told me that you wish to exchange rings as a token of the commitments you are making to each other.

Accordingly, **His First Name**, will you please take the ring that you have brought, place it **on Her First Name's** finger, and repeat after me: "With this ring, I pledge you my love".

And, **Her First Name**, will you please take the ring that you have brought, place it **on His First Name's** finger, and repeat after me: "With this ring, I pledge you my love".

And now, will the two of you please join hands as a symbol of your union.

His First Name and **Her First Name**, at this time I would like to speak, briefly, of some of the things that those who are here today wish for you.

Firstly, we wish for you that the love you share today will continue to give you joy, a zest for living and the energy with which to enjoy the challenges of life.

We wish for you a home, not a place of stone and wood, but an island of sanity and serenity in a frenzied world. We wish that this home be not just a place of private joy and retreat, but that it will serve also as a temple where the values of your life are generated and upheld.

We wish for you that your home might stand as a symbol of humans living together in love and in peace, seeking truth and demanding social justice.

We wish that your home might encompass the beauty of nature, that it has within it the elements of simplicity, exuberance, beauty, silence and color. We wish for you a home with books and poetry and music, a home with all the things that represent the highest strivings of men and women.

Should you have children, we wish for you children who will be not mere reflections of yourselves, but children who will learn from you your best traits and who will go forth to recreate the values that you shall have instilled in them. We hope that you will stand by them when they need you and will stand aside when it is time for them to seek their personal destinies. And we hope that you will pass on to your children the concept of family, not as an economic unit but as a transcendent force which brings people close in time of joy and in time of need.

We wish that you have many times of joy, and few, if any, times of need. **His First Name and Her First Name**, we, your relatives and friends here today, wish you well!

CLOSING

Now, then, **His First Name** and **Her First Name**, you have declared in the presence of these witnesses that you take one another as husband and wife. You have symbolized your marriage by the giving and acceptance of rings and the joining of your hands.

So Now, in the presence of these witnesses, and by virtue of the authority vested in me by the State of Wisconsin, as Municipal Judge for the City/Town/Village of _____________, I hereby do declare that you are now husband and wife. Congratulations, and my best wishes to you both!

To the family and friends of _______________ and _____________.

We are gathered here to witness and to celebrate the marriage of _______ and ___________.

The purpose of a wedding is to publicly declare the decisions and to exchange vows that have already been made by the two people standing before you here today. You have been invited to participate in this ceremony. You are their family and friends. It is natural that they should want you to share in their great joy and heartfelt decisions.

You have been invited as more than mere spectators. A wedding is an intensely private and yet a fundamentally public affair. Just as is the product of a wedding a family; the most private of institutions, the family is also a fundamental unit of a community. It is the family's obligation not only to itself but also to the society to which it belongs. Society in turn has its obligation to the families that comprise it. Therefore your presence here acknowledges the beginning of a relationship of everlasting unity for __________ and ______________. And you are hereby acknowledging their roles in the community.

Marriage is the deepest and most complete commitment that two individuals can make. It is a promise to share forever in one another's dreams for the future, in the joys or sorrows of the present and to accept each other pasts. It is a firm and unshakable vow to live life together as long as life persists.

______________and ______________, as you know no minister, priest, rabbi or public official can marry you. While a third party performs the ceremony the commitment of marriage involves only the two of you. By a mutual commitment to love each other, to work toward creating an atmosphere of care, consideration and respect, by the willingness to face the tensions and anxieties that underlie human life do you make the symbolism of wedded life come alive.

While marriage brings happiness, joy, satisfaction and privileges it also entails many fears, anxieties and responsibilities. The more these can be mutually shared with each other, the more patient, sympathetic, and considerate each is with the other, the happier and more satisfactory the mutual relationship becomes.

Marriage is a relationship not to be entered into lightly or thoughtlessly but reverently, soberly, with deep purpose and in the spirit of enduring love. Much is required of you both. Knowing this does each of you wish to proceed with this marriage?

Please face each other and join your hands.

__________ do you now take this woman whose hands you hold to be your lawfully wedded wife? Hereby promising to love, cherish and protect her, in sickness and in health, for richer or for poorer, for better or for worse and to forsake all other women as long as you both shall live?

__________ do you now take this man whose hands you hold to be your lawful wedded husband? Hereby promising to love, cherish and protect him, in sickness and in health, for richer or for poorer, for better or for worse and to forsake all other men as long as you both shall live?

__________ please repeat after me. I _________ take you _________to be my wife, To live with you from this day forward. To love and to cherish you so long as we both shall live.

__________ please repeat after me. I _________ take you ________ to be my husband. To live with you from this day forward. To love and to cherish you so long as we both shall live.

You have stated that you wish to exchange rings as a symbol of your union together.
The giving and acceptance of rings is a symbolic declaration that as the ring has no end nor does your love for each other. Just as the ring, made of gold will not tarnish neither will your love, your beliefs or your commitments.

__________ take the ring that you have brought, place it on _________ third finger of her left hand and repeat after me. With this ring I forever join my life with yours.

__________ take the ring that you have brought, place it on _________ third finger of his left hand and repeat after me. With this ring I forever join my life with yours.

__________and________ you have declared in the presence of these witnesses that you take one another as husband and wife. You have symbolized your declarations by the joining of hands, and the exchange of rings.

Today, as you join yourselves in marriage, there is a vast and unknown future stretching out before you. The possibilities and potentials of your married life are great, and now falls upon your shoulders the task of choosing values and making real the moral dreams other men and women have striven and died for. In this way, you will create the meaning of your life. If your love is vital it will make the choosing and implementing easier for you both.

Now therefore by the virtue of the authority vested in me I do declare in the presence of these witnesses that in accordance with the laws of this state and the practices of this society that from this day forward you are husband and wife.

You may kiss the bride.

To the family and friends of _________ and ___________. They welcome you and ask you to join them today to be witness in their joyous expressions of love and commitment.

As guests at this celebrated event, you have been invited here to share in their happiness as you already share in their lives. Family and friends of __________unable to witness this union also share in their joy on this day.

Between them they have known many whom they have chosen to call friends. Those people who have touched their lives and shared in their thoughts. They have attained a wealth of life's experiences; some with their association of those present here today. And so they have expressed their desire for you to share in this, their day of commitment.

______________and______________

You stand before these people, all of whom have touched your lives, to declare in their presence; Your love for each other, your commitment to each other, and your desire to unify your lives.

You both have experienced the difficulties associated with marriage and know of the trials and tribulations of marriage and parenting.

Marriage is the highest form of expression that two people can share. It symbolizes the intimate sharing of two lives yet it must enhance the differences and individuality of each partner. A good and balanced relationship is one in which neither person is overpowered by the other. Thus it is out of the tension between separateness and union that love, whose incredible strength is equal only to its incredible fragility, is born and reborn.

You have already made your decisions to unify your lives long before today. These decisions were made in your hearts and expressed to each other as your relationship developed. Together - you discussed plans for your future, the direction of your lives, learned to understand each other's needs and allowed your love for each other to grow, as it continues to grow each day. You are entering into this marriage with the openness and understanding of what is needed for a successful relationship.

___________and______________

You stand before me today as two mature and thoughtful people who wish to express their emotions within the framework of a meaningful life. For your self-reliance, courage and love, you deserve respect and admiration, and it is these attributes which make this a serious but not solemn occasion.

Marriage is the deepest and most complete commitment that two individuals can make. It is a promise to share forever, in one another's dreams for the future and in the joys or sorrows of the present. It is a firm and unshakable vow to live life together as long as life persists.
Marriage is the symbol of a loving union of two who strive to become one, yet never lose their separate identities. Within this bond, you will enhance each other's individuality but will become one heart and mind.

You came here freely, willingly and lovingly to be joined together and I charge you both as you make this commitment to each other today to remember:

If you can love without overpowering
Appreciate each other without judging
Invite without demanding
Ask without pleading
Criticize without blaming
Help without insulting

You will truly enrich each other's lives. For love is very patient and kind, never jealous or envious, never boastful or proud, never selfish or rude.
It does not hold grudges and will hardly ever notice when others do wrong. Love is never glad about injustice, but rejoices whenever truth wins out. Love is forgiving and forgetting.

When you love someone you are loyal to him or her, no matter what the costs. Believe in each other and expect the best of each other.
Remember that love and loyalty are the foundations of a happy home. Listen to the promises you are making to each other here today. If you can live your marriage by these vows, your lives together will be full of joy and you will live in peace.

Knowing what you are about to undertake are both of you ready to join your lives in marriage?

I am

Please join your right hands

___________, do you take ______ to be your wife? To live together as partners in marriage, to honor her, cherish her and live for her before all others, in joy and sorrow, in good times and in hard times as long as you both shall live?

I do

_________, do you take ___________ to be your husband? To live together as partners in marriage, to honor him, cherish him and live for him before all others, in joy and sorrow, in good times and in hard times as long as you both shall live?

I do

You have told me that you wish to exchange rings as a token of the commitments you are making to each other.

______________, will you take the ring you have brought, place it on __________ left hand and repeat after me.

<u>With this ring I pledge my love to you and join my life with yours.</u>

_________, will you take the ring you have brought, place it on _________ left hand and repeat after me.

<u>With this ring I pledge my love to you and join my life with yours.</u>

Please join your hands

The giving and accepting of rings is a symbolic declaration of fidelity and love for each other. As the rings are round and without end, so may trust, your love and compassion each for the other be continuous and without end. Just as the ring, made of gold, will not tarnish neither will your love, your beliefs or commitments, as witnessed by all here this day.

Prepare Candles

You have indicated that you desire to further express your love and commitment to each other by lighting a candle to symbolize the joining of your lives.

Please take these two candles you have been presented and join the flames to light the single candle.

Please join hands again.

___________and______________

Having declared in the presence of these witnesses the solemn vows of marriage, the giving and accepting of rings and the lighting of a Unity candle, you have demonstrated your love for each other and indicated by your acts the desire to live in the sanctity of marriage.

Now, by the authority vested in me, by the State of Wisconsin, I do now declare that you __________and__________ are husband and wife.

You may kiss each other

Ladies and Gentlemen I present to you:

We are gathered here because ________ and ________ have decided to join their lives in matrimony. They come here with precious gifts--their love, hopes, dreams, and trust. They have resolved to share their lives in enduring love and loyalty.

The decision has been made in their hearts and minds. We are here to witness the public expression of their private commitments to each other.

The law requires only a declaration that the parties take each other as spouses, in the presence of witnesses and of some person authorized by the state. Once this has been fulfilled, the community and the state will recognize, respect, and protect the new relationship. The legal requirements of a marriage are simple. But marriage is not simple.

Marriage is a relationship not to be entered into lightly or thoughtlessly, or on a whim, but with deep purpose and in the spirit of an enduring love. Cherish the vision of love that you share. Let it not be tarnished by the slow corrosion of time and events. Believe in your love. Let it be binding and guide your lives together.

Marriage requires much of you both, but the rewards are well worth the effort. Knowing this, is it the wish of each of you to proceed with this marriage? If so, please answer, “We do.”

________, do you take ________ as your spouse, to live with in marriage? If so, please answer, “I do.” Will you love, comfort, honor and keep ________ in sickness and in health, in sorrow and in joy, and will you live for ________, before all others, as long as you both shall live? If so, answer, “I will.”

________, do you take ________ as your spouse, to live with in marriage? If so, please answer, “I do.” Will you love, comfort, honor and keep ________ in sickness and in health, in sorrow and in joy, and will you live for ________, before all others, as long as you both shall live? If so, answer, “I will.”

________, will you then repeat after me?

I, ________, take you, ________, to be my spouse— to live with you from this day forward—for better, for worse—in plenty and in want—in strength and in weakness—to love and to cherish—so long as we both shall live.

________, will you then repeat after me?

I, ________, take you, ________, to be my spouse—to live with you from this day forward—for better, for worse—in plenty and in want—in strength and in weakness—to love and to cherish—so long as we both shall live.

(EXCHANGE OF RINGS)

You have told me that you wish to exchange rings as a token of the commitments you are making to each other.

________, in the spirit of these commitments, will you now place your ring upon ________'s finger and say: "With this ring, I pledge my love to you."

________, in the spirit of these commitments, will you now place your ring upon ________'s finger and say: "With this ring, I pledge my love to you."

Please join your right hands as a symbol of your union.

________ and ________, having declared in the presence of your witnesses that you take each other as spouses and having symbolized your marriage by the joining of hands and the giving and acceptance of the rings;

Now, therefore, by virtue of the authority vested by law in me, by the State of Wisconsin, I do confirm that you are lawfully married spouses.

Congratulations!

16: JUDICIAL ETHICS

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1. Judicial Independence and Integrity

A. The central guiding principle of judicial ethics is judicial independence and impartiality, including independence from the other branches of government

SCR 60.02
755.01(1)

1) Judges should participate in establishing, maintaining, and enforcing high standards of conduct and shall personally observe those standards so the **integrity** and **independence** of the judiciary will be preserved

Wis. Const. art. VII §§ 2, 4

B. Municipal courts and judges are supervised by the Wisconsin Supreme Court

1) Municipal courts **are not** municipal departments supervised by the governing body, chief executive, or the police department

SCR 60.02 & 60.03

2) Although judges should be independent, they must comply with the law, including the provisions of the Code of Judicial Conduct. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility

Bradley v Fisher,
80 U.S. (13 Wall.) 335, 349 n.16, 20 L.Ed. 646 (1871)

a. It is essential in all courts that the judges who are appointed to administer the law should be permitted to administer it under the protection of the law, independently and freely, without favor and without fear

b. This provision of the law is not for the protection or benefit of a … judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence, and without fear of consequences

Municipal Judge, Robert McSeveney, State of Washington Bar Assoc. *Bar News*, Oct. 2002

c. Judges have a legal and ethical obligation to administer justice according to law, without fear or favor, and without regard to the wishes or policy of the executive branch of government

Wis Judicial Comm' n v Kachinsky
2019 WI 82
387 Wis. 2d 823

d. Judicial independence does not protect a judge's conduct when the behavior violates the Code of Judicial Conduct

2. Application of the Code of Judicial Conduct

SCR 60

A. Become familiar with the Code of Judicial Conduct

SCR ch. 60 Preamble

1) The Code of Judicial Conduct is found in Supreme Court Rule chapter 60 (SCR ch. 60). See page 16-C

2) When the text of SCR ch. 60 says, "shall," "shall not," or "may not," it is intended to impose binding obligations that can result in discipline

   a. The use of "should" or "should not" in SCR ch. 60 is intended to encourage or discourage specific conduct and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined

   b. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific SCR ch. 60 rules

3) A judge may commit a "willful" violation constituting judicial misconduct when the judge has no actual knowledge that his or her conduct is prohibited by the code of judicial conduct

a. The harm caused by a violation of this code provision exists even though the judge reaches the correct decision in the particular case, and the judge does not receive any personal benefit from the decision in the case

Wis Judicial Comm. v. Ziegler, 2008 WI 47, ¶ 6 309 Wis. 2d 253

b. A judge's actual knowledge, or lack thereof, of the code violation is relevant to the issue of the level of discipline, but not to whether a violation exists

4) Also review State Ethics Code, Wis. Stat. §§ 19.45 & 19.46, and discussed at Sec. 4

SCR 60.07(2)
SCR 60.06(1g)

B. Part-time municipal judges are exempt from the following provisions:

1) SCR 60.05(3)(a), (b), (c)1.b., 2.a., and c., re: holding other governmental positions, engaging in adversary proceeding, and assisting fund raising for an organization

SCR 60.05(3)(c)2.d.

a. However, no judge may use the prestige of judicial office for fund raising or membership solicitation

2) SCR 60.05(4)(a)1.b., (b), (c), (d), and (e), re: financial or business dealings with lawyers or others likely to appear in court before the judge

3) SCR 60.05(5), (6), (7), and (8) re: assuming fiduciary duties, practicing law and extra-judicial income

SCR 60.06(1g)

C. If the judge did not devote 40 or more hours to performance of official duties in preceding calendar year, then SCR 60.06 rules on political activity do not apply to those judges

D. SCR 60.05 covers extra-judicial activities. Note that SCR 60.05(1) and (2), DO apply to all judges

1) These rules specifically relate to casting doubt on your impartiality, demeaning the judicial office or conduct that interferes with judicial duties

2) Most of the Code DOES APPLY to part-time municipal judges

E. Behavior prohibited by the Code—Examples

SCR 60.04(1)(e), (f)
In re Michelson
225 Wis. 2d 221 (1999)

1) A judge may not show bias or prejudice, including that based on race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status. You may not knowingly permit your staff to do so. You shall require lawyers to refrain from such conduct

SCR 60.04(4)

2) A judge that has bias, such as a close personal friendship with a party or lawyer appearing in the judge's court, should recuse or disclose issue affecting the judge's impartiality and invite the parties to consider waiving recusal. See Section 2.F.3)f., below

   a. A judge should recuse when facts and circumstances the judge knows or reasonably should know establish personal bias or when reasonably well-informed persons knowledgeable about judicial ethics standards and the justice system and aware of the facts and circumstances would reasonably question the judge's ability to be impartial

Wis Judicial Comm'n v. Gorski, 2020 WI 5, 390 Wis. 2d 22

   b. A judge and judge's family that socialized with a lawyer at least once a month, and traveled together with the lawyer and their spouse on 4 vacations should recuse or disclose the relationship and invite the parties to consider waiving the recusal

SCR 60.04(1)(g)
In re Aulik
146 Wis. 2d 57 (1988)

3) A judge may not engage in *ex parte* communications, with some limited exceptions

SCR 60.04

   a. *Ex Parte* Communication: A substantive communication between a judge and only one party to an action that is to be heard or is being heard before the judge on an issue or matter involved in the action

In re Tesmer, 219 Wis. 2d 708 (1998)

   b. Includes communication from third parties, who are not participants about the substance of a pending action, unless an exception permits communication

SCR 60.04(1)(g)
Wis Judicial Comm'n v Calvert
2018 WI 68
382 Wis. 2d 354

c. It is prohibited *ex parte* communication for a judge to contact the police chief and review a "contact file" about a matter pending before the judge

SCR 60.03, 60.04

4) A judge shall avoid impropriety and the appearance of impropriety in all the judge's activities

   a. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired

   b. Although the prosecutor, police officers and/or witnesses may be well known to you, informal greetings and chit chat compromise your independence and must be avoided within view of the litigants and witnesses

   c. The defendant needs to see that you are truly independent and not merely an extension of the police department or prosecutor

SCR 60.04(1)(j)
In re Carver
192 Wis. 2d 136 (1995)

5) A judge may not make public comments on pending cases or impending cases in any court, that could influence the proceedings

SCR 60.05(3)(c)2.d.

6) A judge may not use or permit use of the prestige of the office for fundraising or membership solicitation

SCR 60.06(1m)
In re Pressentin
139 Wis. 2d 150 (1987)
SCR 60.06(1g)

7) A judge may not become a candidate for any non-judicial elective office without first resigning his/her judicial position

   a. A judge that devotes less than 40 hours a year to performance of municipal court duties is not subject to this rule

SCR 60.04(4)(c), (d), (e)

8) A judge should not exercise his/her duties with respect to any matter in which a near relative by blood or marriage is a party, has an interest, or appears as counsel. A judge shall not participate in any matter in which the judge has a significant financial interest or in which the judge previously acted as counsel

SCR 60.04(4)
In re Laatsch
2007 WI 20, ¶ 9
299 Wis. 2d 144

a. A judge cannot act in cases where a current private practice client, niece or nephew, that is, anyone within a third degree of kinship, is a litigant

990.001(16)

b. "Third degree of kinship" means closer than a cousin

Wis Judicial Comm. v. Ziegler, 2008 WI 47, ¶ 6
309 Wis. 2d 253

c. A judge must recuse him or herself from presiding in a case in which the judge's spouse is a director of a party to the proceeding

SCR 60.04(2)(c)

9) A judge shall not exercise the power of appointment for personal, financial, or partisan advantage

NOTE:

The section of the old Code of Judicial Ethics that this section replaces has been interpreted by the Wisconsin Judicial Commission to mean that appointing a near relative as your clerk <u>is a violation</u>

SCR 60.04(1)(g)
State v Vanmanivong
2003 WI 41
261 Wis. 2d 202

10) A judge may not independently investigate the facts of a case but must consider only the evidence presented

a. This includes the background of a witness

Wis Judicial Comm'n v Piontek
2019 WI 51
386 Wis. 2d 703

b. This can include internet research of facts relating to a case

State v. Counihan
2020 WI 12, ¶ 49
390 Wis. 2d 172

c. A court may access its own "institutional memory," that is, its own records, whether in hard copy or electronic form

SCR 60.03(2)
In re Laatsch
2007 WI 20, ¶ 11
299 Wis. 2d 144

11) A municipal judge shall not advertise for the judge's business or the fact that he or she serves as municipal judge, such as "Yellow Pages" listing for a law practice

SCR 60.03(1)

12) A judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary

Wis Judicial Comm'n v Calvert
2018 WI 68
382 Wis. 2d 354

a. A judge that threatened litigants that police were instructed by the judge to issue citations regardless of fault if any more complaints were made between the parties violated the judge's duty to promote impartiality and confidence in the judicial integrity

Wis Judicial Comm'n v Kachinsky
2019 WI 82
387 Wis. 2d 823

b. Municipal judge's willful, prolonged, and persistent pattern of non-work-related communications and conduct toward a municipal court employee resulting in the employee feeling harassed and intimidated violated SCR 60.02 and SCR 60.03(1)

c. SCR 60.02 requires a judge in every aspect of judicial behavior to participate in establishing, maintaining, and enforcing high standards of conduct and to personally observe those standards

SCR 60.04(1)(h)
757.81(4)(b)
Wis. Judicial Comm. v. Zodrow, 2010 WI 107, 329 Wis. 2d 53

13) Disregard of any non-moving traffic violations, even if motivated to demonstrate the need for a full-time or extra clerk, is misconduct as "willful or persistent failure to perform official duties"

F. Behavior permitted by the Code of Judicial Conduct

1) A part-time municipal judge can practice law, if an attorney

2) A part-time municipal judge can be otherwise employed

SCR 60.04(6)

3) A judge may continue on a case where recusal is raised if recusal is properly waived. Parties may waive recusal as follows:

a. The judge discloses on the record the basis of the recusal and that the basis is waived

b. Parties and their lawyer (if they have one) are asked to consider outside the presence of the judge whether to waive recusal

c. No judicial participation in the considerations

d. All must agree; and

e. Agreement incorporated in the record

f. Certain conflicts may not be waived, such as cases affecting the judge's spouse or immediate family, and *never* in cases of actual bias

G. Campaign and other Political Speech

1) How the Rules of Judicial Conduct affect a judge's rights of free speech, especially as to judicial or other elections is the subject of several federal court cases. This is an evolving area of the law where judicial ethics and free speech meet. Careful examination should be made of the Code, comments and the decisions of the courts and Judicial Conduct Advisory Committee

2) Provisions of the Rules of Judicial Conduct have been found unconstitutional as violating Free Speech protections of the First Amendment

Duwe v Alexander, 490 F. Supp. 2d 968 (W.D. Wis. 2007)

a. SCR 60.04(4)(f) requiring recusal if public comments by the judge appear to commit the judge regarding issues or controversy in a proceeding before the judge

Duwe v Alexander, 490 F. Supp. 2d 968 (W.D. Wis. 2007)

b. SCR 60.06(3)(b)'s restriction on campaign statements that appear to commit the judge to a position on a matter that may appear before judge held unconstitutional as applied to a questionnaire on abortion

Siefert v Alexander, 608 F.3d 974 (7th Cir. 2010)

c. SCR 60.06(2)(b)1., regarding political party membership

3) Campaign Donations and Recusal

SCR 60.04(7)

a. Recusal is not required solely because of any endorsement or campaign contribution, including contributions by an individual or entity in a proceeding

Storms v Action Wis, Inc, 2008 WI 110, ¶ 24 314 Wis. 2d 510

b. Test: Judge must determine whether there is a factual basis or an appearance of partiality that precludes him or her acting in an impartial manner

Caperton v A.T. Massey Coal Co, 129 S. Ct. 2252, 2265 (2009)

c. Due Process: An extraordinary large or indirect campaign contribution by a litigant to a judge which may not necessarily violate any other law or rule can be denial of Due Process of Law where there is strong probability of "actual bias" and the judge fails to recuse himself/herself from the litigation

SCR 60.04(1)(b) & 60.05(1)(a)

4) While this is a changing area of Judicial Ethics, there has been the persistent guiding theme that a judge's conduct should not cast reasonable doubt of the judge's impartiality, nor should partisan interests, public clamor or fear of criticism sway a judge

SCR 60.06(2)(b)2.–4.

5) No judge shall publicly endorse or speak on behalf of a party or candidate for partisan office, nor make or solicit campaign contributions for a candidate for partisan office

   a. See Appendix 16-H for a list of partisan and non-partisan offices

3. State Code of Ethics

19.42(13)

A. Municipal Judges are subject to the State Code of Ethics—Wis. Stat. §§ 19.45 & 19.46

1) The Code covers three main areas:

   a. Private Gain

   b. Influence and Reward

   c. Conflicting Interests

2) The Code is separate from the Judicial Code of Conduct, and is administered and enforced by the state Ethics Commission or, in some cases, the Attorney General

3) See, State Ethics Commission http://ethics.wi.gov

   Two Advisory Opinions/Guidelines at pages 16-A and 16-B

B. Private Gain—Wis. Stat. § 19.45(2), (3m), (4) & (5)

19.45(2)

1) Prohibited from using public office to obtain financial gain or "anything of substantial value" for the private benefit of the judge, the judge's immediate family, or an organization affiliated with the judge

2003 WI Eth Bd. 17

2) "Substantial value" is contrasted with mere token or inconsequential value

2003 WI Eth Bd. 17

3) Substantial value" may include avoidance of financial loss

19.42(7)

4) "Immediate family" is your spouse, relatives by marriage or lineal descendants who receive 50% or more of their support from the judge or provides 50% or more of the judge's support

19.42(11)

5) "Organization" is any corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust or other legal entity but not an individual or body politic

19.42(2)

6) "Associated" means the municipal judge or a member of his or her immediate family is an officer, director or trustee or owns at least 10% of an organization or is an authorized representative or agent of an organization

   a. Membership or employment with an organization does not constitute being "associated"

19.45(4)

7) May not use or disclose information gained in course of or by reason of position as judge in any way that could result in a private gain

19.45(5)

8) May not use or attempt to use office to influence unlawful gain or benefits personally or for others

C. Influence and Reward—Wis. Stat. § 19.45(3)

1) No municipal judge may solicit or accept "anything of value" if it could reasonably be expected to influence the judge's judgment or reasonably be considered a reward

19.45(3)

2) "Anything of value" includes money, property, favor, service, payment, advance, forbearance, loan or promise of future employment

   a. Does not include compensation and expenses paid by governmental unit, hospitality extended unrelated to government business or legally reported campaign contributions

   b. Does not include gifts received on behalf of government unit

D. Conflicting Interests—Wis. Stat. § 19.46

19.46(1)(a)

1) May not take any official action substantially affecting a matter in which the judge, the judge's immediate family or an organization with which the judge is associated has a substantial interest

19.46(1)(b)

2) May not use public office to produce or assist in the production of substantial benefit to the judge, the judge's immediate family or an organization with which the judge is associated has a substantial interest

3) Note: If Code of Ethics statute applies, there is no waiver provision as found in SCR 60.04(6)

E. Financial Disclosure Statement—Wis. Stat. § 19.43

1) All municipal judges must file a statement of economic interests with the State Ethics Commission no later than April 30 each year

2) Information shall be current as of December 31 of prior year

3) If newly appointed, must file within 21 days of assuming office

4) Information and forms are available from Ethics Commission

4. Advisory Opinions

A. Opinions can be formal or informal. In all cases, the person making the request must be a judge or judicial candidate. The conduct in question must be the requester's own actual proposed conduct. The committee will not address hypothetical situations or questions about the conduct of another person

See, List of Advisory Opinions, Appendix 16-F or at https://wicourts.gov/supreme/sc_judcond.jsp

1) Informal

   a. You may call any member of the Judicial Conduct Advisory Committee and get an informal opinion. However, such an opinion does not provide you with any protection. Only formal opinions provide any level of protection. The request can be by telephone to any committee member or in writing to the chair. The chair is Hon. Bryan Keberlein, Winnebago County Circuit Court

2) The municipal court representative on this committee is:

   Hon. Christine E. Ohlis
   Mid-Moraine Municipal Court
   962 W. Paradise Dr.
   West Bend, WI 53095
   (262) 334-5700

3) Formal

   a. Commission or the Supreme Court. It can be a factor taken into account as a showing that you acted in good faith in trying to comply with the Code if you followed the opinion's ruling. Requests for formal opinions must include the specific facts for action you contemplate actually taking. It is recommended to inquire about contemplated conduct to avoid self-reporting a possible violation of the Code. It cannot be a hypothetical situation or something that has already been done. The request must be in writing, specify the facts at issue, include the questions and it must include reference to the provisions SCR Ch. 60 that you believe are relevant. It does not need to be scholarly. Write to:

      Director of State Courts
      P. O. Box 1688
      Madison, WI 53701-1688

B. Miscellaneous

Code Appendix § A.(6)

1) **Confidentiality**— Formal opinions are edited to omit the names and any other information that may tend to identify the requester or any other person. The requester gets a copy of the opinion and a limited time to comment on the opinion before it is distributed. It is possible to request non-publication

2) **Distribution**—Opinions are distributed to the requester, the Justices and the Clerk of the Supreme Court, the Chief Judge of the Court of Appeals and the Chief Judges of the administrative districts, the Director of State Courts, the State Law Library, and the State Bar of Wisconsin. An annual report will be published

Code Appendix § B

3) **Time frames**—Generally, the committee has 15 days to discuss, assign, and draft the preliminary opinion in the case. Then the committee has 10 days to respond to the preliminary draft and another 10 days for the draftee to revise and issue a final draft. Then the requester is given the draft and has 10 days to review and respond to it. The committee then has another 10 days after the comment period expires to circulate a final formal opinion. Committee members then have 5 days to vote on it

Code Appendix § B.(6)

4) **Reconsideration**—The committee or the person originally requesting the opinion can request reconsideration within 10 days of receipt of the final opinion. The committee then has 10 days to respond

Wisconsin Ethics Commission

For Judges

Officiating At A Wedding

A judge should refuse to accept a payment, even if unsolicited, for officiating at a marriage at a courthouse, regardless of the hour at which the marriage is performed. When a judge is offered a payment for officiating at a marriage at a courthouse, the judge should decline it or suggest that it be paid instead to a local charity.

When a monetary payment or honorarium is pressed upon a judge under these circumstances, the judge may accept the payment for transmittal to the appropriate county treasurer or to the director of state courts for deposit. If transmittal to the county treasurer or director of state courts is not practical, the judge may accept the payment for contribution to a charitable organization.

The Ethics Code provides no obstacle to a judge's accepting a payment for officiating at a marriage any place other than a courthouse provided the payment does not exceed a reasonable amount that a member of the clergy might receive under like circumstances and provided the payment could not reasonably be expected to influence the judge's exercise of judicial duties.

The Ethics Code does not require a judge, on his or her Statement of Economic Interest, to report a payment received for officiating at a wedding.

Wisconsin Ethics Commission

For state public officials

Officials' receipt of food, drink, favors, services, etc.

AN OFFICIAL MAY ACCEPT…

FROM ANY PERSON:

1. **ITEMS AND SERVICES MADE AVAILABLE TO THE GENERAL PUBLIC ON THE SAME TERMS.** Food, drink, transportation, lodging, items, and services at the same price, if any, charged others by a person other than a lobbyist, when each of the following applies:
   A. It is available to anyone who wants it and who meets the criteria for eligibility;
   B. The criteria are:
      i. Established and readily identifiable; and
      ii. Drawn without the purpose or effect of giving a preference to or conferring an advantage upon an agency official, legislative employee, or elective state official; and
   C. There is no offer or notice of the event, item, or service directed to an official that would confer an advantage to the official.

   WIS. STAT. §§ 13.625(2), 19.56(3)(b). 80 Op. Att'y Gen. 205, 212 (1992). *See e.g.*, 1991 Wis Eth Bd 3, 1991 Wis Eth Bd 9, 1997 Wis Eth Bd 12.

2. **EDUCATIONAL OR INFORMATIONAL MATERIALS OF UNEXCEPTIONAL VALUE.** Educational or informational materials of substantial value may only be accepted if some other exception applies, such as the state benefit exception. WIS. STAT. §§ 13.625(6t), 19.45(2); *see e.g.*, WIS. STAT. § 19.56(3)(c).

FROM A PERSON OTHER THAN A LOBBYIST/LOBBYING PRINCIPAL:

3. **ITEMS AND SERVICES UNRELATED TO PUBLIC POSITION**. Food, drink, transportation, lodging, items, and services which the recipient can clearly demonstrate are received for a reason unrelated to the recipient's holding or having held *any* public position. WIS. STAT. §§ 19.45(3m) and 19.56(3)(b).

4. **ITEMS AND SERVICES FOR WHICH THE RECIPIENT PAYS THE FULL COST**. Food, drink, transportation, lodging, items, and services if the official pays either (a) the price charged all others, if the event is open to the general public, or (b) the highest of: (i) the price charged others, (ii) the item's or service's true value, or (iii) the furnisher's cost; provided the opportunity to purchase the item itself is not a thing of value. WIS. STAT. §§ 19.45(3m) and 19.56(3)(b); 80 Op. Att'y Gen. 201, 202 (1992); 1997 Wis Eth Bd 12.

5. **EXPENSES PROVIDED BY OR TO THE STATE.** Food, drink, transportation, lodging, or payment or reimbursement of costs that the official can clearly demonstrate are provided by or on behalf of the state and primarily for the state's benefit, not for the private benefit of the official. WIS. STAT. § 19.56(3)(c). Although neither required nor conclusive, a certification of another official who can appropriately be seen as acting on the state's behalf is one possible way to support that the item received was for the state's benefit. *See e.g.*, 2007 Wis Eth Bd 1.

FROM CERTAIN PERSONS:

6. **EXPENSES FOR TALKS AND PROGRAMS.** Payment or reimbursement of actual and reasonable expenses an official incurs for presenting a talk or program about state issues if the payment or reimbursement is paid or arranged by the organizer of the event. WIS. STAT. §§ 13.625(7), 19.56(3)(a).

7. **REASONABLE COMPENSATION (ELECTED OFFICIALS ONLY).** An elected official may accept reasonable compensation for presenting a talk or program about state issues if the compensation is paid or

arranged by the organizer of the event and the person paying or arranging for the compensation is not a lobbyist or lobbying principal. WIS. STAT. §§ 13.625(7), 19.56(3)(a).

8. **ITEMS, SERVICES, AND REIMBURSEMENTS FROM A POLITICAL COMMITTEE.** Services, items, and reimbursements from a political committee if permitted and reported under campaign finance law. WIS. STAT. § 19.56(3)(d).

9. **ANYTHING OF VALUE FROM EITHER THE DEPARTMENT OF TOURISM OR THE WISCONSIN ECONOMIC DEVELOPMENT CORPORATION WHEN AUTHORIZED TO PROVIDE.** WIS. STAT. § 13.625, 19.56(3)(f).

10. **ANYTHING OF VALUE FROM A LOBBYING PRINCIPAL WHO IS A LOCAL GOVERNMENTAL UNIT (LOCAL ELECTED OR APPOINTED OFFICIALS ONLY).** A legislative or agency official who is also a local elected official may accept from a principal that is also a local governmental unit an amount not exceeding that provided to other similarly situated officials of that local governmental unit. WIS. STAT. § 13.625(6g)(a). A legislative or agency official who is also a local appointed official may accept from a principal that is also a local governmental unit a per diem or payment of actual and reasonable expenses not exceeding that provided to other similarly situated officials of that local governmental unit. WIS. STAT. § 13.625(6g)(b).

EXCEPT AS PROVIDED, AN OFFICIAL MAY NOT ACCEPT…

1. **TRANSPORTATION, TRAVELING ACCOMMODATIONS, OR COMMUNICATION SERVICES.** Discounted transportation or traveling accommodation for which the supplier would usually charge. WIS. CONST. art. XIII, § 11; WIS. STAT. § 946.11.

2. **ITEMS OR SERVICES FROM LOBBYISTS OR LOBBYING PRINCIPALS.** Food, drink, transportation, lodging, employment, or any other thing of pecuniary value from a lobbyist or lobbying principal, either directly or through an agent. WIS. STAT. § 13.625(1)-(3). Except:

   A. **CAMPAIGN CONTRIBUTIONS FROM A LOBBYIST (PARTISAN ELECTED OFFICIALS OR CANDIDATES FOR PARTISAN OFFICE ONLY).** A lobbyist may make a personal campaign contribution only between the first day authorized by law for the circulation of nomination papers as a candidate at a general or special election, and the day of that election, except that a contribution to a candidate for legislative office may be made during that period only if the legislature has concluded its final floor period and is not in special or extraordinary session. Incumbent partisan elected officials may not accept contributions from lobbyists while running for a different office during the spring election. Campaign contributions from other sources (e.g, a political action committee) may be delivered by a lobbyist at any time. WIS. STAT. § 13.625(1m).

   B. **ANYTHING OF VALUE FROM A LOBBYIST OR LOBBYING PRINCIPAL WHO IS A RELATIVE OF THE OFFICIAL OR WHO RESIDES IN THE SAME HOUSEHOLD.** A "relative" means a parent, grandparent, child, grandchild, brother, sister, parent-in-law, grandparent-in-law, brother-in-law, sister-in-law, uncle, aunt, nephew, niece, spouse, fiancé or fiancée. WIS. STAT. §§ 13.62(12g), 13.625(6).

   C. **ANYTHING OF VALUE FROM A LOBBYIST OR LOBBYING PRINCIPAL TO AN OFFICIAL WHO IS AN EMPLOYEE.** An individual who is a legislative or agency official solely because of membership on a state commission, board, council, committee, or similar body may accept anything of value from a lobbyist or a lobbying principal who employs the official, if not in excess of that customarily provided by the employer to similarly situated employees and the official receives no compensation for his or her services to the state other than a per diem or reimbursement of actual and necessary expenses incurred in the performance of his or her duties. WIS. STAT. § 13.625(6r).

   D. **ANYTHING OF VALUE FROM A LOBBYING PRINCIPAL TO AN OFFICER OR EMPLOYEE OF THE UNIVERSITY OF WISCONSIN SYSTEM FOR SERVICE ON THE GOVERNING BODY**

OF THE PRINCIPAL. In an amount not exceeding the amount provided to other members of the governing body for the same service. WIS. STAT. § 13.625(6s).

3. **TRANSPORTATION, LODGING, MEALS, FOOD, OR BEVERAGE OFFERED FOR A REASON RELATED TO HOLDING OR HAVING HELD ANY PUBLIC POSITION.** WIS. STAT. §§ 19.45(3m), 19.56(3)(b).

4. **OTHER ITEMS OR SERVICES OFFERED BECAUSE OF STATE POSITION.** No state public official may use his or her public position to obtain anything of substantial value for himself or herself, or his or her immediate family, or for an organization with which he or she is associated. WIS. STAT. § 19.45(2).

5. **REWARDS FOR OFFICIAL ACTION.** Anything of value that could reasonably be considered as a reward for the official's action or inaction. WIS. STAT. § 19.45(3).

6. **ITEMS AND SERVICES THAT COULD INFLUENCE OFFICIAL ACTION.** Anything of value that could reasonably be expected to influence the state public official's vote, official actions, or judgment. This does not prohibit a state public official from engaging in outside employment. WIS. STAT. § 19.45(3).

7. **PAYMENT FOR OFFICIATING AT A COURTHOUSE WEDDING (JUDGES ONLY).** A payment, even if unsolicited, for officiating at a marriage at a courthouse during business hours or if using access or resources not available to any resident. WIS. STAT. §§ 19.45(2), 19.56(3)(b). 2 Op. Eth Bd 58 (1978), 4 Op. Eth Bd 85, 86 (1981).

WISCONSIN SUPREME COURT RULE 60 ONE SHEET

SECTION	TOPIC
60.01	Definitions.
60.02	Integrity/independence of judiciary (general).
60.03	AVOID IMPROPRIETY/APPEARANCE OF IMPROPRIETY IN JUDGE'S ACTIVITIES
60.03(1)	Respect/comply with the law (act in manner promoting public integrity / 1st amendment balance).
60.03(2)	Relationships cannot influence judgment/ use/misuse of prestige of judicial office (letters of recommendation/reference, acting as a witness).
60.03(3)	Cannot be a member of organization practicing invidious discrimination.
60.04	JUDICIAL DUTIES
60.04(1)(a)	Duty to sit (shall hear and decide matters assigned judge unless recused, disqualified or substituted).
60.04(1)(b)	Maintain professional competence/not be swayed by public clamor.
60.04(1)(c)	Require order and decorum in proceedings.
60.04(1)(d)	Must be patient, dignified and courteous to others and require the same of others in judge's court.
60.04(1)(e)	Cannot act with bias/prejudice or permit others subject to control to do so.
60.04(1)(f)	Cannot allow attorneys to manifest improper bias/prejudice in court.
60.04(1)(g)	Ex parte communications (includes exceptions and independent fact investigations).
60.04(1)(h)	Prompt / efficient resolution of matters before judge.
60.04(1)(hm)	Perform duties fairly and impartially and ensure rights of all litigants (including pro ses) to be heard.
60.04(1)(j)	Improper public comment.
60.04(1)(k)	Prohibition against criticizing jurors.
60.04(1)(m)	Prohibition against disclosure of non-public information.
60.04(1)(o)	Cooperate with other judges in judicial administration.
60.04(2)	Diligently discharge of administrative responsibilities without bias/prejudice / maintain professional competence / require same of staff, avoid nepotism/favoritism.
60.04(3)	Judge's reporting requirements for ethical misconduct of other judges and attorneys.
60.04(4)	Recusal.
60.04(5)	Requirement to stay informed of household economic interests.
60.04(6)	Waiver.
60.04(7)	Effect of campaign contributions on recusal (money alone = not enough).
60.04(8)	Effect of independent communications on recusal (communication alone = not enough).
60.05	EXTRA-JUDICIAL ACTIVITIES
60.05(1)	Extrajudicial activities In general (no activities casting reasonable doubt on impartiality, demeaning office, or interfering with duty).
60.05(2)	Avocational activities (teaching, public speaking, etc.).
60.05(3)	Involvement with governmental, civic or charitable organizations.
60.05(4)	Financial activities (incl. work for business entities, prohibition for business affected with the public interest).
60.05(4)(e)	General prohibition against gifts, favors or loans (with exceptions).
60.05(5)	Limitations regarding role as fiduciary.
60.05(6)	Prohibition against acting as arbitrator/mediator (AKA neutral third person).
60.05(7)	Prohibition against practice of law.
60.05(8)	Limitations regarding compensation and reimbursement / financial reporting requirements.
60.06	POLITICAL ACTIVITIES
60.06(1)	Political activity: definitions.
60.06(1m)	Candidacy for non-judicial elective office.
60.06(2)	Partisan political membership/activities (membership, donation, solicitation, speech/endorsement, attendance at events).
60.06(3)	Campaign conduct/rhetoric (including promises and misrepresentations).
60.06(4)	Campaign contributions (solicitation/acceptance).
60.06(5)	Endorsements (solicitation/acceptance).
60.07	Applicability + distinctions for full time vs. part time judges (in Section 60.05).

Highlighted = rules may not apply or may be different for part-timers (may still depend on hours though, even if part timers – see 60.06(1g).

CHAPTER SCR 60

CODE OF JUDICIAL CONDUCT

SCR 60 Preamble.
SCR 60.01 Definitions.
SCR 60.02 A judge shall uphold the integrity and independence of the judiciary.
SCR 60.03 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
SCR 60.04 A judge shall perform the duties of judicial office impartially and diligently.
SCR 60.05 A judge shall so conduct the judge's extra−judicial activities as to minimize the risk of conflict with judicial obligations.
SCR 60.06 A judge or judicial candidate shall refrain from inappropriate political activity.
SCR 60.07 Applicability.
APPENDIX

Judicial Council Committee's Note, 1979: The following rules, called the code of judicial conduct, govern the members of the Wisconsin judiciary. These rules were originally adopted by the supreme court on November 14, 1967, effective January 1, 1968. They were amended on June 28, 1974; December 23, 1977; March 16, 1978; March 28, 1978; and November 20, 1979. The rules were originally numbered standards 1 to 16 and rules 1 to 17. They have been clarified and numbered SCR 60.001 to 60.19 for uniformity and convenience.

Note: SCR Chapter 60 was amended January 16, 1985; April 29, 1985; November 17, 1994. SCR Chapter 60 was repealed and recreated July 1, 1996, amended 12−20−96, eff. January 1, 1997 and modified July 7, 1997; amended April 6, 2001; November 14, 2001; April 1, 2002; January 1, 2005; January 1, 2007; July 7, 2010; July 1, 2010; July 1, 2014; February 25, 2019.

Note: SCR 60 Preamble. Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all provisions of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

Note: The rules of the Code of Judicial Conduct are authoritative. The Commentary, has three varying functions: 1) to elaborate a standard in the rules; 2) to set forth policy bases for the rules; or 3) by explanation and example, to provide guidance with respect to the purpose and meaning of the rules. The Commentary is not intended as a statement of additional rules.

Note: When the text of a rule uses "shall," "shall not" or "may not," it is intended to impose binding obligations the violation of which can result in disciplinary action. For a judge's conduct to constitute a violation of a rule, the judge must have known or reasonably should have known the facts giving rise to the violation.

Note: The use of "should" or "should not" in the rules is intended to encourage or discourage specific conduct and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

Note: The provisions of the Code of Judicial Conduct are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

Note: The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers or litigants for mere tactical advantage in a proceeding.

Note: The provisions of the Code are intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system. *See* ABA Standards Relating to Judicial Discipline and Disability Retirement.

Note: Because it is not possible to address every conceivable conduct of a judge that might erode public confidence in the integrity, independence and impartiality of the judiciary, some of the binding rules of the Code are cast in general terms setting forth the principles their specific provisions are intended to foster. *See*, for example, SCR 60.02, 60.03 (1) and 60.05 (1) and accompanying Comments. Those rules provide a touchstone against which judicial conduct, actual or contemplated, is to be measured. Care must be taken that the Code's necessarily general rules do not constitute a trap for the unwary judge or a weapon to be wielded unscrupulously against a judge.

Note: The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

SCR 60.01 Definitions. In this chapter:

(1) "Appropriate authority" means the chief judge of an offending judge's district, the director of state courts, the judicial commission, and the office of lawyer regulation.

(2) "Candidate" means a person seeking selection for or retention of a judicial office by means of election or appointment who makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support.

(3) "Court personnel" means staff, court officials and others subject to the judge's direction and control, including judicial assistants, reporters, law clerks, and bailiffs. "Court personnel" does not include the lawyers in a judicial proceeding.

(4) "*De minimis*" means an insignificant interest that does not raise reasonable question as to a judge's impartiality or use of the prestige of the office.

(5) "Economic interest" means ownership of a more than *de minimis* legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that none of the following is an economic interest:

(a) Ownership of an interest in a mutual or common investment fund that holds securities, unless the judge participates in the management of the fund or unless a proceeding pending or impending before the judge could substantially affect the value of the interest.

(b) Service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge's spouse or child as an officer, director, advisor or other active participant in any organization.

(c) A deposit in a financial institution, the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, unless a proceeding pending or impending before the judge could substantially affect the value of the interest.

(d) Ownership of government securities, unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

(6) "Fiduciary" means a personal representative, trustee, attorney−in−fact, conservator or guardian.

(7) "Gift" means the payment or receipt of anything of value without valuable consideration.

(7m) "Impartiality" means the absence of bias or prejudice in favor of, or against, particular parties, or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

(8) "Judge" means a justice of the supreme court, a judge of the court of appeals, a judge of the circuit court, a reserve judge, a municipal judge, a court commissioner, and anyone, whether or

not a lawyer, who is an officer of the judicial system and who performs judicial functions.

(8m) "Judge−elect" means a person who has been elected or appointed to judicial office but has not yet taken office.

(9) "Knowingly" or "knowledge" means actual knowledge of the fact in question, which may be inferred from the circumstances.

(10) "Law" means court rules, statutes, constitutional provisions and legal conclusions in published court decisions.

(11) "Member of the judge's family" means the judge's spouse, child, grandchild, parent, grandparent and any other relative or person with whom the judge maintains a close familial relationship.

(12) "Member of the judge's family residing in the judge's household" means a relative of the judge by blood or marriage or a person treated by the judge as a member of the judge's family who resides in the judge's household.

(13) "Nonpublic information" means information that, by law, is not available to the public, including information that is sealed by statute or court order, impounded or communicated in camera, offered in grand jury proceedings or contained in presentencing reports, dependency case reports or psychiatric reports.

(14) "Part−time municipal judge" or "part−time court commissioner" means a judge or court commissioner who serves repeatedly on a part−time basis by election or under a continuing appointment.

(15) "Require" means the exercise of reasonable direction and control over the conduct of those persons subject to the directions and control.

(16) "Third degree of kinship" means a person who is related as a great−grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great−grandchild, nephew or niece.

History: Sup. Ct. Order No. 95−05, 202 Wis. 2d xvii (1997); Sup. Ct. Order No. 01−12, 2001 WI 120, 247 Wis. 2d xiii; Sup. Ct. Order No. 00−07, 2004 WI 134, 274 Wis. 2d xvii.

SCR 60.02 A judge shall uphold the integrity and independence of the judiciary. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. This chapter applies to every aspect of judicial behavior except purely legal decisions. Legal decisions made in the course of judicial duty on the record are subject solely to judicial review.

Comment: Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of the judges. The integrity and independence of judges depend in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this chapter. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this chapter diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

The role of the judicial conduct organization like the Wisconsin Judicial Commission is not that of an appellate court. Wis. Admin. Code Sec. JC 3.06 (May 1979) states as follows: "**Commission not to act as appellate court**. The commission may not function as an appellate court to review the decisions of a court or judge or to exercise superintending or administrative control over determinations of courts or judges." It is important to remember this concept as one interprets this chapter, particularly in light of the practice of some groups or individuals to encourage dissatisfied litigants to file simultaneous appeals and judicial conduct complaints.

History: Sup. Ct. Order No. 95−05, 202 Wis. 2d xvii (1997), modified 210 Wis. 2d xvii (1998).

SCR 60.03 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities. **(1)** A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Comment: Public confidence in the judiciary is eroded by irresponsible or improper conduct of judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the chapter. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this chapter. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

Restrictions on the personal conduct of judges cannot, however, be so onerous as to deprive them of fundamental freedoms enjoyed by other citizens. Care must be taken to achieve a balance between the need to maintain the integrity and dignity of the judiciary and the right of judges to conduct their personal lives in accordance with the dictates of their individual consciences.

In striking this balance the following factors should be considered:

(a) the degree to which the personal conduct is public or private;

(b) the degree to which the personal conduct is a protected individual right;

(c) the potential for the personal conduct to directly harm or offend others;

(d) the degree to which the personal conduct is indicative of bias or prejudice on the part of the judge;

(e) the degree to which the personal conduct is indicative of the judge's lack of respect for the public or the judicial/legal system.

See also Comment to sub. (3).

(2) A judge may not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge may not lend the prestige of judicial office to advance the private interests of the judge or of others or convey or permit others to convey the impression that they are in a special position to influence the judge. A judge may not testify voluntarily as a character witness.

Comment: Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. As to the acceptance of awards, *see* SCR 60.05 (4) (e) 1.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. Such a letter should not be written if the person who is the subject of the letter is or is likely to be a litigant engaged in a contested proceeding before the court. However, a judge must not initiate the communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons information for the record in response to a formal request.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration and by responding to official inquiries concerning a person being considered for a judgeship.

A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross−examining the judge. A judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

(3) A judge may not hold membership in any organization that practices invidious discrimination on the basis of race, gender, religion or national origin.

Comment: Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited.

Whether an organization, club or group is "private" depends on a review of the following factors: 1) size; 2) purpose; 3) policies; 4) selectivity in membership; 5) congeniality; and 6) whether others are excluded from critical aspects of the relationship. An organization that is not "private" is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise be admitted to membership. *See*, *New York State Club Ass'n. Inc. v. City of New York*, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537 (1987), 95 L. Ed. 2d 474; *Roberts v. United States Jaycees*, 468 U.S. 609 (1984). Organizations dedicated to the preservation of religious, fraternal, sororal, spiritual, charitable, civic or cultural values which do not stigmatize any excluded persons as inferior and therefore unworthy of membership are not considered to discriminate invidiously.

Public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary.

When a judge has reason to believe that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under sub. (3) or under SCR 60.03, the judge may, in lieu of resigning, make immediate efforts to

have the organization discontinue its invidiously discriminatory practices but must suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible, the judge must resign from the organization.

History: Sup. Ct. Order No. 95−05, 202 Wis. 2d xvii (1997).

LRB Note: A judge's threats against the chief judge in an attempt to pressure the chief judge to decide an administrative dispute on the basis of political considerations and family relationships, rather than the merits, were, in effect, attempts to induce the chief judge to violate sub. (2). Wisconsin Judicial Commission v. Crawford, 2001 WI 96, 245 Wis. 2d 373, 629 N.W.2d 1.

SCR 60.04 A judge shall perform the duties of judicial office impartially and diligently. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law.

(1) In the performance of the duties under this section, the following apply to adjudicative responsibilities:

(a) A judge shall hear and decide matters assigned to the judge, except those in which recusal is required under sub. (4) or disqualification is required under section 757.19 of the statutes and except when judge substitution is requested and granted.

(b) A judge shall be faithful to the law and maintain professional competence in it. A judge may not be swayed by partisan interests, public clamor or fear of criticism.

(c) A judge shall require order and decorum in proceedings before the judge.

(d) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity and shall require similar conduct of lawyers, staff, court officials and others subject to the judge's direction and control. During trials and hearings, a judge shall act so that the judge's attitude, manner or tone toward counsel or witnesses does not prevent the proper presentation of the cause or the ascertainment of the truth. A judge may properly intervene if the judge considers it necessary to clarify a point or expedite the proceedings.

Comment: The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

In respect to sub. (c), by order of June 4, 1996, the Supreme Court adopted Standards of Courtesy and Decorum for the Courts of Wisconsin, chapter 62 of the Supreme Court Rules.

(e) A judge shall perform judicial duties without bias or prejudice. A judge may not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice, including bias or prejudice based upon race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, and may not knowingly permit staff, court officials and others subject to the judge's direction and control to do so.

Comment: A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceedings, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

(f) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status against parties, witnesses, counsel or others. This subsection does not preclude legitimate advocacy when race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status or other similar factors are issues in the proceeding.

(g) A judge may not initiate, permit, engage in or consider ex parte communications concerning a pending or impending action or proceeding except that:

1. A judge may initiate, permit, engage in or consider ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits if all of the following conditions are met:

a. The judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication.

b. When the ex parte communication may affect the substance of the action or proceeding, the judge promptly notifies all of the other parties of the substance of the ex parte communication and allows each party an opportunity to respond.

2. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond.

3. A judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities.

4. A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

5. A judge may initiate, permit, engage in or consider ex parte communications when expressly authorized by law.

6. A judge may initiate, permit, engage in or consider ex parte communications knowingly waived by a participant when the judge is assigned to a therapeutic, treatment or problem−solving docket in which the judge must assume a more interactive role with participants, treatment providers, probation officers, social workers, prosecutors, defense counsel, and others.

Comment: The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by SCR 60.04 (1) (g), it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief *amicus curiae*.

Certain ex parte communication is approved by SCR 60.04 (1) (g) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte communication and allow it only if all the criteria stated in SCR 60.04 (1) (g) are clearly met. A judge must disclose to all parties all ex parte communications described in SCR 60.04 (1) (g) 1. and 2. regarding a proceeding pending or impending before the judge.

A judge must not independently investigate facts in a case and must consider only the evidence presented.

A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

A judge should not accept trial briefs that are not exchanged with adversary parties unless all parties agree otherwise in advance of submission of the briefs.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that SCR 60.04 (1) (g) is not violated through law clerks or other personnel on the judge's staff.

If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

The prohibition of a lawyer's ex parte communication with a judge and others is set forth in SCR 20:3.5.

(h) A judge shall dispose of all judicial matters promptly and efficiently.

Comment: In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.

(hm) A judge shall uphold and apply the law and shall perform all duties of judicial office fairly and impartially. A judge shall also afford to every person who has a legal interest in a proceeding, or to that person's lawyer, the right to be heard according to the law. A judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of all litigants, including self−represented litigants, to be fairly heard.

Comment (2014): A judge may exercise discretion consistent with the law and court rules to help ensure that all litigants are fairly heard. A judge's responsibility to promote access to justice, combined with the growth in litigation involving self−represented litigants, may warrant more frequent exercise of such discretion using techniques that enhance the process of reaching a fair determination in the case. Although the appropriate scope of such discretion and how it is exercised will vary with the circumstances of each case, a judge's exercise of such discretion will not generally raise a reasonable question about the judge's impartiality. Reasonable steps that a judge may take in the exercise of such discretion include, but are not limited to, the following:

1. Construe pleadings to facilitate consideration of the issues raised.
2. Provide information or explanation about the proceedings.
3. Explain legal concepts in everyday language.
4. Ask neutral questions to elicit or clarify information.
5. Modify the traditional order of taking evidence.
6. Permit narrative testimony.
7. Allow litigants to adopt their pleadings as their sworn testimony.
8. Refer litigants to any resources available to assist in the preparation of the case or enforcement and compliance with any order.
9. Inform litigants what will be happening next in the case and what is expected of them.

Note: Sup. Ct. Order No. 13−14 states that "the Comment to SCR 60.04 (1) (hm) is not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule."

(j) A judge may not, while a proceeding is pending or impending in any court, make any public comment that may reasonably be expected to affect the outcome or impair the fairness of the proceeding. The judge shall require court personnel subject to the judge's direction and control to similarly abstain from comment. This subsection does not prohibit a judge from making public statements in the course of his or her official duties or from explaining for public information the procedures of the court. This paragraph does not apply to proceedings in which the judge is a litigant in a personal capacity.

Comment: The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This paragraph does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of *mandamus* where the judge is a litigant in an official capacity, the judge must not comment publicly.

(k) A judge may not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding but may express appreciation to jurors for their service to the judicial system and the community.

Comment: Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

(m) A judge may not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

(o) A judge shall cooperate with other judges as members of a common judicial system to promote the satisfactory administration of justice.

(2) In the performance of the duties under this section, the following apply to administrative responsibilities:

(a) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(b) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(c) A judge may not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge may not approve compensation of appointees beyond the fair value of services rendered.

Comment: Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers and guardians, and personnel such as clerks, judicial assistants and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by SCR 60.04 (2) (c).

(3) In the performance of the duties under this section the following apply to disciplinary responsibilities:

(a) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this chapter should take appropriate action. A judge having personal knowledge that another judge has committed a violation of this chapter that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.

(b) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the rules of professional conduct for attorneys should take appropriate action. A judge having personal knowledge that a lawyer has committed a violation of the rules of professional conduct for attorneys that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority. This paragraph does not require a judge to report conduct disclosed through a judge's participation in a group to assist ill or disabled judges or lawyers when such information is acquired in the course of assisting an ill or disabled judge or lawyer.

(c) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted under par. (a) or (b) are part of a judge's judicial duties and shall be absolutely privileged and no civil action predicated on those acts may be instituted against the judge.

Comment: Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to an appropriate authority or other agency or body.

(4) Except as provided in sub. (6) for waiver, a judge shall recuse himself or herself in a proceeding when the facts and circumstances the judge knows or reasonably should know establish one of the following or when reasonable, well−informed persons knowledgeable about judicial ethics standards and the justice system and aware of the facts and circumstances the judge knows or reasonably should know would reasonably question the judge's ability to be impartial:

Comment: Under this rule, a judge must recuse himself or herself whenever the facts and circumstances the judge knows or reasonably should know raise reasonable question of the judge's ability to act impartially, regardless of whether any of the specific rules in SCR 60.04 (4) applies. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be required to recuse himself or herself from any matters in which that law firm appeared, unless the recusal was waived by the parties after disclosure by the judge.

Section 757.19 of the statutes sets forth the circumstances under which a judge is required by law to disqualify himself or herself from any civil or criminal action or proceeding and establishes the procedures for disqualification and waiver.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of recusal, even if the judge believes there is no real basis for recusal.

By decisional law, the rule of necessity may override the rule of recusal. For example, a judge might be required to participate in judicial review of a judicial salary statute or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible recusal and use reasonable efforts to transfer the matter to another judge as soon as practicable.

(a) The judge has a personal bias or prejudice concerning a party or a party's lawyer or personal knowledge of disputed evidentiary facts concerning the proceeding.

Comment: As a general matter, for recusal to be required under this provision, the personal bias or prejudice for or against a party or the personal knowledge of disputed facts must come from an extrajudicial source. A bias or prejudice requiring recusal most often arises from a prior personal relationship but may arise from strong personal feelings about the alleged conduct of a party. If a judge's personal bias or prejudice concerning a party's lawyer is of such a degree as to be likely to transfer to the party, the judge's recusal is required under this provision.

(b) The judge of an appellate court previously handled the action or proceeding as judge of another court.

(c) The judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning the matter.

Comment: A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of SCR 60.04 (4) (d); a judge formerly employed by a government agency, however, should recuse himself or herself in a proceeding if the judge's impartiality reasonably may be questioned because of such association.

(d) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse or minor child wherever residing, or any other member of the judge's family residing in the judge's household has an economic interest in the subject matter in con-

troversy or in a party to the proceeding or has any other more than *de minimis* interest that could be substantially affected by the proceeding.

Comment: A financial interest requiring recusal does not occur solely because the judge is a member of a political or taxing body that is a party or is a ratepayer to a party. The test then remains whether the judge's interest as a taxpayer or ratepayer could be substantially affected by the outcome.

(e) The judge or the judge's spouse, or a person within the third degree of kinship to either of them, or the spouse of such a person meets one of the following criteria:

1. Is a party to the proceeding or an officer, director or trustee of a party.

2. Is acting as a lawyer in the proceeding.

3. Is known by the judge to have a more than *de minimis* interest that could be substantially affected by the proceeding.

4. Is to the judge's knowledge likely to be a material witness in the proceeding.

(f) The judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to any of the following:

1. An issue in the proceeding.

2. The controversy in the proceeding.

Comment: The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself require the judge's recusal. Under appropriate circumstances, the fact that the judge's impartiality may reasonably be questioned or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" may require the judge's recusal.

Recusal is not required under this provision if the judge determines on the record that a subpoena purporting to make his or her relative a witness is false, sham or frivolous.

(5) A judge shall keep informed of the judge's own personal and fiduciary economic interests and make a reasonable effort to keep informed of the personal economic interests of the judge's spouse and minor children residing in the judge's household, having due regard for the confidentiality of the spouse's business.

(6) A judge required to recuse himself or herself under sub. (4) may disclose on the record the basis of the judge's recusal and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive recusal. If, following disclosure of any basis for recusal other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be required to recuse himself or herself and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

Comment: A waiver procedure provides the parties an opportunity to proceed without delay if they wish to waive the recusal. To assure that consideration of the question of waiver is made independently of the judge, a judge must not solicit, seek or hear comments on a possible waiver of the recusal unless the lawyers jointly propose a waiver after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the waiver agreement.

(7) EFFECT OF CAMPAIGN CONTRIBUTIONS. A judge shall not be required to recuse himself or herself in a proceeding based solely on any endorsement or the judge's campaign committee's receipt of a lawful campaign contribution, including a campaign contribution from an individual or entity involved in the proceeding.

Comment, July 2010: Wisconsin vigorously debated an elective judiciary during the formation and adoption of the Wisconsin Constitution in 1848. An elective judiciary was selected and has been part of the Wisconsin democratic tradition for more than 160 years.

Campaign contributions to judicial candidates are a fundamental component of judicial elections. Since 1974 the size of contributions has been limited by state statute. The limit on individual contributions to candidates for the supreme court was reduced from $10,000 to $1,000 in 2009 Wisconsin Act 89 after the 2009 supreme court election. The legislation also reduced the limit on contributions to supreme court candidates from political action committees, from $8,625 to $1,000.

The purpose of this rule is to make clear that the receipt of a lawful campaign contribution by a judicial candidate's campaign committee does not, by itself, require the candidate to recuse himself or herself as a judge from a proceeding involving a contributor. An endorsement of the judge by a lawyer, other individual, or entity also does not, by itself, require a judge's recusal from a proceeding involving the endorser. Not every campaign contribution by a litigant or attorney creates a probability of bias that requires a judge's recusal.

Campaign contributions must be publicly reported. Disqualifying a judge from participating in a proceeding solely because the judge's campaign committee received a lawful contribution would create the impression that receipt of a contribution automatically impairs the judge's integrity. It would have the effect of discouraging "the broadest possible participation in financing campaigns by all citizens of the state" through voluntary contributions, see Wis. Stat. § 11.001, because it would deprive citizens who lawfully contribute to judicial campaigns, whether individually or through an organization, of access to the judges they help elect.

Involuntary recusal of judges has greater policy implications in the supreme court than in the circuit court and court of appeals. Litigants have a broad right to substitution of a judge in circuit court. When a judge withdraws following the filing of a substitution request, a new judge will be assigned. When a judge on the court of appeals withdraws from a case, a new judge also is assigned. When a justice of the supreme court withdraws from a case, however, the justice is not replaced. Thus, the recusal of a supreme court justice alters the number of justices reviewing a case as well as the composition of the court. These recusals affect the interests of non−litigants as well as non−contributors, inasmuch as supreme court decisions almost invariably have repercussions beyond the parties.

(8) EFFECT OF INDEPENDENT COMMUNICATIONS. A judge shall not be required to recuse himself or herself in a proceeding where such recusal would be based solely on the sponsorship of an independent expenditure or issue advocacy communication (collectively, an "independent communication") by an individual or entity involved in the proceeding or a donation to an organization that sponsors an independent communication by an individual or entity involved in the proceeding.

Comment, July 2010: Independent expenditures and issue advocacy communications are different from campaign contributions to a judge's campaign committee. Contributions are regulated by statute. They are often solicited by a judge's campaign committee, and they must be accepted by the judge's campaign committee. Contributions that are accepted may be returned. By contrast, neither a judge nor the judge's campaign committee has any control of an independent expenditure or issue advocacy communication because these expenditures or communications must be completely independent of the judge's campaign, as required by law, to retain their First Amendment protection.

A judge is not required to recuse himself or herself from a proceeding solely because an individual or entity involved in the proceeding has sponsored or donated to an independent communication. Any other result would permit the sponsor of an independent communication to dictate a judge's non−participation in a case, by sponsoring an independent communication. Automatically disqualifying a judge because of an independent communication would disrupt the judge's official duties and also have a chilling effect on protected speech.

History: Sup. Ct. Order No. 95−05, 202 Wis. 2d xvii (1997), modified 210 Wis. 2d xvii (1998); Sup. Ct. Order No. 00−07, 2004 WI 134, 274 Wis. 2d xvii; Sup. Ct. Order Nos. 08−16, 08−25, 09−10, and 09−11, 2010 WI 73, filed and eff. 7−7−10; Sup. Ct. Order No. 11−09, 2012 WI 56, filed 5−22−12, eff. 7−1−12; Sup. Ct. Order No. 13−14, 2014 WI 49, filed and eff. 7−1−14.

LRB note: Sub. (4) (e) 1., requires a judge to recuse himself or herself from presiding in a case in which the judge's spouse is a director of a party to the proceeding. The fact that allegations of misconduct were made during an election does not mean that the allegations may be given short shrift. Although a judge may commit a "willful" violation constituting judicial misconduct when the judge has no actual knowledge that his or her conduct is prohibited by the code of judicial conduct, the judge's actual knowledge, or lack thereof, of the code is relevant to the issue of discipline. Wisconsin Judicial Commission v. Ziegler, 2008 WI 47, 309 Wis. 2d 253, 750 N.W.2d 710, 07−2066.

SCR 60.05 A judge shall so conduct the judge's extra−judicial activities as to minimize the risk of conflict with judicial obligations. (1) EXTRA−JUDICIAL ACTIVITIES IN GENERAL. A judge shall conduct all of the judge's extra−judicial activities so that they do none of the following:

(a) Cast reasonable doubt on the judge's capacity to act impartially as a judge.

(b) Demean the judicial office.

(c) Interfere with the proper performance of judicial duties.

Comment: Complete separation of a judge from extra−judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. *See* SCR 60.03 (1) and (3).

(2) AVOCATIONAL ACTIVITIES. A judge may speak, write, lecture, teach and participate in other extra−judicial activities concerning the law, the legal system, the administration of justice and nonlegal subjects, subject to the requirements of this chapter.

Comment: As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

In this and other subsections of SCR 60.05, the phrase "subject to the requirements of this chapter" is used, notably in connection with a judge's governmental, civic or charitable activities. This phrase is included to remind judges that the use of permis-

sive language in various provisions of the chapter does not relieve a judge from the other requirements of the chapter that apply to the specific conduct.

(3) GOVERNMENTAL, CIVIC OR CHARITABLE ACTIVITIES. (a) A judge may not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting *pro se* in a matter involving the judge or the judge's interests.

Comment: *See* SCR 60.03 (2) regarding the obligation to avoid improper influence.

As provided in SCR 60.07 (2), sub. (3) (a) does not apply to a judge serving on a part−time basis.

(b) A judge may not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. A judge may represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities and may serve on a governmental or private committee, commission or board concerned with historical, educational or cultural activities. A judge may serve in any branch of military reserves and be called to duty in the active military.

Comment: A judge is prohibited from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by par. (c). The appropriateness of accepting extra−judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra−judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

This provision does not govern a judge's service in a non−governmental position. *See* par. (c) permitting service by a judge with organizations devoted to the improvement of the law, the legal system or the administration of justice and with educational, religious, charitable, fraternal or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited, but service on the board of a public law school or any private educational institution would generally be permitted under par. (c).

As provided in SCR 60.07 (2), sub. (3) (b) does not apply to a judge serving on a part−time basis.

(c) A judge may serve as an officer, director, trustee or nonlegal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of a nonprofit educational, religious, charitable, fraternal, sororal or civic organization, subject to the following limitations and the other requirements of this chapter:

Comment: This provision does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system or the administration of justice; *see* par. (b).

See Comment to SCR 60.05 (2) regarding use of the phrase "subject to the following limitations and the other requirements of this chapter." As an example of the meaning of the phrase, a judge permitted by this provision to serve on the board of a fraternal institution may be prohibited from such service by SCR 60.03 (1) or (3) or 60.05 (1) if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of SCR 60.05 in addition to sub. (3). For example, a judge is prohibited by sub. (7) from serving as a legal advisor to a civic or charitable organization.

1. A judge may not serve as an officer, director, trustee or nonlegal advisor if it is likely that the organization will do any of the following:

a. Engage in proceedings that would ordinarily come before the judge.

b. Engage frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

Comment: The changing nature of some organizations and of their relationship to the law makes it necessary for a judge to regularly re−examine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

As provided in SCR 60.07 (2), par. (c) 1. b. does not apply to a judge serving on a part−time basis.

2. A judge, in any capacity:

a. May assist the organization in planning fund−raising activities and may participate in the management and investment of the organization's funds but may not personally participate in the solicitation of funds or other fund−raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

Comment: As provided in SCR 60.07 (2), par. (c) 2. a. does not apply to a judge serving on a part−time basis.

b. May make recommendations to public and private fund−granting organizations on projects and programs concerning the law, the legal system or the administration of justice;

c. May not personally participate in membership solicitation if the solicitation reasonably may be perceived as coercive or, except as permitted in subd. 2. a., if the membership solicitation is essentially a fund−raising mechanism; and

Comment: As provided in SCR 60.07 (2), par. (c) 2. c. does not apply to a judge serving on a part−time basis.

d. May not use or permit the use of the prestige of judicial office for fund raising or membership solicitation.

Comment: A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system or the administration of justice or a nonprofit educational, religious, charitable, fraternal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund−raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing or by telephone except in the following cases: 1) a judge may solicit for funds or memberships other judges over whom the judge does not exercise supervisory or appellate authority, 2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves, and 3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

SCR 60.05 should not be read as proscribing participation in *de minimis* fund−raising activities so long as a judge is careful to avoid using the prestige of the office in the activity. Thus, e.g., a judge may pass the collection basket during services at church, may ask friends and neighbors to buy tickets to a pancake breakfast for a local neighborhood center and may cook the pancakes at the event but may not personally ask attorneys and others who are likely to appear before the judge to buy tickets to it. Similarly, SCR 60.05 should not be read to prohibit judges from soliciting memberships for religious purposes, but judges must nevertheless avoid using the prestige of the office for the purpose of such solicitation.

Use of an organization letterhead for fund raising or membership solicitation does not violate subd. 2 provided the letterhead lists only the judge's name and office or other position in the organization and, if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

A judge may be a speaker or guest of honor at an organization's fund−raising event provided there is no advertising of the judge as speaker or guest of honor in order to encourage people to attend and make contributions and provided that any contributions at the event are made prior to the judge's speech or presentation as guest of honor. A judge's attendance at such event is permissible if otherwise consistent with this chapter.

(4) FINANCIAL ACTIVITIES. (a) 1. A judge may not engage in financial or business dealings that could meet any of the following conditions:

a. Reasonably be perceived to exploit the judge's judicial position.

b. Involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

Comment: As provided in SCR 60.07 (2), sub. (4) (a) 1. b. does not apply to a judge serving on a part−time basis.

2. A judge shall comply with sub. (4) (a) 1. as soon as reasonably possible and, in any event, within one year of the applicability of this chapter to the judge.

Comment: When a judge acquires in a judicial capacity information, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain. *See* SCR 60.03 (2) and 60.04 (1) (m).

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's court. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for recusal or disqualification. With respect to affiliation of relatives of a judge with law firms appearing before the judge, *see* Comment to SCR 60.04 (4) relating to recusal.

Participation by a judge in financial and business dealings is subject to the general prohibitions in SCR 60.05 (1) against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in SCR 60.03 against activities involving impropriety or the appearance of impropriety and

the prohibition in SCR 60.03 (2) against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in SCR 60.02. *See* Comment to SCR 60.05 (2) regarding use of the phrase "subject to the requirements of this chapter."

If engaged in a financial or business activity at the time this chapter becomes applicable to the judge, a judge may continue to do so for a reasonable period not to exceed one year.

(b) A judge may, subject to the requirements of this chapter, hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity.

Comment: Subject to the requirements of this chapter, a judge may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge's family, and investments owned jointly by the judge and members of the judge's family.

As provided in SCR 60.07 (2), sub. (4) (b) does not apply to a judge serving on a part−time basis.

(c) 1. Except as provided in par. 2., a judge may serve as an officer, director, manager, general partner, advisor or employee of a business entity if that service does not conflict with the judge's judicial duties, create the appearance of impropriety, or otherwise violate any provision of this chapter.

2. A judge may not serve as an officer, director, manager, general partner, advisor or employee of any business entity affected with a public interest, including a financial institution, insurance company, and public utility, and may not participate in or permit the judge's name to be used in connection with any business venture or commercial advertising that indicates the judge's title or affiliation with the judiciary or otherwise lends the power or prestige of office to promote a business or commercial venture.

Comment: A judge may participate in a business not affected with a public interest if that participation does not conflict with the judge's judicial duties, create the appearance of impropriety, or violate any other provision of this Code. For example, a judge may be prohibited from participation if the business entity frequently appears before a court in the jurisdiction in which the judge serves or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participation if the judge's participation would involve misuse of the prestige of office.

As provided in SCR 60.07 (2), sub. (4) (c) does not apply to a judge serving on a part−time basis.

(d) A judge shall manage the judge's investments and other financial interests so as to minimize the number of cases in which the judge's recusal or disqualification is required. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

Comment: As provided in SCR 60.07 (2), sub. (4) (d) does not apply to a judge serving on a part−time basis.

(e) A judge may not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, favor or loan from anyone except for the following:

Comment: Sub. (4) (e) does not apply to contributions to a judge's campaign for judicial office.

Because a gift, favor or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

As provided in SCR 60.07 (2), sub. (4) (e) does not apply to a judge serving on a part−time basis.

1. A gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar−related function or an activity devoted to the improvement of the law, the legal system or the administration of justice.

Comment: Acceptance of an invitation to a law−related function is governed by sub. (4) (e) 1; acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by sub. (4) (e) 8.

A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this chapter. *See* SCR 60.05 (1) (a) and 60.03 (2).

2. A gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge, provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties.

3. Ordinary social hospitality.

4. A gift from a relative.

5. A gift from a friend for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship.

Comment: A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require recusal or disqualification of the judge where recusal or disqualification would not otherwise be required. *See*, however, par. (e) 5.

6. Anything of value if the activity or occasion for which it is given is unrelated to the judge's use of the state's time, facilities, services or supplies not generally available to all citizens of this state and the judge can show by clear and convincing evidence that it was unrelated to and did not arise from the judge's holding or having held a public office.

7. A gift, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require recusal under SCR 60.04 (4).

8. A loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges.

9. A scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants.

10. Any other gift, favor or loan, only if the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge.

Comment: Unless authorized by other provisions of sub. (4) (e), sub. (4) (e) 10 prohibits judges from accepting gifts, favors or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge. *See* sec. 19.43 *et seq.*, Stats.

(5) FIDUCIARY ACTIVITIES. (a) A judge may not serve as executor, administrator or other personal representative, trustee, guardian, attorney−in−fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of his or her judicial duties.

(b) A judge may not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(c) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

(d) A judge shall comply with pars. (a) and (b) as soon as reasonably possible and, in any event, within one year of the applicability of this chapter to the judge.

Comment: A judge who is a fiduciary at the time this chapter becomes effective for the estate or person of one who is not a member of the judge's family may continue to act as such if the demands on his or her time and the possibility of a conflict of interest are not substantial and for the period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship but in no event longer than one year.

The restrictions imposed by SCR 60.05 may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of sub. (4) (d).

As provided in SCR 60.07 (2), sub. (5) does not apply to a judge serving on a part−time basis.

(6) SERVICE AS ARBITRATOR OR MEDIATOR. A judge may not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

Comment: Paragraph (6) does not prohibit a judge from participating in arbitration, mediation or settlement conference performed as part of judicial duties.

As provided in SCR 60.07 (2), sub. (6) does not apply to a judge serving on a part−time basis.

(7) PRACTICE OF LAW. A judge may not practice law. Notwithstanding this prohibition, a judge may act *pro se* and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family and represent without com-

pensation the estate of a person with whom the judge maintains a close familial relationship so long as the estate remains uncontested.

Comment: This prohibition refers to the practice of law in a representative capacity and not in a *pro se* capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or judge's family. *See* SCR 60.03 (2).

The chapter allows a judge to give legal advice to and draft legal documents for members of the judge's family, so long as the judge receives no compensation. A judge must not, however, act as an advocate for a member of the judge's family in a legal matter.

The restraint against a judge giving advice to parties in matters before the judge does not prohibit a judge from advising such parties to obtain lawyers or medical treatment and from advising such parties on similar matters unrelated to the merits of the matter before the judge.

As provided in SCR 60.07 (2), sub. (7) does not apply to a judge serving on a part−time basis.

(8) COMPENSATION, REIMBURSEMENT AND REPORTING. (a) *Compensation and Reimbursement.* A judge may receive compensation and reimbursement of expenses for the extra−judicial activities permitted by this chapter if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

1. Compensation may not exceed a reasonable amount nor may the compensation exceed what a person who is not a judge would receive for the same activity.

2. Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of that amount is compensation.

(b) *Financial reports.* Except as provided in SCR 60.07, a judge shall file with the ethics commission a timely financial report as required by section 19.43 of the statutes.

Comment: The chapter does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

See SCR 60.05 (4) (e) and sec. 19.56, Stats., regarding reporting of gifts and loans.

As provided in SCR 60.07 (2), sub. (8) does not apply to a judge serving on a part−time basis. Sub. (8) does not apply to a supplemental court commissioner authorized under SCR 75.02 (3) who has performed fewer than 40 hours of circuit court commissioner duties in the preceding calendar year.

History: Sup. Ct. Order No. 95−05, 202 Wis. 2d xvii (1997), modified 210 Wis. 2d xvii (1998); Sup. Ct. Order No. 00−12, 2001 WI 34, 242 Wis. 2d xiii, Sup. Ct. Order No. 01−12A, 2002 WI 8, 249 Wis. 2d xiii; Sup. Ct. Order No. 18−06, 2019 WI 18, filed and eff. 2−25−19.

SCR 60.06 A judge or judicial candidate shall refrain from inappropriate political activity.

Note: Because the Wisconsin judiciary is elective and nonpartisan, rules governing a judge's political and campaign activity that may be appropriate in other jurisdictions may not be responsive to the political and campaign realities in this state. Accordingly, in order that due consideration be given to the preparation and promulgation of such rules, the Supreme Court will appoint a committee composed of judges, lawyers, and public members to consult persons and entities experienced in the matter of judicial ethics as it pertains to political and campaign activity and draft for the court's consideration a comprehensive set of ethical rules in this area. After the committee files its recommendations with the court, the court will invite comment and hold a public hearing on the proposal.

Pending submission of that committee's report, the public hearing and the court's action in the matter, the court promulgates the following provisions from the Supreme Court Rules — 1994.

(1g) TERMINOLOGY. In this section, "judge" has the meaning given in SCR 60.01 (8), except that in subs. (1r), (2), and (4), "judge" does not include a court commissioner or a municipal judge who did not devote 40 or more hours to the performance of his or her official duties in the preceding calendar year.

(1m) CANDIDATE FOR OFFICE. A judge shall not become a candidate for a federal, state or local nonjudicial elective office without first resigning his or her judgeship. A judge's eligibility to serve may be governed by other rules or constitutional provisions.

Comment: Article VII, section 10 (1) of the Wisconsin Constitution provides, "No justice of the supreme court or judge of any court of record shall hold any other office of public trust, except a judicial office, during the term for which elected." See *Wagner v. Milwaukee County Election Comm'n*, 2003 WI 103, 263 Wis. 2d 709, 666 N.W.2d 816.

(2) PARTY MEMBERSHIP AND ACTIVITIES. (a) Individuals who seek election or appointment to the judiciary may have aligned themselves with a particular political party and may have engaged in partisan political activities. Wisconsin adheres to the concept of a nonpartisan judiciary. A candidate for judicial office shall not appeal to partisanship and shall avoid partisan activity in the spirit of a nonpartisan judiciary.

(b) No judge or candidate for judicial office or judge−elect may do any of the following:

1. Be a member of any political party.

2. Participate in the affairs, caucuses, promotions, platforms, endorsements, conventions, or activities of a political party or of a candidate for partisan office.

3. Make or solicit financial or other contributions in support of a political party's causes or candidates.

4. Publicly endorse or speak on behalf of its candidates or platforms.

(c) A partisan political office holder who is seeking election or appointment to judicial office or who is a judge−elect may continue to engage in partisan political activities required by his or her present position.

(d) 1. Paragraph (b) does not prohibit a judge, candidate for judicial office or judge−elect from attending, as a member of the public, a public event sponsored by a political party or candidate for partisan office, or by the campaign committee for such a candidate.

2. If attendance at an event described in subd. 1. requires the purchase of a ticket or otherwise requires the payment of money, the amount paid by the judge, candidate for judicial office, or judge−elect shall not exceed an amount necessary to defray the sponsor's cost of the event reasonably allocable to the judge's, candidate's, or judge−elect's attendance.

(e) Nothing in this subsection shall be deemed to prohibit a judge, judge−elect, or candidate for judicial office, whether standing for election or seeking an appointment, from appearing at partisan political gatherings to promote his or her own candidacy.

Comment: The rule prohibits political party membership and activities by judges, nonincumbent candidates for judicial office, and judges−elect. When one becomes a candidate for judicial office is determined by the terms of SCR 60.01 (2) which defines "candidate" as "a person seeking selection for or retention of a judicial office by means of election or appointment who makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions." The rule prohibits judicial candidates and judges−elect as well as judges from making or soliciting contributions to the party or its candidates and from publicly endorsing or speaking on behalf of partisan candidates or platforms. Although the rule contemplates the continuance of nonpartisanship on the part of Wisconsin judges and those seeking judicial office, judges are not expected to lead lives of seclusion. As members of the public and as public officeholders, judges may attend public events, even those sponsored by political parties or candidates, so long as the attendance does not constitute the kind of partisan activity prohibited by this rule. The judge, judicial candidate or judge−elect is responsible for so conducting herself or himself that her or his presence at the sponsored event is not made to appear as an endorsement or other prohibited political activity. The judge, judicial candidate, or judge−elect should also exercise care that the price of his or her ticket to any such event does not include a prohibited political contribution.

(3) CAMPAIGN CONDUCT AND RHETORIC. (a) *In general.* While holding the office of judge or while a candidate for judicial office or a judge−elect, every judge, candidate for judicial office, or judge−elect should maintain, in campaign conduct, the dignity appropriate to judicial office and the integrity and independence of the judiciary. A judge, candidate for judicial office, or judge−elect should not manifest bias or prejudice inappropriate to the judicial office. Every judge, candidate for judicial office, or judge−elect should always bear in mind the need for scrupulous adherence to the rules of fair play while engaged in a campaign for judicial office.

Comment: This subsection is new. It states a rule generally applicable to judges, candidates for judicial office, and judges−elect.

(b) *Promises and commitments.* A judge, judge−elect, or candidate for judicial office shall not make or permit or authorize others to make on his or her behalf, with respect to cases, controversies, or issues that are likely to come before the court, pledges,

promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

Comment: This section prohibits a candidate for judicial office from making statements that commit the candidate regarding cases, controversies or issues likely to come before the court. A judge or candidate for judicial office may not, while a proceeding is pending or impending in the court to which selection is sought, make any public comment that may reasonably be viewed as committing the judge, judge−elect or candidate to a particular case outcome. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. This section does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Nor does this section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This section applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection.

(c) *Misrepresentations.* A candidate for a judicial office shall not knowingly or with reckless disregard for the statement's truth or falsity misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent. A candidate for judicial office should not knowingly make representations that, although true, are misleading, or knowingly make statements that are likely to confuse the public with respect to the proper role of judges and lawyers in the American adversary system.

Comment: This subsection is new. The first paragraph is based on the August 2003 amendments to the ABA model code of conduct.

The second paragraph is aspirational. Thus, "should" is used rather than "shall." The remaining standards are mandatory and prohibit candidates from knowingly or with reckless disregard for the truth making various specific types of misrepresentations. Candidates are not responsible for misrepresentations or misleading statements made by third parties not subject to the control of the candidate, e.g., through independent expenditures by interest groups.

(4) SOLICITATION AND ACCEPTANCE OF CAMPAIGN CONTRIBUTIONS. A judge, candidate for judicial office, or judge−elect shall not personally solicit or accept campaign contributions. A candidate may, however, establish a committee to solicit and accept lawful campaign contributions. The committee is not prohibited from soliciting and accepting lawful campaign contributions from lawyers, other individuals, or entities even though the contributor may be involved in a proceeding in which the judge, candidate for judicial office, or judge−elect is likely to participate. A judge, candidate for judicial office, or judge−elect may serve on the committee but should avoid direct involvement with the committee's fundraising efforts. A judge, candidate for judicial office, or judge−elect may appear at his or her own fundraising events. When the committee solicits or accepts a contribution, a judge, candidate for judicial office, or judge−elect should be mindful of the requirements of SCR 60.03 and 60.04(4); provided, however, that the receipt of a lawful campaign contribution shall not, by itself, warrant judicial recusal.

Comment, July 2010: Under longstanding Wisconsin law, a judicial candidate may not personally solicit or accept campaign contributions. However, a judicial candidate may form and rely upon a campaign committee to solicit and accept contributions for the judicial campaign. Lawyers, other individuals, and entities are not excluded from this process merely because committee members or contributors may be involved in proceedings in which the judge is likely to participate.

The solicitation of contributions from participants in judicial proceedings is always a matter requiring close, careful attention. Campaign committees should be sensitive to the existence of pending litigation, the proximity of judicial elections, and the wording of campaign solicitations to avoid the appearance of promise or pressure.

A judge should avoid having his or her name listed on another's fundraising solicitation even when the listing is accompanied with a disclaimer that the name is not listed for fundraising purposes.

Acknowledgement by a judge or candidate for judicial office of a contribution in a courtesy thank you letter is not prohibited.

(5) SOLICITATION AND ACCEPTANCE OF ENDORSEMENTS. A judge or candidate for judicial office may solicit or accept endorsements supporting his or her election or appointment personally or through his or her committee. A judge, candidate for judicial office, or his or her committee is not prohibited from soliciting and accepting endorsements from lawyers and others. A judge or candidate for judicial office shall not knowingly personally solicit or accept endorsements from parties who have a case pending before the court to which election or appointment is sought. Nevertheless, a judge or judicial candidate may personally solicit or accept endorsements from the types of organizations that ordinarily make recommendations for selection to the office. In soliciting or accepting an endorsement, a judge or candidate for judicial office should be mindful of the requirements of SCR 60.03 and 60.04 (4).

Comment: This subsection is new. In light of the restrictions on campaign rhetoric under SCR 60.06 (3), the receiving of endorsements is an important method of informing the electorate of broad−based and presumably informed support for a particular candidacy. As with the solicitation and acceptance of campaign contributions, knowing solicitation and acceptance of endorsements from current litigants are prohibited. Candidates for judicial office may solicit and accept endorsements from entities that regularly endorse candidates, such as newspapers and trade organizations. Neither culling nor cross−checking of names on mailing lists or dockets is required.

History: Sup. Ct. Order No. 95−05, 202 Wis. 2d xvii (1997), modified 210 Wis. 2d xvii (1998); Sup. Ct. Order No. 00−07, 2004 WI 134, 274 Wis. 2d xvii; Sup. Ct. Order Nos. 08−16, 08−25, 09−10, and 09−11, 2010 WI 73, filed and eff. 7−7−10.

LRB Note: Minnesota's code of judicial conduct prohibiting judicial candidates from expressing their views on disputed legal and political issues violates the 1st Amendment right of free speech. Republican Party of Minnesota v. White, 536 U.S. 765, 153 L. Ed. 2d 694 (2002).

Case Note: Judicial candidates have a 1st amendment right to speak in support of their campaigns. States have a compelling interest in preserving public confidence in their judiciaries. When a state adopts a narrowly tailored restriction, like the one at issue in this case, providing that judicial candidates "shall not personally solicit campaign funds . . . but may establish committees of responsible persons" to raise money for election campaigns, those principles do not conflict. A state's decision to elect judges does not compel it to compromise public confidence in their integrity. The 1st amendment permits such restrictions on speech. Williams−Yulee v. Florida Bar, 575 U. S. ___, 135 S. Ct. 1656, 191 L. Ed. 2d 570 (2015).

SCR 60.07 Applicability. (1) GENERAL. Subject to sub. (2), all judges shall comply with this chapter. Candidates for judicial office and judges−elect shall comply with SCR 60.06.

(2) PART−TIME JUDICIAL SERVICE. A judge who serves on a part−time basis, including a reserve judge, a part−time municipal judge, or a part−time court commissioner, is not required to comply with the following: SCR 60.05 (3) (a), (b) and (c) 1. b., 2. a., and c., (4) (a) 1. b., (b), (c), (d) and (e), (5), (6), (7) and (8). All circuit court commissioners appointed under SCR 75.02 (1) and those supplemental court commissioners authorized under SCR 75.02 (3) who have performed 40 hours or more of circuit court commissioner duties during the preceding calendar year shall comply with SCR 60.05 (8).

Comment: Candidates for judicial office and judges−elect are subject to the requirements of SCR 60.06.

History: Sup. Ct. Order No. 95−05, 202 Wis. 2d xvii (1997), modified 210 Wis. 2d xvii (1998); Sup. Ct. Order No. 00−12, 2001 WI 34, 242 Wis. 2d xiii; Sup. Ct. Order No. 00−07, 2004 WI 134, 274 Wis. 2d xvii; Sup. Ct. Order No. 06−10, 2006 WI 130, 292 Wis. 2d xiii.

SCR CHAPTER 62

STANDARDS OF COURTESY AND DECORUM FOR THE COURTS OF WISCONSIN

SCR 62.01 Scope.

The uniform standards of courtroom courtesy and decorum in SCR 62.02, adopted to enhance the administration of justice by promoting good manners and civility among all who participate in the administration of justice in Wisconsin, are applicable to judges, court commissioners, lawyers, court personnel and the public in all Wisconsin courts. Notwithstanding SCR 20:8.4 (f), the standards under SCR 62.02 are not enforceable by the office of lawyer regulation. Conduct by a lawyer that violates SCR ch. 20 or SCR 40.15 is subject to the authority of the office of lawyer regulation.

SCR 62.02 Standards.

(1) Judges, court commissioners, lawyers, clerks and court personnel shall at all times do all of the following:

(a) Maintain a cordial and respectful demeanor and be guided by a fundamental sense of integrity and fair play in all their professional activities.

(b) Be civil in their dealings with one another and with the public and conduct all court and court-related proceedings, whether written or oral, including discovery proceedings, with civility and respect for each of the participants.

(c) Abstain from making disparaging, demeaning or sarcastic remarks or comments about one another.

(d) Abstain from any conduct that may be characterized as uncivil, abrasive, abusive, hostile or obstructive.

(e) While in court or while participating in legal proceedings, dress in a manner showing proper respect for the court, the proceedings and the law. Judges shall wear black robes while presiding on the bench except when exceptional circumstances exist.

(f) Advise clients, witnesses, jurors and others appearing in court that proper conduct and attire is expected within the courthouse and, where possible, prevent clients, witnesses or others from creating disorder or disruption.

(g) In scheduling all hearings, meetings and conferences, be considerate of the time schedules of the participants and grant reasonable extensions of time when they will not adversely affect the court calendar or clients' interests.

(h) Conduct themselves in a manner which demonstrates sensitivity to the necessity of preserving decorum and the integrity of the judicial process.

(2) Judges, court commissioners and lawyers shall be punctual in convening and appearing for all hearings, meetings and conferences and, if delayed, shall notify other participants, if possible.

(3) Lawyers shall do all of the following:

(a) Make all reasonable efforts to reach informal agreement on preliminary and procedural matters.

(b) Attempt expeditiously to reconcile differences through negotiation, without needless expense and waste of time.

(c) Abstain from pursuing or opposing discovery arbitrarily or for the purpose of harassment or undue delay.

(d) If an adversary is entitled to assistance, information or documents, provide them to the adversary without unnecessary formalities.

(e) Abstain from knowingly deceiving or misleading another lawyer or the court.

(f) Clearly identify for the court and other counsel changes that he or she has made in documents submitted to him or her by counsel or by the court.

(g) Act in good faith and honor promises and commitments to other lawyers and to the court.

(4) Adherence to standards of professionalism and courtesy, good manners and dignity is the responsibility of each judge, court commissioner, lawyer, clerk, and other personnel of the court who assist the public.

Adopted June 4, 1996. Amended November 14, 2001; January 23, 2002.

SCR 70.41 Assistance to court users; court staff guidelines.

(1) Definitions. In this rule:

(a) “Court” means an appellate, circuit, or municipal court.

(b) “Court staff” means persons under the supervision of the clerk of the supreme court and court of appeals, a clerk of circuit court, a circuit court commissioner, a register in probate, a district court administrator, a circuit court judge, or a municipal court judge.

(c) “Forms” means any of the following:

1. Forms that have been approved by the records management committee.

2. Forms that have been approved by a circuit court or municipal judge for use in that jurisdiction.

(d) “Individual”: means any person who seeks court-related information, including information needed to file, pursue, or respond to a case.

(e) “Should” is directory only, not mandatory, and connotes a duty or obligation to pursue a goal or objective.

(2) Purpose. The purpose of this rule is to assist the court in communicating with individual court users without practicing law. The rule is intended to enable court staff to provide the best service possible to individuals within the limits of the individual staff member's responsibility. The rule is not intended to restrict powers of court staff otherwise provided by statute or rule nor is it intended to eliminate the collection of applicable fees or costs. The rule is not intended to list all assistance that can be provided. The rule recognizes that the best service the court staff may provide in many proceedings is advising an individual to seek the assistance of an attorney.

(3) Impartiality. Court staff shall remain impartial and may not provide or withhold assistance for the purpose of giving one party an advantage over another.

(4) Authorized information and assistance. Court staff shall do all of the following:

(a) Provide public information contained in any of the following:

1. Dockets or calendars.

2. Case files.

3. Indexes.

4. Existing reports.

(b) Provide a copy of, or recite, any of the following:

1. Common, routinely employed state and local court rules.

2. Common, routinely employed court procedures.

3. Common, routinely employed applicable fees and costs.

(c) Advise an individual where to find statutes and rules, without advising whether a particular statute or rule is applicable.

(d) Identify and provide applicable forms and written instructions without providing advice or recommendations as to any specific course of action.

(e) Answer questions about how to complete forms, such as where to write in particular types of information, but not questions about how the individual should phrase his or her responses on the forms.

(f) Define terms commonly used in court processes.

(g) Provide phone numbers for lawyer referral services, local attorney rosters, or other assistance services, such as Internet resources, known to the court staff.

(h) Provide appropriate aids and services for individuals with disabilities to the extent required by the Americans With Disabilities Act of 1990, 42 U.S.C. 12101 et seq.

(5) Unauthorized information and assistance. Court staff may not do any of the following:

(a) Provide legal advice or recommend a specific course of action for an individual.

(b) Apply the law to the facts of a given case, or give directions regarding how an individual should respond or behave in any aspect of the legal process.

(c) Recommend whether to file a petition or other pleading.

(d) Recommend phrasing for or specific content of pleadings.

(e) Fill in a form, unless required by sub. 4 (h).

(f) Recommend specific people against whom to file petitions or other pleadings.

(g) Recommend specific types of claims or arguments to assert in pleadings or at trial.

(h) Recommend what types or amount of damages to seek or the specific individuals from whom to seek damages.

(i) Recommend specific questions to ask witnesses or litigants.

(j) Recommend specific techniques for presenting evidence in pleadings or at trial.

(k) Recommend which objections to raise regarding an opponent's pleadings or motions at trial or when and how to raise them.

(l) Recommend when or whether an individual should request or oppose an adjournment.

(m) Recommend when or whether an individual should settle a dispute.

(n) Recommend whether an individual should appeal a judge's decision.

(o) Interpret the meaning or implications of statutes or appellate court decisions as they might apply to an individual case.

(p) Perform legal research.

(q) Predict the outcome of a particular case, strategy, or action.

(6) Referral to supervisor. When a court staff member is uncertain whether the advice or information requested is authorized, the staff member should seek the assistance of a supervisor. If a supervisor is not available, the staff member should advise the individual to seek assistance from an attorney.

COMMENT

Court staff shall provide a copy of a common rule, but court staff should not attempt to apply the rule to the facts in the individual's case. Sometimes, after court staff provides a rule, an individual will ask whether or how the rule would apply, or if the rule might be applied differently, given the facts in his or her case. This calls for an interpretation of the law or rule of procedure. Court staff shall avoid offering interpretations of laws or rules.

In providing assistance regarding forms, court staff may inform individuals that some general content may be required in a pleading, such as identification of the other parties involved in the accident or a description of the facts surrounding the accident. But court staff may not tell an individual whom to identify or which particular facts might be relevant in the pleading.

Court staff should, if possible, provide or direct an individual to pamphlets or other documents that may address an individual's question and that have been prepared for general distribution to the public.

Court staff may not compute deadlines specified by statute or rule.

Court staff may not perform legal research. Court staff may refer individuals to sections of the Wisconsin supreme court rules, local court rules, or Wisconsin statutes that govern matters of routine administration, practice, or procedure and they may give definitions of common, well-defined legal terms used in those sections. However, court staff shall not interpret the meaning of statutes or rules.

The list of prohibited types of assistance set forth under sub. 70.41(5) is not comprehensive. The list is consistent with the statutory directives in ss. 757.22 and 757.30(2), stats., regarding the practice of law by judicial officers and the unauthorized practice of law.

Judicial Ethics Advisory Opinions

Release Date	Description	Answer
Mar. 13, 2019	**OPINION 19-1**: May a judge appear before the Legislature and testify on the issue of the compensation rate for criminal defense representation for the indigent when the State Public Defender’s office must contract out cases to private counsel?	Yes, with qualification
Aug. 19, 2015	**OPINION 15-1:** May a judicial officer, because of his or her own religious or personal beliefs,decline to be the “officiating person” at the marriage of two persons of the same sex? If a judicial officer cannot decline because of his or her own religious or personal beliefs to be the “officiating person” at the marriage of two persons of the same sex, may he or she decline to perform marriages at all, regardless of whether the parties seeking to be married are of the same or opposite gender?	No Yes
Feb 26, 2013	**OPINION 13-1:** May circuit court judges utilize legal research services of an attorney employed by the county who regularly practices before them?	No
May 1, 2012	**OPINION 12-1:** May a judge appoint his or her father as a supplemental court commissioner in the same county in which the judge presides?	No
Nov 29, 2011	**OPINION 11-2R:** May a judge accept an appointment to a military service academy panel?	No
Oct 18, 2011	**OPINION 11-2:** May a judge accept an appointment to a military service academy panel?	See Opinion 11-2R
Sep 22, 2011	**OPINION 11-1:** Does the Wisconsin Code of Judicial Conduct prohibit a Wisconsin Circuit Court Judge from carrying a concealed weapon in the courthouse and courtroom?	No
Aug 18, 2009	**OPINION 09-3:** Must a judge recuse himself or herself from hearing the cases in drug court of participants who were admitted based upon charges issued while that judge served as the District Attorney, and, if so may the parties waive recusal?	No No
Jan 30, 2009	**OPINION 09-2:** Does the State of Wisconsin Code of Judicial Conduct require a sitting judge to be subpoenaed to appear as a fact witness?	No
Jan 30, 2009	**OPINION 09-1:** Does a judge's participation in a "polar plunge" event with many participants and spectators "demean" his or her judicial office, within the meaning of the judicial code? [See opinion for other issue.]	No
Dec 30, 2008	**OPINION 08-2:** Is a judge required to recuse himself or herself from contested matters in which a party is represented by an attorney who was previously a member of a fraternal organization of which the judge was also a member and who, as a president of that local organization, signed the judge's daughter's application for a scholarship to an affiliated national organization, thereby verifying the legitimacy of the application? [See opinion for second issue.]	No
May 22, 2008	**OPINION 08-1:** May a judge serve as a "greeter" at an election polling place?	No
Oct 01, 2007	**OPINION 07-2:** May a Circuit Court Judge continue as a shareholder, officer, or member of the Board of Directors of a closely held corporation which, as part of its business activities, owns commercial property which it leases as office space to a law firm whose attorneys are likely to come before the judge's Court? [See opinion for second issue]	No
Jul 18, 2007	**OPINION 07-1:** May a part time municipal court judge simultaneously serve as a sheriff's deputy for the county within which the municipality lies?	No
Oct 25, 2006	**OPINION 06-2:** May a judge handle cases where the judge's son was in charge of or a part of an investigation which resulted in the issuance of citations and/or charges?	No

Release Date	Description	Answer
Oct 24, 2006	**OPINION 06-1R:** May a judge publicly express a personal opinion as to the fairness, efficacy and wisdom of the death penalty which is the subject of an advisory referendum being presented to the citizens of Wisconsin?	No, with qualification
Oct 02, 2006	**OPINION 06-1:** May a judge publicly express a personal opinion as to the fairness, efficacy and wisdom of the death penalty which is the subject of an advisory referendum being presented to the citizens of Wisconsin?	No
Aug 01, 2005	**OPINION 05-2:** May a judge serve as an election official?	No
Mar 10, 2005	**OPINION 05-1:** May a judge's image, name, and title be featured on a billboard as part of an advertising campaign by one of the University of Wisconsin System campuses?	No
Jun 15, 2004	**OPINION 04-1:** May a part-time municipal judge have an "of counsel" relationship with a law firm that has an existing "of counsel" relationship with the municipal attorney whose job responsibilities include the prosecution of municipal ordinance cases before the judge?	No
Mar 22, 2004	**OPINION 03-1:** Is a judge required, after a contested election, to recuse himself or herself from contested matters involving a former campaign manager?	Yes, for reasonable time
Mar 15, 2003	**OPINION 02-2:** May a judge lease space to a lawyer who is likely to appear before the judge? May a judge share a common employee with a lawyer who is likely to appear before the judge?	No No
Feb 21, 2003	**OPINION 02-1:** May a judge who handles juvenile matters on a rotating basis serve as a mentor to a juvenile who has been diverted out of the court system into an alternative program?	No
Sep 19, 2002	**OPINION 01-3:** May a circuit court judge serve as a panel member on a Wisconsin State Bar Fee Arbitration Panel?	No
Mar 20, 2002	**OPINION 01-2:** Does a marriage between a court reporter and an assistant district attorney require disclosure of that relationship to all litigants in all matters when the assistant district attorney appears in the court to which the court reporter is assigned?	Not in every case. Judge must exercise discretion
Jan 08, 2002	**OPINION 01-1:** May a judge serve on a County Community Correction Advisory Board?	Yes
Jan 08, 2002	**OPINION 00-5:** May a reserve judge serve as president of a civic, non-profit organization, a substantial part of whose mission is to advocate social goals through litigation and legislative action?	No
Jul 31, 2001	**OPINION 00-4:** May a judge testify at a Canadian administrative tribunal hearing on behalf of an interest group which seeks a binding administrative rule declaring that the Canadian Human Rights Act applies to the Canadian judiciary?	Yes
Jul 31, 2001	**OPINION 00-3:** Must a judge who formerly was the corporation counsel in charge of the county's child support agency recuse himself or herself in child support cases?	No, but see opinion for conditions
Jan 18, 2001	**OPINION 00-2:** May a judge sign the nominating petition of a partisan candidate for office?	Yes, with caution
Jan 18, 2001	**OPINION 00-1:** May a judge hear cases in which attorneys from the law firm in which the judge's niece practices represent litigants before the judge?	Yes, with some caution

Release Date	Description	Answer
Mar 08, 2000	**OPINION 99-5:** May a judge purchase common stock of a Wisconsin corporation that could be involved in future litigation before the court in which the judge serves?	Yes,
Oct 29, 1999	**OPINION 99-4:** May a circuit court judge serve as an appointed member of a city library board?	Yes , subject to limitations
Apr 14, 1999	**OPINION 99-2:** May a circuit court judge perform in an ecumenical Easter program?	Yes, with conditions
Apr 14, 1999	**OPINION 99-3:** May a cir. ct. judge serve on the editorial bd. of Wis. Opinions, a wkly. newspaper devoted to the publ. of the appellate opins. of the WI Sup. Ct., the WI Ct. of Appeals, U.S. Dist. Ct., U.S. Seventh Cir., WI trial cts. and news to bench and bar?	Yes, as long as name not used in promotion and no fund raising
Jan 29, 1999	**OPINION 99-1:** May a full-time municipal judge serve as a neutral third person, without pay, if appointed by a circuit court judge?	No
Nov 23, 1998	**OPINION 98-12:** Is selling fruit door-to-door to raise money for a charitable organization a de minimis activity?	Yes
Nov 23, 1998	**OPINION 98-13:** May a judge meet in chambers with a representative of a special interest group without violating the Code of Judicial Ethics?	No
Nov 18, 1998	**OPINION 98-10R:** May a judge or the judge's staff attend a holiday party given by a law firm some of whose members appear before the judge?	Yes
Sep 23, 1998	**OPINION 98-11:** May a part-time municipal judge provide services for hire in a private business as a neutral third person?	Yes
Jul 09, 1998	**OPINION 98-9:** May a full-time court commissioner serve for hire as a neutral third person?	No
Jun 09, 1998	**OPINION 98-6:** May a former judge serve both as a reserve judge and provide services for hire in a private business as a neutral third person?	Yes
May 21, 1998	**OPINION 98-8:** May judges wear their robes in church at a St. Thomas More Lawyers Society "Red Mass"?	Yes
May 08, 1998	**OPINION 98-7:** May a judge, without the use of the judge's letterhead, solicit non-lawyer friends and neighbors for contributions, ranging from $25 to $100, to a charity bicycle ride?	No
May 08, 1998	**OPINION 97-6R:** REVISED - May a former judge who currently serves as a reserve judge, use the title "judge," designation "reserve judge," or be pictured in judicial robes in advertising services for hire as a mediator or arbitrator?	No
Apr 20, 1998	**OPINION 98-5:** May a judge, as a volunteer for an organization which distributes left-over food to shelters, community meal programs and food pantries, seek donations of food from restaurants located in the courthouse and state office buildings?	No
Feb 19, 1998	**OPINION 98-4:** May a judge serve as a member of the bd of dir of a state univ ext foundation committee whose purpose is to promote development of the university's cty center and to improve the quality of student life at the center?	Yes, subject to limitations
Feb 19, 1998	**OPINION 98-1:** May a judge participate as a celebrity judge in a fund-raising event for a charitable organization?	Yes writing script, No to performing

Release Date	Description	Answer
Feb 19, 1998	**OPINION 98-2:** May a court commissioner conducting initial appearances in crim., small claims, civil traffic and forfeiture cases also act as counsel in small claims and as a prosecutor in municipal traffic and forfeiture cases that are processed through the same court?	Yes, with limitations
Feb 19, 1998	**OPINION 98-3:** May a judge participate in writing the script for and performing in a skit to raise money for a charitable organization?	No
Jan 27, 1998	**OPINION 97-7:** May a candidate for judicial office solicit campaign funds from close friends and others?	No, but see *Siefert v. Alexander*
Nov 19, 1997	**OPINION 97-5:** May a judge act as an overseer for a local union's election of officers?	No
Oct 06, 1997	**OPINION 97-1R:** May a judge sell his photographic art work for profit at a public event?	Yes
Sep 18, 1997	**OPINION 97-3:** Must a judge testify when subpoenaed?	Yes
Sep 18, 1997	**OPINION 97-4:** May a newly-elected judge lease office space to a lawyer as part of an agreement between the judge and the lawyer for the purchase of the judge's law practice?	Yes, but not more than 1 year after office
Jul 28, 1997	**OPINION 97-2:** To what extent, if any, may a full-time court commissioner assist a spouse in hosting a political fund-raising activity in their home?	Yes in non-visible activities

NOTE: For links to the full text of the opinions, see https://www.wicourts.gov/supreme/sc_judcond.jsp.

NONPARTISAN vs. PARTISAN ELECTED OFFICES IN WISCONSIN

NONPARTISAN	**PARTISAN**
STATE OFFICE	**STATE OFFICE**
- All Judicial Offices (Supreme Court, Court of Appeals, Circuit Court)	- Legislature (including Representatives in the Assembly and State Senators)
- State Superintendent of Public Instruction	- Governor
	- Lt. Governor
	- Attorney General
	- Secretary of State
	- State Treasurer
	- District Attorney
COUNTY OFFICE	**COUNTY OFFICE**
- County Executive	- County Clerk
- County Supervisor	- County Treasurer
- County Comptroller	- County Sheriff
	- County Coroner
	- Clerk of Circuit Court
	- County Register of Deeds
	- County Surveyor
MUNICIPAL OFFICE	*There are no partisan municipal elected positions.*
- Mayor	
- Alder or Alderperson	
- Town/Village Board Member	
- Municipal Clerk	
- Municipal Treasurer	
- Municipal Judge	
SCHOOL DISTRICT OFFICE (School Board)	*There are no partisan school district elected positions.*
- Board Member of School Directors - -	
- School District Officer	
There are no non-partisan federal elected positions.	**FEDERAL OFFICE**
	President and Congress

Prepared by Jeremiah Van Hecke, Wisconsin Judicial Commission. For additional information see: https://elections.wi.gov/candidates

17: MANDATORY EDUCATION

1. Requirements for Judges 17-1
2. Requirements for Municipal Court Clerks 17-1
3. Noncompliance 17-1

SCR Chapter 33 (Continuing Education for Municipal Judges) 17-A

1. Requirements for Judges

SCR 33.04(1)

A. Newly elected or appointed judges must attend the earliest Municipal Judge Orientation Institute following election or appointment

SCR 33.04(2)
SCR 33.01(2)

B. Municipal judges and reserve municipal judges must earn at least four credits each calendar year

   1) There is no credit carryover from one year to the next

SCR 33.02

C. Credit shall be awarded on the basis of each half day attendance at

   1) An Office of Judicial Education Municipal Judge Seminar
   2) Other programs approved by the Municipal Judge Education Committee at its discretion

2. Requirements for Municipal Court Clerks

755.18(1)

A. Municipal court clerks shall participate in a program of continuing education as required by the Supreme Court

SCR 33.04(3)

B. Each municipal court judge shall designate a minimum of one municipal court clerk to attend the annual Municipal Court Clerk Seminar at least once every 2 years

3. Noncompliance

SCR 33.06

A. Any municipal court judge who does not receive four judicial education credits in any calendar year will be given a notice of noncompliance, informing him or her that an extension of up to 4 months (or longer if good cause is shown) has been granted for compliance

1) Notice shall be by registered or certified mail

2) Copy of the notice is sent to the Director of State Courts and the Chief Judge of the Judicial Administrative District in which the municipal court is located

B. Any judge who has not complied after the extension has passed, shall be given a hearing by the Municipal Judge Education Committee to explain why the judge has not complied

C. If the Education Committee finds the judge has not complied, it shall refer the judge to the Wisconsin Supreme Court for action

SCR CHAPTER 33: CONTINUING EDUCATION FOR MUNICIPAL JUDGES

Table of Contents for SCR Ch. 33:

SCR 33.01 Definitions.
SCR 33.02 Credit.
SCR 33.03 Municipal judge education committee.
SCR 33.04 Mandatory education.
SCR 33.05 Credit for teaching.
SCR 33.06 Noncompliance.

NOTE.

SCR Chapter 33 was adopted by the supreme court on January 21, 1985, eff. July 1, 1985; amended November 1, 1991; October 30, 1998; July 1, 2011; January 1, 2018.

SCR 33.01 Definitions.

In this chapter:

(1) "Committee" means municipal judge education committee.

(2) "Municipal judge" means a judge elected under section 8.50 or 755.01 of the statutes or appointed under section 800.065 of the statutes.

(3) "Newly elected municipal judge" means any municipal judge who has not served 12 full months in office.

(4) "Municipal court clerk" means a court clerk appointed by a municipal judge pursuant to section 755.10 of the statutes.

History: SCR Chapter 33 was adopted by the supreme court on January 21, 1985, eff. July 1, 1985; amended November 1, 1991; October 30, 1998; July 1, 2011.

SCR 33.02 Credit. Credit shall be awarded on the basis of one credit for each half-day attendance at a required municipal judge orientation institute, a review institute or a graduate institute and, in the committee's discretion, at other programs sponsored or approved by the committee.

SCR 33.03 Municipal judge education committee. The director of judicial education shall establish a municipal judge education committee, which shall advise the judicial education office in the development of educational programs for municipal judges and municipal court personnel and assist in the enforcement of the mandatory education rule under SCR 33.04. The committee shall include at least 2 nonattorney and 2 attorney municipal judges, who shall serve terms of 2 years and may be reappointed to successive terms. The director of judicial education or his or her designee shall chair the committee and participate as a voting member.

SCR 33.04 Mandatory education.

(1) Each newly-elected or appointed municipal judge shall attend the earliest municipal judge orientation institute offered following his or her election or appointment, unless a period of extension is granted by the committee upon prior application by the municipal judge.

(2) Each municipal judge shall earn at least 4 credits in each calendar year at a municipal judge orientation institute, review institute or graduate institute developed by the judicial education office. A municipal judge who holds office for less than 5 months during any calendar year is exempt from this subsection.

(3) Each municipal judge shall designate and require a minimum of one municipal court clerk to attend the annual municipal court clerk's training seminar, developed by the judicial education office, at least once every 2 years.

History: Sup. Ct. Order No. 98-04, 221 Wis. 2d xxv (1998); Sup. Ct. Order No. 10-11, 2011 WI 23, 332 Wis. 2d xiii; Sup. Ct. Order No. 16-07, 2017 WI 68, filed 6-27-17, eff. 1-1-18.

SCR 33.05 Credit for teaching. Municipal judges who serve as faculty members at judicial education programs may be awarded credit in accordance with policies determined by the committee.

SCR 33.06 Noncompliance.

(1) If a judge fails to comply with the provisions of this chapter, the director of judicial education shall send the judge a notice of noncompliance by registered or certified mail. The notice shall specify the nature of noncompliance. Copies of the notice shall be sent to the director of state courts and the chief judge of the judicial administrative district in which the municipal judge holds office. The notice shall inform the judge that an extension is being granted for compliance. The director of judicial education may set the period of extension at up to 4 months. For good cause shown, the committee may extend further the period for compliance.

(2) If the judge has not complied with this chapter after the period of extension has passed, the director of judicial education shall refer the matter to the committee for a hearing and send the judge a notice of the hearing by registered or certified mail.

(3) If the committee finds the judge has not complied with this chapter, it shall refer the matter to the supreme court for such action as the court deems appropriate. Notice of such referral shall be sent to the director of state courts and the chief judge of the municipal judge's judicial administrative district.

CHAPTER 755

MUNICIPAL COURT

755.001 Definitions.
755.01 Option of municipality.
755.02 Term.
755.03 Oath and bond.
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755.045 Jurisdiction.
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755.06 Sessions of court.
755.09 Office, where kept.
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755.13 Books demanded by municipal clerk.
755.14 Duty of clerk on receipt of books.
755.15 Pending actions triable by court which receives books.
755.16 Continuance on vacancy; notice of trial.
755.17 Municipal court decorum and facilities.
755.18 Municipal judge and court clerk training.
755.19 Municipal court commissioners.
755.21 Collection.

755.001 Definitions. In this chapter:

(1) "Judge" means municipal judge.

(2) "Judicial administrative district" means the judicial administrative district having the largest portion of the population in the jurisdiction served by the judge.

(3) "Records" mean all of the records subject to SCR chapter 72.

History: 1977 c. 305; 2009 a. 402.

755.01 Option of municipality. (1) There is created and established in and for each city, town and village, a municipal court designated "Municipal Court for the .... (city, town or village) of .... (name of municipality)". A municipal court created under this subsection is a coequal branch of the municipal government, subject to the superintending authority of the supreme court, through the chief judge of the judicial administrative district. A court shall become operative and function after January 1, 2011, when the city council, town board, or village board adopts an ordinance or bylaw providing for the election of a judge and the operation and maintenance of the court, receives a certification from the chief judge of the judicial administrative district that the court meets the requirements under ss. 755.09, 755.10, 755.11, and 755.17, and provides written notification to the director of state courts of the adoption of the ordinance or bylaw. A permanent vacancy in the office of municipal judge shall be filled under s. 8.50 (4) (fm). Any municipal court established under this section is not a court of record. The court shall be maintained at the expense of the municipality. The municipal governing body shall determine the amount budgeted for court maintenance and operations. The budget of the municipal court shall be separate from, or contained on a separate line item from, the budget or line items of all other municipal departments, including the budget or line items of the municipal prosecuting attorney and the municipal law enforcement agency.

(2) The governing body may by ordinance or bylaw abolish the municipal court as part of a consolidation under s. 66.0229 or at the end of any term for which the judge has been elected or appointed, but only if the ordinance or bylaw abolishing the court is submitted to the appropriate filing office under s. 11.0102 (1) (c) and to the director of state courts prior to October 1 of the year preceding the end of the term for which the judge has been elected or appointed. The governing body may not abolish the municipal court while an agreement under sub. (4) is in effect.

(3) A municipality may establish as many branches of municipal court as it deems necessary.

(4) Two or more cities, towns or villages of this state may enter into an agreement under s. 66.0301 for the joint exercise of the power granted under sub. (1), except that for purposes of this subsection, any agreement under s. 66.0301 shall be effected by the enactment of identical ordinances by each affected city, town or village. Electors of each municipality entering into the agreement shall be eligible to vote for the judge of the municipal court so established. If a municipality enters into an agreement with a municipality that already has a municipal court, the municipalities may provide by ordinance or resolution that the judge for the existing municipal court shall serve as the judge for the joint court until the end of the term or until a special election is held under s. 8.50 (4) (fm). Each municipality shall adopt an ordinance or bylaw under sub. (1) prior to entering into the agreement. The contracting municipalities need not be contiguous and need not all be in the same county. Upon entering into or discontinuing such an agreement, the contracting municipalities shall each transmit a certified copy of the ordinance or bylaw effecting or discontinuing the agreement to the appropriate filing officer under s. 11.0102 (1) (c). Any court formed under this subsection, including the formation of a new court by a change in the municipalities that have entered into an agreement under s. 66.0301, shall become operative and function when the requirements under this subsection are met, the court receives a certification from the chief judge of the judicial administrative district that the court meets the requirements under ss. 755.09, 755.10, 755.11, and 755.17, and the court provides written notification to the director of state courts. Discontinuation of an agreement under this subsection shall be effective at the end of the term for which the judge has been elected or appointed but only if the ordinance or bylaw discontinuing the agreement is submitted to the appropriate filing office under s. 11.0102 (1) (c) and to the director of state courts prior to October 1 of the year preceding the end of the term for which the judge has been elected or appointed. When a municipal judge is elected under this subsection, candidates shall be nominated by filing nomination papers under s. 8.10 (6) (bm), and shall register with the filing officer specified in s. 11.0102 (1) (c).

History: 1977 c. 187 s. 94; 1977 c. 305; Stats. 1977 s. 755.01; 1985 a. 89, 304; 1987 a. 389; 1989 a. 274; 1997 a. 208; 1999 a. 150 s. 672; 1999 a. 182; 2001 a. 109; 2009 a. 402; 2015 a. 117; 2017 a. 366; 2019 a. 70.

755.02 Term. The judges shall be elected at large for a term of 4 years unless a different term, not exceeding 4 years nor less than 2 years, is provided by charter ordinance enacted under s. 66.0101. The term shall commence on May 1 of the year of the judge's election.

History: 1977 c. 187 s. 94; 1977 c. 273, 305, 447; Stats. 1977 s. 755.02; 2009 a. 402.

755.03 Oath and bond. (1) The judge shall, after election or appointment, take and file the official oath as prescribed in s. 757.02 (1) and at the same time, if required to do so by a city's, village's, or town's governing body, execute and file an official bond in an amount to be fixed by the governing body. If the governing body does not require the judge to execute and file an official bond, the governing body shall obtain a dishonesty insurance policy or other appropriate insurance policy that covers the judge, in an amount fixed by the governing body, in lieu of the bond requirement. The governing body shall pay the costs of the bond or insurance policy. No judge may act as such until he or she has complied with the requirements of sub. (2).

(2) Within 10 days after a municipal judge takes the oath, the judge shall file the oath and, if required to do so as described in

sub. (1), the official bond with the clerk of the city, town or village where the judge was elected or appointed. If the municipal judge is elected under s. 755.01 (4), the judge shall file copies of the oath and bond with each applicable municipal clerk. The judge shall file a certified copy of the oath with the office of director of state courts within the 10−day time period after the judge takes the oath.

History: 1977 c. 187 s. 94; 1977 c. 305; Stats. 1977 s. 755.03; Sup. Ct. Order, 88 Wis. 2d xiii (1979); 1983 a. 192; 1985 a. 89, 304; 2009 a. 402; 2017 a. 51; 2019 a. 113.

755.04 Salary. The governing body shall fix a salary for the judge. The salary may be increased by the governing body before the start of the 2nd or a subsequent year of service of the term of the judge, but shall not be decreased during a term. The salary of a municipal judge who is designated or appointed under s. 8.50 (4) (fm) or 800.06 shall be determined by contract between the municipality and the judge. The judge may not serve until the contract is entered into. Salaries may be paid annually or in equal installments as determined by the governing body, but no judge may be paid a salary for any time during the term during which the judge has not executed and filed his or her official bond or official oath, as required by s. 755.03.

History: 1977 c. 187 s. 94; 1977 c. 305 s. 64; Stats. 1977 s. 755.04; 1985 a. 304; 2009 a. 402.

755.045 Jurisdiction. (1) A municipal court has exclusive jurisdiction over an action in which a municipality seeks to impose forfeitures for violations of municipal ordinances of the municipality that operates the court, except as follows:

(a) If the action is transferred under s. 800.035 (5) (c) or 800.05 (3) to a court of record.

(b) If equitable relief is demanded the plaintiff shall bring the action in a court of record.

(c) Whenever the municipal court of a 1st class city in any county having a population of 750,000 or more is not in session, the circuit court has concurrent jurisdiction to hear municipal court cases.

(2) A municipal judge may issue civil warrants to enforce matters which are under the jurisdiction of the municipal court, as provided in ch. 800. Municipal judges are also authorized to issue inspection warrants under s. 66.0119.

(3) A municipal judge may order the payment of restitution for violations of ordinances that prohibit conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment or both. The judge shall use the restitution procedure under s. 800.093.

History: 1977 c. 187 s. 94; 1977 c. 305; Stats. 1977 s. 755.045; 1979 c. 32 s. 92 (17); 1985 a. 179; 1989 a. 261; 1991 a. 40; 1999 a. 150; 2009 a. 402; 2017 a. 207 s. 5.

755.05 Territorial jurisdiction. Every judge has statewide jurisdiction as authorized by this chapter and ch. 800.

History: 1977 c. 187 s. 94; 1977 c. 305 s. 64; Stats. 1977 s. 755.05; 1985 a. 89; 2009 a. 402.

755.06 Sessions of court. The municipal court shall be open daily or as determined by the judge and approved by the governing body.

History: 1977 c. 187 s. 94; Stats. 1977 s. 755.06; 1983 a. 192 s. 303 (4); 2009 a. 402.

755.09 Office, where kept. (1) The governing body of the city, village, or town shall provide the judge with an office or appropriate work space other than at a place prohibited under sub. (2).

(2) No judge may keep his or her office or hold court in any tavern, or in any room in which intoxicating liquors are sold, or in any room connecting with a tavern or room in which intoxicating liquors are sold.

History: 1977 c. 187 s. 94; 1977 c. 305 s. 64; Stats. 1977 s. 755.09; 1997 a. 27; 2009 a. 402.

755.10 Employees. (1) Except as provided in sub. (2), the judge shall in writing appoint the personnel that are authorized by the council or board. The council or board shall authorize at least one clerk for each court. Except as provided in sub. (2), the hiring, termination, hours of employment, and work responsibilities of the court personnel, when working during hours assigned to the court, shall be under the judge's authority. Their salaries shall be fixed by the council or board. The clerks shall, before entering upon the duties of their offices, take the oath provided by s. 19.01 and give a bond if required by the council or board. The cost of the bond shall be paid by the municipality. Oaths and bonds of the clerks shall be filed with the municipal clerk.

(2) In the municipal court located in the city of Milwaukee the court administrator shall in writing appoint the personnel that are authorized by the council or board. In the municipal court located in the city of Milwaukee the hiring, termination, hours of employment, and work responsibilities of the court personnel, when working during hours assigned to the court, shall be under the court administrator's authority.

History: 1977 c. 187 s. 94; Stats. 1977 s. 755.10; 1983 a. 192 s. 303 (4); 2009 a. 402; 2011 a. 260 s. 80.

755.11 Records. Every judge shall file and keep together all records in an action separate from all other records. The judge shall store all records in the office of the court clerk or in another appropriate facility designated by the council or board. Access to the records shall be restricted to court personnel except as authorized by the judge or by law. Nothing in this section is intended to restrict the ability of counsel or parties to read the records. The purchase or implementation of any electronic records management system used by the court shall be approved by the judge.

History: 1977 c. 187 s. 94; Stats. 1977 s. 755.11; 1983 a. 192 s. 303 (4); 2009 a. 402.

755.12 Delivery of books to municipal clerk. When a municipal court ceases to operate, the court records, books of account, case files, moneys and bonds belonging to the court shall be delivered to the municipal clerk within 10 days after the vacancy occurs by the person who is in possession. If the municipal court was established under s. 755.01 (4), the person shall separate the court records, books, files, moneys and bonds according to the municipalities involved and deliver them to the appropriate municipal clerk.

History: 1977 c. 187 s. 94; Stats. 1977 s. 755.12; 1985 a. 89; 1995 a. 224.

755.13 Books demanded by municipal clerk. If any materials which should be delivered to the municipal clerk under s. 755.12 are not delivered within the time specified, the municipal clerk shall demand their delivery and may by action compel delivery.

History: 1977 c. 187 ss. 94, 135; Stats. 1977 s. 755.13.

755.14 Duty of clerk on receipt of books. (1) When the municipal clerk receives the court records, books of account and case files of a municipal court which has ceased to operate, he or she shall within 10 days dispose of them as follows:

(a) Deliver them to the clerk of the circuit court of that county if the municipality in which the municipal court was located was within one county.

(b) Deliver the case files of the pending and appealable cases to the clerk of circuit court of the county where the court held office and certified copies of the court records for the past 12 months to the clerk of circuit court of every county in which the municipality lies, if the municipality in which the municipal court was located is in more than one county.

(2) For any pending or appealable cases, the bail shall be delivered along with the case file to the proper clerk of court. Any other moneys received under sub. (1) shall be delivered to the municipal treasurer as provided in s. 800.10 (2).

History: 1977 c. 187 s. 94; 1977 c. 305 s. 65; 1977 c. 449 s. 497; Stats. 1977 s. 755.14; 1979 c. 32 s. 92 (17); 1981 c. 317 s. 2202; 1993 a. 246; 1995 a. 224.

755.15 Pending actions triable by court which receives books. When any action is pending before a judge at the time his or her office becomes vacant and his or her books and

records have been delivered to the circuit court, it may try the action and enter judgment as though the action was begun before it.

History: 1977 c. 187 s. 94; 1977 c. 305 s. 64; 1977 c. 449 s. 497; Stats. 1977 s. 755.15; 2009 a. 402.

755.16 Continuance on vacancy; notice of trial. All actions before any judge undetermined or appealable when his or her office becomes vacant are continued until the expiration of 10 days from the time when his or her books and records were delivered to the circuit court. The court shall give 3 days' notice to the parties to the action.

History: 1977 c. 187 s. 94; 1977 c. 305 s. 64; 1977 c. 449 s. 497; Stats. 1977 s. 755.16; 2009 a. 402.

755.17 Municipal court decorum and facilities. **(1)** A municipal judge shall wear a black robe while presiding in a municipal court except when exceptional circumstances exist.

(1m) The clerk of the municipal court shall be attired in appropriate clothing and may not, while performing municipal court functions, wear anything that implies or indicates that he or she is a law enforcement officer or employee of a law enforcement agency.

(2) The governing body of the city, village, or town shall provide a courtroom for a municipal court, which shall be in an adequate facility. The courtroom shall be in a public building if a suitable public building is available within the municipality and shall be located in an area separate from the police department by design or signage. The courtroom shall be designed and furnished to create and promote the proper atmosphere of dignity, safety, and decorum for the operation of the court. Upon request of the municipal judge, the governing body shall provide an armed guard or officer for court sessions.

(3) All personnel employed by the court shall be located in an area separate and distinct from the police department by design or signage.

(4) Every municipal court shall have a telephone number or extension separate from the telephone number or extension of any other governmental department.

History: 1977 c. 305; 2009 a. 402; 2019 a. 70.

755.18 Municipal judge and court clerk training. **(1)** Municipal court clerks and judges shall participate in a program of continuing education as required by the supreme court.

(2) Municipalities shall bear the cost of programs under sub. (1) provided by the court. All moneys collected by the supreme court under this section shall be deposited in s. 20.680 (2) (i).

(3) This section does not apply to a municipal judge appointed under s. 8.50 (4) (fm) nor to a former municipal judge or former circuit judge to whom cases are assigned under s. 800.06 during the 6−month period following the date on which the judge receives his or her initial assignment.

History: 1983 a. 27; 1985 a. 304; 2009 a. 402.

755.19 Municipal court commissioners. **(1)** APPOINTMENT. First class cities may create the office of municipal court commissioner. The municipal court commissioner shall be an attorney licensed to practice in this state and shall complete annual educational credits consistent with supreme court requirements for municipal judges. The common council shall establish the number of positions and set the term, the additional qualifications and the compensation for the office. The presiding judge of the municipal court shall be the appointing authority and may terminate the employment of a municipal court commissioner at will and without cause. The municipal court commissioner shall be supervised by the judge whose cases the commissioner is hearing. Each municipal court commissioner shall take and file the official oath in the office of the clerk of the municipal court of the 1st class city for which appointed before performing any duty of the office.

(2) POWERS AND DUTIES. Under the supervision of a municipal judge, a municipal court commissioner may do all of the following:

(a) Under ss. 800.035 and 800.095 (1), conduct initial appearances and receive noncontested forfeiture pleas, order the revocation or suspension of driving privileges and impose forfeitures, impose community service and restitution according to the schedule adopted by the municipal court where appointed, and issue dispositional and sanction orders pursuant to ch. 938.

(b) Issue warrants for those who do not appear as scheduled or as summoned.

(c) Conduct hearings on warrant returns.

(d) Schedule indigency hearings.

(e) Make a finding on the indigency of defendants.

(f) Enforce alternative judgments for failure to comply with court orders.

(g) Conduct court proceedings and exercise any power authorized by statute.

(3) NEW HEARINGS AND APPEALS OF MUNICIPAL COURT COMMISSIONER RULINGS. A motion for a new hearing or appeal of a contested ruling by a municipal court commissioner shall be filed with the municipal court no later than the 20th day after the commissioner makes the ruling. The motion shall be heard by the supervising municipal judge under the procedure consistent with the procedure adopted by the judicial district on motions to reopen judgments before the municipal court. Nothing in this subsection shall be construed as altering the time periods for filing a notice of appeal from a final judgment or filing a motion of relief from judgment.

History: 1997 a. 27; 2009 a. 402.

755.21 Collection. The governing body or court may contract with a collection agency for the collection of unpaid forfeitures, assessments, and surcharges under s. 66.0114 (1) (a). Collection under this section may not begin until the court refers the case to the collection agency. The contract shall provide that the collection agency shall be paid from the proceeds recovered by the collection agency. For each violation for which a forfeiture, assessment, or surcharge is imposed, the municipal court shall determine the amount to be distributed to each entity under s. 66.0114 (1) (bm) and (3) (b) and (c) as follows:

(1) Calculate the percentage of the total violation amount to which the entity is entitled before the collection agency is paid.

(2) Subtract from the amount collected for the violation the amount paid to the collection agency to collect the violation amount.

(3) Multiply the remainder under sub. (2) by the percentage under sub. (1).

History: 2003 a. 140; 2005 a. 305; 2009 a. 402.

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.

800.005 Time. The provisions of s. 801.15 (1) and (5) apply to actions in municipal court.

History: 2019 a. 70.

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 contain the name of 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 or complaints may designate by ordinance or resolution other municipal officials who are authorized to issue and be named in citations or complaints with respect to ordinances which are directly related to the official responsibilities of the officials. Officials granted the authority to issue and be named in citations and complaints 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), 23.335 (21) (a), 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; 2013 a. 107; 2015 a. 170.

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. For the purposes of this section, if a defendant is a limited liability company, the defendant appears in person if the appearance is by a member, as defined in s. 183.0102 (11), by an agent or authorized employee of the defendant, or by an agent of the member or an authorized employee of the agent.

(1m) An attorney may provide limited scope representation to a person involved in a municipal court action as provided in ss. 802.045 and 802.05.

(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.

5. Inform the defendant that he or she must notify the court in writing within 5 days of any change of his or her address during the pendency of the case.

(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, 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 subch. I of 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, or the judge may by order, 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 court shall promptly transmit all papers and fees in the cause, including any other citations or complaints arising from the same incident, 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; Sup. Ct. Order No. 13−10, 2014 WI 45, 354 Wis. 2d xliii; 2015 a. 176; 2019 a. 70; 2021 a. 258; 2023 a. 55.

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 judge 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 and shall consider any objection to the proposed location in making the determination. In all such cases, the parties shall remain the same, the prosecutor of the transferring court shall be responsible for prosecution before the new judge, 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; 2019 a. 70.

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, 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; 2019 a. 70.

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 administrative 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.

(5) If a defendant does not appear at trial, the court may enter a default judgment under s. 800.09.

History: 1977 c. 305; 1979 c. 32 ss. 68, 92 (17); Stats. 1979 s. 800.08; 1997 a. 205; 2009 a. 402; 2013 a. 107.

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 applies:

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

(2) The court finds good cause after considering the following factors:

(a) Whether any undue surprise or prejudice would result.

(b) Whether the proponent has been unable, after due diligence, to procure the physical presence of the witness.

(c) The convenience of the parties and the proposed witness and the cost of producing the witness in relation to the importance of the offered testimony.

(d) Whether the procedure would allow full effective cross−examination, especially where availability to counsel of documents and exhibits available to the witness would affect such cross−examination.

(e) The importance of presenting the testimony of witnesses in open court, where the finder of fact may observe the demeanor of the witness, and where the solemnity of the surroundings will impress upon the witness the duty to testify truthfully.

(f) Whether the quality of the communication is sufficient to understand the offered testimony.

(g) Whether a physical liberty interest is at stake in the proceeding.

(h) Financial or physical limitations on the ability of the defendant or counsel for the defendant to be physically present.

(i) Any other factors as the court may, in each individual case, determine to be relevant.

History: 2009 a. 402; 2019 a. 70; 2021 a. 240 s. 30.

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 s. 104.035 (1). 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.

(4) Notwithstanding s. 755.045 or 800.115 (2), no municipal judgment alleged by the defendant to be void due to the existence of a conviction, suspension, or revocation arising from another matter that existed at the time of the municipal judgment shall be considered void by any court unless the defendant disclosed the conviction, suspension, or revocation with specificity and in writing to the municipal court and to the prosecuting attorney prior to the entry of the municipal judgment.

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; 2015 a. 55; 2019 a. 70; 2021 a. 240 s. 30.

Section 343.30 (5) does not preclude the suspension of operating privileges under this section or s. 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 under former s. 885.04, 2017 stats., to subpoena persons outside of the state; thus the court in this case could not 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 or theft of the property of or physical injury to or death of 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; 2019 a. 70.

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 one year. 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 transportation 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 one−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 one−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. a. Except as provided in subd. 3. b., the defendant shall be committed to a jail or a house of correction in the county in which the cause of action arose.

b. The defendant may be committed to the jail in another county within or outside of the state if the other county borders the county in which the cause of action arose, and the monthly expenses charged to the municipality by the other county to imprison the defendant are at least 25 percent less than the monthly expenses charged by the county in which the cause of action arose, and the other county agrees to having the defendant committed to the jail in that county.

c. The defendant shall be eligible for privileges under s. 303.08 or a similar program in the other county if committed under subd. 3. b. 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 permanently 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 s. 104.035 (1) 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 any of the following:

(a) Orders for restitution under s. 800.093.

(b) Cases where service of the summons and complaint or citation is made by mail as authorized in s. 800.01 (2) (e), unless the defendant subsequently appeared in the action or was personally served with a copy of the judgment and notice of the right to request review of the findings under sub. (1) (b) 2.

(c) Failure to pay a monetary judgment within 60 days of the judgment under s. 800.09 (1b), unless the court finds good cause and orders otherwise.

(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 under s. 71.935.

(7) In addition to the procedures under this section, the court or a municipality may enforce the judgment in the same manner

as for a judgment in an ordinary civil action, including entry into the judgment and lien docket as provided under s. 806.12.

(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; 2013 a. 376; 2015 a. 55, 234; 2019 a. 70.

Section 343.30 (5) does not preclude the suspension of operating privileges under s. 800.09 or this section. 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 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, except that any costs shall be based on the expense associated with the motion and the court shall consider the defendant's ability to pay the costs using the factors in s. 814.29 (1) (d) 1. to 3. No costs may be imposed as a requirement of filing the motion.

(5) Upon making a motion under this section, the court shall provide notice to all parties and schedule a hearing on the motion. Upon receiving a motion under this section, the court may enter an order denying the motion for failure to state grounds upon which relief may be granted, schedule a hearing on the motion, or enter an order based on written submissions from the parties.

History: 1987 a. 389; 2009 a. 402; 2019 a. 70.

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, hearing on a motion under s. 800.115, and hearing regarding whether the defendant is unable to pay the judgment because of poverty, as that term is used in s. 814.29 (1) (d), 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; 2019 a. 70.

800.14 Appeal from municipal court decision. **(1)** Appeals from judgments, decisions on motions brought under s. 800.115, or determinations regarding whether the defendant 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 court and other party written notice of appeal and paying any required fees within 20 days after the judgment or decision. No appeals may be taken from default judgments.

(2m) Upon receipt by the municipal court of the notice of appeal and any required fees and, if a trial has been held, after the 20 day time period under sub. (4) has passed, the appeal is perfected. Within 30 days after perfection, the municipal court shall transmit the case to the circuit court as provided under sub. (5) and shall comply with the requirements of s. 343.325, if applicable.

(3) Upon perfection of the appeal under sub. (2m), 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, unless otherwise ordered by the municipal court prior to transmittal to the circuit court or unless ordered by the circuit court thereafter. An order lifting a stay may be reviewed by the circuit court at any time following transmittal to the circuit court, upon motion and good cause shown.

(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 one of the following applies:

(a) If the defendant is charged with a violation of an ordinance that is in conformity with s. 346.63 (1) or (5) and did not proceed under s. 800.035 (5) (c), the municipality 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.

(b) If par. (a) does not apply, 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 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, and 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). If there is a request under sub. (4), the municipal court shall transmit to the circuit court as much of the record as deemed appropriate by the municipal court, but the transmission shall include, at the minimum, a copy of the citation or complaint and the judgment. The municipal court may supplement the transmission upon request of either party or the circuit court. The circuit court may order the preparation of a transcript of the proceedings by any qualified court reporter at the cost of the appellant. The transcript shall be deemed accurate unless determined otherwise by the municipal court, by request of either party or the circuit court.

(5m) A defendant claiming an inability to pay with regard to the transcript fee, the appeal fee, or the 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; 2019 a. 70; 2021 a. 240 s. 30.

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. Metzl, 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. Anderegg. Wis. Law. Mar. 2006.

LIST OF RESOURCES

Laws, References, and Forms

Wisconsin State Statutes Cost: Approx. $173

Document Sales & Distribution
2310 Darwin Rd.
Madison, WI 53704-3108
Local: 608-243-2441
Toll Free: 800-362-7253
Fax: 608-243-2820
Email: DOADocumentSalesInformation@wi.gov
https://docsales.wi.gov

State of Wisconsin—Revised Uniform Traffic Deposit Schedule

Wisconsin Judicial Conference
c/o Director of State Courts Office
Room 300, East State Capitol
Madison, WI 53702
Tel: (608) 266-6984
https://www.wicourts.gov/publications/fees/index.htm
* Revised annually - available at end of year

State of Wisconsin—Uniform Deposit & Bail Schedule for Conservation, Environmental Protection, ATV/UTV, Boat, OHM, and and Snowmobile Violations

Department of Natural Resources
101 S. Webster
Madison, WI 53703
Tel: (608) 266-2141
https://www.wicourts.gov/publications/fees/index.htm

Wisconsin Rules of Evidence: A Courtroom Handbook — $229 Bar Member; $286 Nonmember

Traffic Law and Practice in Wisconsin — $235 Bar Member; $295 Nonmember

WI Traffic Law Codebook — $69.00 Bar Member; $89.00 Nonmember

WI Children’s Code and Juvenile Justice Code — $69.00 Bar Member; $89.00 Nonmember

State Bar of Wisconsin
PINNACLE
P.O. Box 7158
Madison, WI 53707-7158
Tel: (608) 257-3838
https://marketplace.wisbar.org/Books/PINNACLE-Print-Books

Uniform Traffic Citations, MVD Forms

DMV-Fiscal Services
P.O. Box 7336
Madison, WI 53707-7336
Tel: (608) 246-3265

Municipal Court Citation Forms

Department of Administration, Document Sales and Distribution
2310 Darwin Rd.
Madison, WI 53704-3108
Tel: (608) 243-2441
Email: DOADocumentSalesInformation@wi.gov

Organizations and Agencies

Office of Judicial Education

110 E. Main St., Suite 200
Madison, WI 53703
Tel: (608) 266-7816
Fax: (608) 261-6650
Email: carol.koschel@wicourts.gov
https://www.wicourts.gov/services/judge/edu.htm
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Chief Judges and District Court Administrators
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Wisconsin Municipal Judges Association

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Ms. Hildie McIntyre, President
Coulee Region Joint Municipal Court
Tel: (608) 781-9558
Email: hmcintyre@onalaskawi.gov

Wisconsin Ethics Commission

101 E. Wilson St., Rm. 127
P. O. Box 7125
Madison, WI 53707-7125
Tel: (608) 266-8123
Fax: (608) 264-9319
https://ethics.wi.gov

League of Wisconsin Municipalities

131 W. Wilson St.
Suite 505
Madison, WI 53703
Tel: (608) 267-2380 or 800 991-5502
Fax: (608) 267-0645
http://www.lwm-info.org/
Email: league@lwm-info.org

DEPARTMENT OF TRANSPORTATION
TELEPHONE REFERRAL NUMBERS
FOR DRIVER LICENSING

CITATIONS 608 266-8693
-Court error on a citation

COMMERCIAL SCHOOLS 608 266-0614
- Coordinator for instructions & schools
- Commercial school exams/forms

COMPLIANCE & RESTORATION
Main Number 608 266-2261
No. for Court Clerks 608 267-1854*
Fax Number 608 267-3812
-Reinstatement requirements
-Occupational licenses
-SR-22 Financial Responsibility filings
-General questions on revocations and suspensions

DRIVER RECORD FILES 608 266-2353
-Driver record requests
-Check points on a driving record
-State statutes on moving & non-moving violations & equipment violations
-Unclaimed licenses/address changes

EXAMINATIONS & DRIVER LICENSING MANUAL 608 266-8685
-All examinations: foreign language, cycle, chauffeur, school bus, sign
-Confirmation of student registration

GROUP DYNAMICS/TRAFFIC SAFETY SCHOOL 608 266-1449
-School and instructor certifications
-Confirmation of student registration

PARKING CITATIONS
(formerly Traffic Violation & Registration Program)
Main Number 608 267-9791
Fax Number 608 267-6966

LICENSE ISSUANCE 608 266-2325
- Driver license cancellations
- Certified copies of driving records (not revoked or suspended)
- Applications for driver licenses
- Information on obtaining or renewing driver licenses
- Name and address changes

MEDICAL FILES 608 266-2327
-Alcohol assessments/driver safety plan reports
-Medical reports
-Driver license cancellations (medical)

MOTORIST MANUALS 608 266-6943
-Revisions of motorist, chauffeur, school bus and cycle handbooks

REVOCATIONS & SUSPENSIONS 608 267-1854

-Why a license is revoked or suspended
-Damage judgments 608 266-1249
-Certified copies of driving records (revoked and suspended)

SAFETY RESPONSIBILITY 608 266-1751
-Driver accident reports
-Uninsured motorists
-Safety responsibility suspensions
-Check insurance company of owner/ driver when involved in an accident

TRAFFIC ACCIDENT SECTION 608 266-0769-
Police accident reports
-Accident facts & statistics

Municipal Court Liaisons by District

District I:

Hon. Christopher Lipscomb
North Shore Municipal Court
5909 N. Milwaukee River Pkwy.
Glendale WI 53209-4292
Court: (414) 228-1752
Business: (414) 276-5763

District II:

Hon. Ed Thompson
Town of Delavan
5621 Town Hall Rd
Delavan WI 53115
Court: (262) 728-5563
Business: (262) 728-9196

District III:

Hon. Steve Wimmer
City of Waukesha
201 Delafield St.
Waukesha, WI 53188
Court: (262) 524-3705

District IV:

Hon. Susan Schleisner
Village of Elkhart Lake
84 North Lake Street
P.O. Box 412
Elkhart Lake WI 53020
Court: (920) 876-2244

District V:

Hon. Thomas J. Alisankus
Evansville-Union Joint Court
31 S. Madison Street
Evansville WI 53536
Court: (608) 490-0544
Business: (608) 921-1128

District VI

This district was eliminated in 2018. The courts were absorbed into other neighboring districts.

District VII:

Hon. Dennis Marcou
City of La Crosse
400 Lacrosse Street
La Crosse WI 54601
Court: (608) 789-7290
Business: (608) 784-2733

District VIII:

Hon. David J. Matyas
DePere Municipal Court
333 South Broadway
DePere WI 54115
Court: (920) 339-2463
Business: (920) 336-2333

District IX:

Hon. John Kruse
City of Marshfield/Village of Spencer
207 W. 6th St.
Marshfield, WI 54449
Court: (715) 384-6903

District X:

Hon. Eric Kasper
City of Rice Lake
30 E. Eau Claire St.
Rice Lake WI 54868
Court: (715) 234-1989

GLOSSARY

ADJOURNMENT The postponement or adjournment of an action pending in court

APPELLATE The power to review the law and/or facts as decided in a prior determination

JURISDICTION of the same case at a lower court or agency level

BAILIFF A court attendant

BOND/DEPOSIT Money or other security given to ensure the appearance of the defendant in court. In municipal court, a defendant posts **bond** not bail

CALENDAR The list of cases on a court's schedule

CAPIAS An order directing a law enforcement officer to pick up a juvenile or other person who fails to obey a summons, issued by the court for failure to appear and where the court finds issuing a summons would be ineffectual. Once a capias is served, the procedures in 938.20 apply to releasing the juvenile

CITATION A written document notifying the person named to appear in court on the day and at the time named. The charging document in municipal court. Serves as notification to the defendant of the violation with which charged.

COMMITMENT The lawful sending of a person to jail for the non-payment of a forfeiture

COMPLAINT A written formal charge

CONCLUSION OF LAW Conclusion reached by the Court in applying the rules of law

CONCURRENT SENTENCE
CONSECUTIVE SENTENCE See Sentence

CONTEMPT OF COURT An act meant to embarrass, hinder or obstruct a court in the administration of justice. Direct contempt is committed in the presence of the court; indirect contempt is when a lawful order is not carried out and the action must be brought in circuit court

CONTINUANCE The postponement or adjournment of an action pending in court

CONVICT To find a person guilty of a charge

CREDIBILITY Believability

CROSS-EXAMINATION Questioning the opponent or an opponent's witness

DECLARANT A person who makes a statement

DEFAULT JUDGMENT When a defendant does not plead within the allowable time or does not *appear* at a scheduled court appearance, the defendant is in default. A judgment against that defendant may then be entered if defendant was properly served

DISCLOSURE Making facts known

DISCOVERY The procedure by which one party gains information concerning the case from the other party

DISMISSAL WITH PREJUDICE When a case is dismissed by the judge and the municipality is prohibited from reissuing

DISMISSAL WITHOUT PREJUDICE When a case is dismissed by the judge and the municipality is <u>permitted</u> to reissue

DISPOSITION The court's determination of the case outcome

DOCKET A case summary

EX PARTE COMMUNICATION Discussion between a judge and only <u>one</u> party to an action that is to be heard or is being heard before the judge on an issue or matter involved in the action

FINDINGS OF FACT Decision made by the court determining the facts

FORFEITURE A monetary penalty imposed in ordinance violation actions

GUARDIAN AD LITEM Attorney appointed by the court to represent the best interests of an incompetent person in the proceeding before the court

HEARING An appearance before the judge by attorneys and parties in a case, generally open to the public

HEARSAY A statement other than one made by the declarant while testifying at a trial or hearing, offered in evidence to prove the truth of the matter asserted

IMPEACH Question the truthfulness of a witness

INCARCERATION Commitment to jail or prison

INCOMPETENT A person is incompetent if he or she is unable to understand the proceedings

INDIGENT Having insufficient funds, assets or income to pay a fine or forfeiture. *See also,* **POVERTY**

INITIAL APPEARANCE The proceeding in a municipal court case at which the judge informs the defendant of the possible pleas and takes the plea to the charge

JUDGE Elected or appointed official with authority to hear and decide cases in a court of law

JUDGMENT The final determination of the court in a case

JUDICIAL NOTICE Rule of evidence (Wis. Rule 902.01) that allows a judge to except a fact as true without the taking of evidence to prove the fact. A judicially noticed fact must be one not subject to reasonable dispute that it is any of the following:

- A fact generally known within the territorial jurisdiction of the court (e.g. where two streets in the municipality intersect, etc.)
- A fact capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questions (e.g. what day of the week Oct. 31, 2009, occurred on, etc.)

JURISDICTION Power of the court to hear and determine a case

MANDAMUS A writ issued by a superior court ordering a public official or body or lower court to perform a specified duty

NO CONTEST PLEA A statement by the defendant that he or she does not wish to contest the charge. The judge must find the defendant guilty upon a no contest plea but the plea cannot be used as evidence against the defendant in a civil suit for damages

OFFER OF PROOF A presentation made by a party or their attorney to a judge to show why evidence offered by the party/attorney is material or relevant to the case

ORDINANCES Municipal laws which govern the conduct of persons subject to the local jurisdiction

PENALTY Punishment fixed by law and/or determined by the court

PLAINTIFF Party who files a civil suit seeking legal relief

PLEA Statement made by the defendant as to his or her guilt or innocence of the charge

POSTPONEMENT See Continuance

POVERTY Determined by application of criteria set out in 814.29(1)(d).
See, Chap. 14, Sec.V.

PRESUMPTION In statute, factual determination created by law

REBUTTAL TESTIMONY Testimony of a witness contradicting the testimony of another witness

PRIMA FACIE Meaning "at first sight". Generally meant adequate as it appears, without more

PRO SE Appearing for oneself, as in the case of one who does not retain an attorney and appears for him/herself in court

RECROSS The cross-examination of a witness after redirect

RECUSAL Self-disqualification of judge

REDIRECT To reexamine one's own witness after cross-examination

RESTITUTION Act of paying the injured party for loss, damage or injury

REVOCATION Cancellation of a person's driving privilege for a period of time. Proof of insurance (SR22) must be maintained with DOT for 3 consecutive years from date of reinstatement eligibility

SENTENCE <u>Concurrent:</u> A sentence that overlaps with another for a period of time. <u>Consecutive:</u> A sentence that follows another

SEQUESTRATION Removing witnesses from the courtroom prior to their giving testimony. Generally includes prohibition from talking with other sequestered witnesses about the matter before the court

SERVICE Providing formal notice to a party that a legal action has been filed against them. Must be completed in accordance with statutes to confer personal jurisdiction over a defendant

STATUTES The acts of the legislature that become laws

STAY The delay of entry or enforcement of payment or forfeiture or judgment

STIPULATION Agreement between opposing parties on **facts** or circumstances

SUA SPONTE	Latin for "on its own will or motions". Commonly used to describe an action by a judge, taken without a motion or request from either party
SUBPOENA	Order of the court compelling the appearance of a witness
SUBPOENA DUCES TECUM	Order of the court compelling a witness to produce specific documents or records
SUMMARY JUDGMENT	A request for a decision by a court on the matter before it, based upon legal arguments only, where no material facts are in dispute. Summary Judgment is not a remedy available in municipal court
SUMMONS	A written document issued by the court requiring the appearance of the person summonsed before the court at a specific time
SUSPENSION	Cancellation of a driving privilege for a period of time, after which a reinstatement fee must be paid
TESTIMONY	Any statement made by a witness under oath in a legal proceeding
TRANSCRIPT	A typewritten verbatim account of a legal proceeding
TRIAL DE NOVO	A new trial or retrial in which the whole case is retried, the same as if it had not been heard before and as if no decision previously had been rendered
UNDER ADVISEMENT	A matter is under advisement when the court delays its decision pending briefs or oral argument
UNIFORM DEPOSIT SCHEDULE	A schedule adopted by the judicial conference for traffic and conservation violations
VENUE	Proper or possible place for trial
WAIVER	An intentional and voluntary giving up of some right
WARRANT, ARREST	An order signed by a judge commanding the arrest of a person
WITNESS	In court, a person who testifies, under oath regarding what s/he has seen, heard or otherwise observed
WRIT OF COMMITMENT	An order signed by a judge commanding the arrest of a person and ordering the person to be conveyed to the house of corrections or local jail for commitment for a specific period of time

COMMON ABBREVIATIONS

ADA	Americans with Disabilities Act
CFR	Code of Federal Regulations
CIB	Crime Information Bureau
COWS	Court Order Web System
CSR	Conviction Status Report
DHFS	Department of Health and Family Services (Formerly DHSS)
DOT	Department of Transportation, State of Wisconsin
IID	Ignition Interlock Device
DMV	Division of Motor Vehicles
OAS/OAR/OWL	Operating after Suspension/Operating after Revocation/Operating without a valid license
OCS	Operating with a restricted controlled substance
OWI/PAC/OCS	Operating while intoxicated/Prohibited Alcohol Concentration/ Operating with a detectable amount of controlled substance
PAC	Prohibited alcohol content (Formerly BAC)
PR	Personal Recognizance
SCR	Supreme Court Rule
SR22	Uniform Financial Responsibility Form
STATS	Wisconsin Statutes (Laws of Wisconsin)
UTC	Uniform Traffic Citation

TABLE OF SAMPLE MUNICIPAL COURT FORMS

Pink Pages Special

Form	
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C	Order for Deposit as Bond
D	Personal Recognizance Bond
E	Subpoena
Ea	Instructions for Subpoenas
F	Summons
G	Warrant
H	Notice of Default Judgment and Statement of Amount Due
Ha	Notice of Default Judgment
I	Notice and Summons to Parent/Guardian/Legal Custodian
J	Order for Pretrial Conference
K	Notice of Right to Appeal
Ka	Notice of Right to Appeal Denial of Relief from Judgment or Indigency Determination
Kb	Notice of Right to Appeal after OWI Trial
L	Juvenile Defendant's Rights
M	Adjudication of Contempt of Municipal Court
N	Application for Municipal Judicial Assignment (Substitution)
O	Sample Court Interpreter Oaths
Q	Request for Relief from Judgment/to Reopen
S	Summons to Appear for Indigence/Good Cause Hearing
T	Writ of Commitment
W	Sample Court Procedure Handout
Wa	Sample Opening Statement
AA	Clerk Appointment Form and Oath

BB	Disqualification/Recusal Order
CC	Notice of Requirement & Order to Install Ignition Interlock Device
DD	Application for IID Cost Reduction & Vehicle Exemption
EE	Order for Installation of Ignition Interlock Device at Reduced Cost
FF	Plea Questionnaire (OWI/PAC/RCS CASES)

AFFIDAVIT FOR SPECIAL INSPECTION WARRANT

STATE OF WISCONSIN __________________County In the court of ___________________

____________________, being duly sworn, says that on the_____ day of _______, 20____, in said county, in and upon certain premises in the (city, town or village) of _____________ and more particularly described as follows: (describe the premises) there now exists a necessity to determine if said premises comply with (section ______of ordinances of said municipality). The facts tending to establish the grounds for issuing a special inspection warrant are as follows: (set forth brief statement of reasons for inspection, frequency and approximate date of last inspection, if any, which shall be deemed probable cause for issuance of warrant).

Wherefore, the said _____ prays that a special inspection warrant be issued to search such premises for said purpose.

Building Inspector...(Signed)

Subscribed and sworn to before me this ________day of ______________, 20____

.... Judge of the .... Court.

SPECIAL INSPECTION WARRANT

STATE OF WISCONSIN _____________ County In the court of ___________________

To the Building Inspector of said municipality:

Whereas, ________ has this day complained (in writing) to the said court upon oath that on the .... day of ...., 20___, in said county, in and upon certain premises in the (city, town or village) of __________ and more particularly described as follows: (describe the premises) there now exists a necessity to determine if said premises comply with (section .... of ordinances of said municipality) and prayed that a special inspection warrant be issued to search said premises.

Now, therefore, in the name of the state of Wisconsin you are commanded forthwith to search said premises for said purposes.

Dated this ________ day of ___________, 20_____.

__________ Judge of the _________________ Court.

ENDORSEMENT ON WARRANT

Received by me ____________, 20____ at ___ o'clock .... M.

________________Building Inspector

RETURN OF OFFICER

STATE OF WISCONSIN _____________ County In the court of ___________________

I hereby certify that by virtue of the within warrant I searched the named premises and found the following things (describe findings).

Dated this ________ day of ___________, 20_____.

________________Building Inspector

FORM A
(2024)

STATE OF WISCONSIN______________MUNICIPAL COURT ______________COUNTY

____
Plaintiff,
vs.
____
Defendant.

ORDER FOR DEPOSIT AS BOND

Case No. ___________

WHEREAS, (name of defendant) appeared before me on the ___ day of ___________, 20____, having been charged with violation of §_________ of the Municipal Code of _____________; and
(municipality name)

WHEREAS, I have determined that one or both of the parties to this case were not prepared for trial at the time of the Defendant's initial appearance; and

WHEREAS, I have set trial of the case for the ___ day of ________, 20__, at ______(a.m.)(p.m.); and

WHEREAS, I have determined that a deposit is necessary to guarantee the presence of the Defendant at trial;

NOW, THEREFORE, I (name of judge), Municipal Judge, hereby order the Defendant to deposit with the Clerk of the Municipal Court or (sheriff or police department), the sum of (not to exceed maximum forfeiture, costs and surcharge) dollars ($) within (days or hours). If (name of defendant) fails to make the deposit as herein specified, s/he shall be committed to jail pending trial while the default continues, except the defendant shall be held no more than 48 hours.

Dated at __________________________, Wisconsin, this _____day of _______________, 20___.

BY THE COURT:

____
Hon. (Name of Municipal Judge)
Municipal Judge, (Municipality)

RECEIPT OF DEPOSIT AS BOND

I hereby certify that I have received of (name of defendant) the sum of _______________ Dollars ($________) in full payment of bond deposit specified on the attached Order for Deposit as Bond.

Dated at ____________________, Wisconsin, this ____ day of ___________________, 20___.

____
(Official Title)

STATE OF WISCONSIN ____________ MUNICIPAL COURT _____________ COUNTY

____
Plaintiff,

PERSONAL RECOGNIZANCE BOND

v.

____
Defendant.

Citation No._____________________

I, ______________________, understand that I have been cited for the violation above mentioned, and have been order to appear in the ____________________________ Municipal Court on _____________________ at _____a.m./ p.m.

In consideration of my being released without cash bail or bond, I am executing this personal recognizance bond with the understanding that should I fail to appear in the __________ Municipal Court on the above date and time, the Court may enter a plea of no contest to the above charge on my behalf, find me guilty and assess a forfeiture plus all costs and assessments.

____
Signature of Defendant Date

____
Name of Police Officer or Witness to Signature

FORM D
(2024)

STATE OF WISCONSIN _______________ MUNICIPAL COURT ________________ COUNTY

SUBPOENA

____
Plaintiff,
vs.

Case No.____________________

____
Defendant.

TO:

You are hereby required to appear before the Honorable ________________________, Municipal Judge of the (City, Town, Village) of ____________________________________, Wisconsin at the Municipal Court ___(street address)___, on the ______ day of _____________ at __________ o'clock (a.m.)(p.m.) to give evidence in a certain cause then and there to be tried between the _______ plaintiff and ___________________, defendant, on the part of the ___________________.

You are further required to bring with you the following papers and documents:

Failure to appear may result in punishment for contempt which may include monetary penalties up to $200 plus court costs, imprisonment and other sanctions.

Dated at _________________, Wisconsin, this ________ day of ______________, 20____.

BY THE COURT:

____
(Name of Municipal Judge)
Municipal Judge, (Municipality)

State of Wisconsin)
_______________ County) ss

I swear that I personally delivered a copy of this subpoena on the above named at:

__________________________________(address) at ______ o'clock ______.m. (time)

on ______________ (date) ______________________________________(signature)

INSTRUCTIONS FOR SUBPOENAS

1. At the top, fill in the name and address of the witness you are subpoenaing. If you know the business address and home address, provide both.

2. The clerk will fill in the rest. **NOTE:** Judge ____________________ must see and sign subpoenas.

3. Take the original and make at least one copy. Have a reliable adult **personally deliver a copy to the witness** or arrange for a professional process server to do so. Professional process servers are listed in the phone book and will charge for the service. The ____________County Sheriff's Department will also serve this for you and charge for the service. They are located ________________________ and can be reached at (____)___________. It is not OK to mail it to the witness and it is not OK to just leave it taped to the person's door. It must be handed to the person or left at the person's place of residence with someone at least 14 years old. It is better if it is left with an adult and you can confirm that the witness does reside where you left it.

4. **You must pay the witness the following at the time you serve the subpoena:** $5.00 plus round-trip mileage to the courthouse from the person's home at $.20 per mile. You must pay the witness by cash, check, money order or certified check. Have the witness sign a receipt showing the payment amount and date. Bring the receipt to the trial.

5. Fill out the bottom portion of the original subpoena with the needed information. Bring the original subpoena with the bottom part filled out to the trial.

6. You will **NOT** be reimbursed for the witness costs even if you win the trial.

STATE OF WISCONSIN__________________ MUNICIPAL COURT______________ COUNTY

____
Plaintiff,
v.

SUMMONS

____
Defendant.

Case No.__________________________

THE STATE OF WISCONSIN TO SAID DEFENDANT;

A citation or complaint has been filed before me, a copy of which is attached, alleging you committed the act of:

contrary to Section __________ of the (city, village, town) (Municipal Code)(Ordinances).

You, ____________________, the defendant, are therefore ordered to appear before the Honorable _____________________________, Municipal Judge of the (city, village, town) of ___________________, at the Municipal Court ____(street address)_______on ________, 20___, at _____(a.m.)(p.m.), and in case of your failure to appear, a default judgment may be rendered against you according to the demand of the citation or complaint, or a warrant for your arrest may be issued.

Dated at ____________________, Wisconsin, this ______ day of _______________, 20_____.

BY THE COURT:

____
Hon. (Name of Municipal Judge)
Municipal Judge, (Municipality)

_____This summons was mailed to defendant on _______________________.

_____This summons was left with ________________at the defendant's usual place of abode.

_____This summons was personally served on the defendant by:

____
SIGNATURE OF PROCESS SERVER

STATE OF WISCONSIN ______________MUNICIPAL COURT __________COUNTY

____

Plaintiff,

v.

____

WARRANT

Case No. ___________________

Address of Defendant (street)

City, State, Zip

Defendant.

THE STATE OF WISCONSIN TO ANY LAW ENFORCEMENT OFFICER

A Wisconsin Uniform Municipal Ordinance Citation or Wisconsin Uniform Traffic Citation having been filed with me, a copy of which is attached, charging the defendant with violating section _______________________ of the _____________ Municipal Code, and having found that probable cause exists that the defendant violated said ordinance,

YOU ARE THEREFORE COMMANDED to arrest the defendant and bring him/her before me, or if I am not available, before some other Judge in this county.

Dated at _____________________, Wisconsin, this _____ day of ________________, 20__.

BY THE COURT:

____

Hon. (Name of Municipal Judge)
Municipal Judge, (Municipality)

NOTE: If you use a warrant for a juvenile, have a SPECIFIC RETURN TIME on it when you will be available to hear the matter

FORM G
(2024)

STATE OF WISCONSIN | TOWN OF DELAVAN | WALWORTH COUNTY

MUNICIPAL COURT
5621 Town Hall Road, Delavan, WI 53115

Town of Delavan
Plaintiff,

v.

Defendant
Street
City, State Zip

Defendant.

NOTICE OF DEFAULT JUDGMENT
and STATEMENT OF AMOUNT DUE

Citation No. **CitNbr**
Description: **OFFENSE**

You failed to appear on the assigned date in this Court regarding the above violation(s). Therefore, the Court has deemed your non-appearance a plea of no contest to the charge and entered judgment accordingly.

Forfeiture, assessments, and costs TotDue DueDate

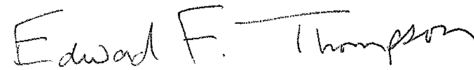
YOU ARE ORDERED to make payment of the total amount noted above within sixty (60) days from the date of this Notice.

If you fail to pay the total amount within sixty (60) days, the Court will:

____ Suspend your drivers license until the forfeiture is paid but no longer than one (1) year.*
____ Issue a commitment order and have you incarcerated in jail. *
____ JUVENILE: Issue a Warrant and have you arrested and brought before me.
____ Refer the debt to Wisconsin Department of Revenue for Debt Collection pursuant to 71.93(8).

Dated at the Town of Delavan Wisconsin this day, ________________________.

BY THE COURT:



Hon. Edward F. Thompson
Municipal Judge, Town of Delavan
262-728-5563

*If because of poverty as defined in ss. 814.29(1)(d) (receiving means-tested assistance of limited/no income) or unexpected circumstances, you are either unable to pay your forfeiture or keep up with an installment plan by your due date, you should notify the Court in writing before the due date, and complete and return the enclosed Poverty Evaluation Form, and an installment plan, community service or a stay may be provided. Notice: Conviction, forfeiture, or stipulation of no contest to the citation may result in the assessment of demerit points against you by the State of Wisconsin, Department of Transportation.

FORM H
(2024)

STATE OF WISCONSIN MUNICIPAL COURT DANE COUNTY		*For Official Use Only*
DeForest/Windsor Municipal Court	**NOTICE OF DEFAULT JUDGMENT**	
-vs-	Citation #: Citation	
Name Street City, State Zip		

PLEASE TAKE NOTICE, you have failed to appear for your court date on **Date** for the case identified above. The Court has deemed your non-appearance a plea of "No Contest" to said charge of **Charge**, and has found you guilty and entered a judgment against you in the amount of **Balance due**. **YOU ARE HEREBY ORDERED** to make payment of the total amount noted above within sixty (60) days or prior to the date of your indigency / good cause hearing.

If you need to make a payment using your debit or credit card, please visit www.govpaynow.com (Pay Location Code A0004K).

SUMMONS

If you fail to pay the total forfeiture within sixty (60) days, YOU ARE SUMMONED TO APPEAR at an indigency/good cause hearing on 6/18/2018 at 5:30 p.m., which will be held at the DeForest/Windsor Municipal Court, 120 S. Stevenson Street, DeForest, WI 53532.

If you do not appear or if you are found not indigent, then the Court may do any of the following:

- ✓ Enter your forfeiture into Wisconsin's Tax Intercept program; or
- ✓ Suspend your driver's license for up to one (1) year or until the forfeiture is paid; or
- ✓ Issue a Warrant for your arrest; or
- ✓ Refer your debt to a Collection Agency, including the WI Department of Revenue State Debt Collection program. A delinquent collection fee of 15% of the unpaid balance or $35.00, whichever is greater, will be added to your account.

Collection action may include one or all of the following, some of which result in additional fees being added to your account:

- *Interception of your Wisconsin tax refunds.*
- *Attachment of wages or other compensation being paid to you.*
- *Garnishment, seizure or levy against your property, including bank accounts and IRAs.*
- *Filing a delinquent tax warrant with the Clerk of Courts in the county in which you reside and/or own property. This warrant will act as judgment and lien on any real and personal property that you own and may affect your credit rating.*

Entered on **DATE** at DeForest, Wisconsin.

BY THE COURT:

Hon. Jason Hanson
DeForest/Windsor Municipal Court
Municipal Court Judge

FORM Ha
(2024)

STATE OF WISCONSIN _____________ MUNICIPAL COURT ___________ COUNTY

NOTICE AND SUMMONS TO PARENT/GUARDIAN/LEGAL CUSTODIAN

____
Plaintiff,
v.

_____________________________ Case No. _______________________
Defendant.

On __________________, 20 ____, your child was scheduled to appear before the ______________Municipal Court but failed to do so. The Court has the authority pursuant to 938.17(2) (cg) to issue a capias to arrest and thus forcibly compel you and your child to appear. To avoid this action, BRING YOUR CHILD TO COURT on ____________________________, at a.m./ p.m.

☐ Under the law, a bond may be posted on or before said date in the amount of the forfeiture, costs and assessments shown below. If such bond is posted and no physical appearance is made on said date, a plea of no contest will be entered on behalf of your child, the bond will be forfeited, your child will be found guilty as charged, and no further appearance will be necessary. The bond that may be posted totals $________.

☐ This is a mandatory appearance, you must appear on the date listed above.

If you have any questions regarding this matter, call ____________ and ask for the Court Clerk

Dated at _______________, Wisconsin, this _____day of ________________, 20_______.

BY THE COURT:

____
Hon. (Name of Mun. Judge)
Municipal Judge, (Municipality)

FORM I
(2024)

STATE OF WISCONSIN ____________________MUNICIPAL COURT ____________COUNTY

____
Plaintiff

____
Defendant

ORDER FOR PRETRIAL CONFERENCE

Citation No.(s):________________________

Charge(s):________________________

TO THE ABOVE NAMED PARTIES

PLEASE TAKE NOTICE that the court has determined, pursuant to §800.045, that the disposition of your case might be more expeditiously handled upon a pretrial conference prior to further scheduling of court appearances in this matter.

NOW, THEREFORE, IT IS HEREBY ORDERED that a pretrial conference be held in this matter with the municipal attorney at the Municipal Court on the date noted below:

Location: ______________________ Municipal Court
Address: ______________________
Date: ______________________
Time: ______________________

If the parties reach an agreement at the pretrial, the agreement must be submitted to the court for the court's approval. If an agreement is not reached, or if the court does not approve the agreement, the court will scheduled the matter for further proceedings, and you will be advised accordingly.

NOTE: **THIS ORDER DOES NOT CHANGE THE TIME LIMITS OR OTHER REQUIREMENTS REGARDING REQUESTING A JURY TRIAL OR FOR EXERCISING ANY OTHER RIGHTS. IF THE DEFENDANT DOES NOT APPEAR AT THE PRETRIAL CONFERENCE, THE COURT MAY ENTER A DEFAULT JUDGMENT AGAINST THE DEFENDANT**

BY THE COURT:

DATED_________________

____
(Judge Name), Municipal Judge
Municipality

FORM J
(2024)

STATE OF WISCONSIN ____________MUNICIPAL COURT ________________COUNTY

____
Plaintiff,

v.

____
Defendant.

NOTICE OF RIGHT TO APPEAL AFTER TRIAL
OWI/PAC/RCS or companion cases with an offense date on or before January 23, 2020 AND All other cases regardless of offense date)

Case No. ______________________

On ________________, you were found guilty after trial and judgment was entered accordingly. Wisconsin Statute § 800.14 provides that you have the right to appeal that judgment to the circuit court of the county where the offense allegedly occurred. If you decide to appeal, you must provide written notice of your decision to do so with the municipal court **and the prosecuting attorney** and pay the statutorily required appeal fees and costs within **20 days** from the above date. Time for filing an appeal cannot be extended by the municipal court judge.

You may satisfy all the statutory requirements for an appeal and choose one of the three forms of appeal below, by completing and filing this notice and the appropriate fees and costs with this municipal court.

#1 - Record Review In this form of appeal, a record of the proceedings will be produced. It, and all other evidence that was presented during the municipal court trial will be sent for review by a circuit court judge. A circuit court judge will review the record and consider any exhibits that were introduced. Unless the circuit judge determines that the municipal judge's findings of fact were clearly erroneous, the decision will not be reversed. Please note that if the municipal attorney requests a New Trial (#2 or #3) within twenty (20) days of your request for a Record Review, that request will take precedence and there will be no record review.

#2 - New Trial Before Circuit Judge Without a Jury In this form of appeal, a new trial will be held at the county courthouse. Each side may bring as many witnesses as they like, even if those witnesses did not appear at the municipal court trial. The circuit court judge decides whether the defendant is guilty or not guilty based only on the evidence that is introduced at the new trial.

#3 - New Trial in Circuit Court Before a Six-Person Jury As in #2, a new trial will be held. However, although a circuit judge will preside over the trial, a jury will decide if the defendant is guilty or not.

****
TO: ________________________MUNICIPAL COURT ______(COURT ADDRESS)

I, the undersigned defendant, hereby appeal from the judgment of the municipal court entered on the date above. I am including herewith the appellate filing fees appropriate to my request as noted below.

___1. **RECORD REVIEW** (Include a check payable to “Clerk of Courts” for $129.50) (In Milwaukee County, another $3.50 is added for the Milwaukee special prosecution clerks surcharge)

___2. **NEW TRIAL BEFORE CIRCUIT COURT JUDGE WITHOUT A JURY** (Include cash or check payable to “Clerk of Courts” in the amount of $144.50) (In Milwaukee County, another $3.50 is added for the Milwaukee special prosecution clerks surcharge)

___3. **NEW TRIAL IN CIRCUIT COURT BEFORE A SIX-PERSON JURY** (Include cash or check payable to “Clerk of Courts” in the amount of $180.50)(In Milwaukee County, another $3.50 is added for the Milwaukee special prosecution clerks surcharge)

Dated:________________________ Signature:__________________________________

cc: Prosecuting Attorney

FORM K
(2024)

STATE OF WISCONSIN ____________MUNICIPAL COURT _______________COUNTY

_______________________ Plaintiff, v. _______________________ Defendant.	**NOTICE OF RIGHT TO APPEAL (DENIAL OF RELIEF FROM JUDGMENT, INDIGENCY DETERMINATION, OR OTHER NON-TRIAL ORDER)** Case No. ____________________

On _________________, the court denied your motion for relief from judgment or determined that you are not indigent. Wisconsin Statute 800.14 provides that you have the right to appeal to the circuit court of the county where the offense allegedly occurred. If you decide to appeal, you must provide written notice of your decision to do so with the municipal court **and the prosecuting attorney** and pay the statutorily required appeal fees and costs within **20 days** from the above date. Time for filing an appeal cannot be extended by the municipal court judge.

You may satisfy all the statutory requirements for an appeal, by completing and filing this notice and the appropriate fees and costs with this municipal court.

In this form of appeal, the court record will be sent for review by a circuit court judge. A circuit court judge review the record and consider any exhibits that were introduced. Unless the circuit judge determines that the municipal judge's determinations were clearly erroneous, the decision will not be reversed.

TO: _________________________MUNICIPAL COURT _______(COURT ADDRESS)

I, the undersigned defendant, hereby appeal from the determination of the municipal court entered on the date above. I am including herewith a check payable to “Clerk of Courts” for $129 (In Milwaukee County, another $3.50 is added for the Milwaukee special prosecution clerks surcharge) **or** an order to waive fees and costs (circuit court form CV-410B) signed by a circuit court judge or the judge’s designee.

Dated:________________________ Signature:__________________________________

cc: Prosecuting Attorney

FORM Ka
(2024)

STATE OF WISCONSIN ____________MUNICIPAL COURT _______________COUNTY

____
Plaintiff,

vs.

____
Defendant.

NOTICE OF RIGHT TO APPEAL AFTER TRIAL
(ONLY USE WITH OWI / PAC / RCS and companion cases with offense date after January 23, 2020)

Case No. ____________________

On __________________, you were found guilty after trial and judgment was entered accordingly. Wisconsin Statute § 800.14 provides that you have the right to appeal that judgment to the circuit court of the county where the offense allegedly occurred. If you decide to appeal, you must provide written notice of your decision to do so with the municipal court **and the prosecuting attorney** and pay the statutorily required appeal fees and costs within **20 days** from the above date. Time for filing an appeal cannot be extended by the municipal court judge.

You may satisfy all the statutory requirements for an appeal and choose one of the two forms of appeal below, by completing and filing this notice and the appropriate fees and costs with this municipal court.

#1 - Record Review In this form of appeal, a record of the proceedings will be produced. It, and all other evidence that was presented during the municipal court trial will be sent for review by a circuit court judge. A circuit court judge will review the record and consider any exhibits that were introduced. Unless the circuit judge determines that the municipal judge's findings of fact were clearly erroneous, the decision will not be reversed. Please note that if the municipal attorney requests a New Trial (#2) or a New Trial with Jury within twenty (20) days of your request for a Record Review, that request will take precedence and there will be no record review.

#2 - New Trial Before Circuit Judge Without a Jury In this form of appeal, a new trial will be held at the county courthouse. Each side may bring as many witnesses as they like, even if those witnesses did not appear at the municipal court trial. The circuit court judge decides whether the defendant is guilty or not guilty based only on the evidence that is introduced at the new trial.

****

TO: ________________________MUNICIPAL COURT ______(COURT ADDRESS)

I, the undersigned defendant, hereby appeal from the judgment of the municipal court entered on the date above.
I am including herewith the appellate filing fees appropriate to my request as noted below.

__1. **RECORD REVIEW** (Include a check payable to "Clerk of Courts" for $129.50. In Milwaukee County, another $3.50 is added for the Milwaukee special prosecution clerks surcharge)

__2. **NEW TRIAL BEFORE CIRCUIT COURT JUDGE WITHOUT A JURY** (Include cash or check payable to "Clerk of Courts" in the amount of $144.50. In Milwaukee County, another $3.50 is added for the Milwaukee special prosecution clerks surcharge)

Dated:________________________ Signature:___________________________________

cc: Prosecuting Attorney

FORM Kb
(2024)

JUVENILE DEFENDANTS RIGHTS

To All Defendants:

You have a right to the following information before you enter your plea to the charge:

1. The charges and facts supporting the charge.

2. The nature and possible consequences of the hearings.

3. The right to confront and cross-examine (question) any witnesses against you brought to hearings.

4. The right to compel the attendance, by *subpoena*, of any witnesses and ask questions of them. This is done for your trial.

5. The right to have the charges against you proven by evidence that is clear, is satisfactory and convincing the judge to a reasonable certainty.

6. The right to have an attorney represent you at your expense.

7. The right to remain silent though that silence may be used against you.

8. The right to request a substitution of judge. This request must be made before the end of the plea hearing or this right is waived.

If you need more information about your rights, please contact the court

at: ____.

(Court Name)
Address
Telephone

FORM L
(2024)

STATE OF WISCONSIN ________________ MUNICIPAL COURT ___________ COUNTY

______________________________,

Plaintiff

Case or Citation No(s). ______________

vs.

_________________________________,

Defendant

ADJUDICATION OF CONTEMPT OF COURT & COURT ORDER

The above-named defendant on__________________was found in contempt of the Municipal Court. The Court found that the defendant intentionally engaged in misconduct in the presence of the court that:

_____ Interfered with the Court proceeding or with the administration of justice.
_____ Impaired the respect due the Court.

Specifically the conduct constituting contempt as defined in Wis. Stat. §800.12(1)(a) consisted of the defendant____.

After affording the defendant an opportunity to be heard in his/her own defense on the charge of contempt, and this defense has been found inadequate, IT IS HEREBY ORDERED, and the Court imposes the following sanction(s):

_____ Imprisonment forthwith in the ___________ County Jail for_____days with "Huber" (not exceeding 7 days);
_____ A forfeiture of $__________ (not exceeding $200.00) plus costs, fees and surcharges totaling $__________to be paid to the Clerk of the Municipal Court within 30 days and in default of payment the defendant shall be committed to the ________ County Jail for _____days with "Huber".
Dated this ______ day of _____________, 20_____.

BY THE COURT:

____

Hon. ____
Municipal Court Judge

FORM M
(2024)

State of Wisconsin

APPLICATION FOR MUNICIPAL JUDICIAL ASSIGNMENT
☐ Specific ☐ General

Case Caption (General Assignment, Dates – Times)	Case Number(s)	
vs.	County	Code
	Date of Offense	
	Current Court Official	Code
	Municipality	District No.

TYPE OF CASE

Indicate one ☐ Traffic ☐ Forfeiture/Ordinance ☐ Other

CASE STATUS INFORMATION

Last Activity in Case	Date	☐ Court Trial ☐ Hearing ☐ Other
Next Scheduled (or to be scheduled Activity)	Date	

Information helpful to chief judge and judge assigned (e.g., time limits in effect, defendant in custody, other judges already substituted or disqualified, other attorneys)

ATTORNEY INFORMATION

Attorney for Plaintiff	Attorney for Defendant
Address	Address
Telephone	Telephone

REASON FOR ASSIGNMENT APPLICATION

☐ 1. Substitution Request, dated:
by .
☐ 2. Disqualification-Wis. Stats.:
Reason:
☐ 4. Congestion
☐ 5. Vacation
☐ 6. Family Medical Leave
☐ 8. Expedite Litigation:
☐ 9. Vacancy
☐ 13. Military Service
☐ 14. Jury Duty
☐ 16. Other:

Application Prepared By

Current Court Official Approval

☐ Approved ☐ Denied (Explain):____________________

____

By:

____________________ ____________________
Current Court Official Date

Chief Judge/DCA Approval

☐ Approved ☐ Denied (Explain):____________________

____

By:

____________________ ____________________
Chief Judge/District Court Administrator Date

Assigned Judge: ____________________

Distribution: Chief Judge & Assigned Judge Copy to DCA. File Copy for Court File

SAMPLE COURT INTERPRETER OATHS

These same oaths may be used for sign and foreign language interpreters

“Do you solemnly swear that you will translate (language) into English and English into (language) for the benefit of the court, the counsel and parties to the best of your abilities, so help you God?”

"Do you solemnly swear or affirm that you will interpret truly, accurately, completely and impartially, [in accordance with the standards prescribed by law and the code of ethics for court interpreters,] follow all court guidelines for interpreting and discharge all the duties of a(n) [official] court interpreter? (bracketed portions, if applicable"

"Do you solemnly swear that you will well and truly interpret the questions and answers between the court, counsel and witness/defendant in this case from (language) into English and from English into (language) to the best of your ability?"

STATE OF WISCONSIN MUNICIPAL COURT

For Official Use Only

MOTION FOR RELIEF FROM JUDGMENT AND ORDER ON MOTION

____
(Issuing Municipality)

-vs-

Citation Nos.: ________________

____

(Print Citation Numbers above)

____
(Defendant's Name

____

____
(Address)

____
(Phone and email)

TO BE FILLED OUT BY DEFENDANT

1. I am the defendant and judgment was entered against me on ______________________________.
2. This matter should be reopened because:
   - a. ☐ judgment was entered against me because of my failure to appear for a scheduled court proceeding. My failure was the result of (check all that apply) (must be made within 6 months of entry of judgment.)
     - ☐ a mistake. ☐ inadvertence. ☐ excusable neglect.
   - b. ☐ It is no longer equitable that the judgment should have any prospective application.
   - c. ☐ Fraud, misrepresentation, or other misconduct of an adverse party.
   - d. ☐ Another reason justifies relief from the judgment.
3. I understand that I may be required to pay reopening costs, attend future court dates, and that I will still owe the forfeiture if my motion is denied. I understand that, if I cannot pay the reopening costs due to poverty, I may file a request to waive those costs.
4. My request to reopen should be granted by the court because: [if you failed to appear, indicate why]

____

____

____

(Attach additional pages if necessary)

______________________ ______________
Defendant Signature Date

TO BE FILLED OUT BY PROSECUTOR

PROSECUTOR'S POSITION ON MOTION:

☐ Do Not Object ☐ Schedule motion for hearing

THE COURT ORDERS THAT:

☐ The motion is denied for failure to:
- ☐ meet statutory requirements
- ☐ establish mistake, inadvertence, or excusable neglect.
- ☐ other/explanation: _________________________________

☐ A hearing on the motion shall be held on _________ at __________.

☐ The motion is granted subject to the defendant paying costs of $________, pursuant to Wis. Stat. §814.07. If the defendant is unable to pay the costs due to poverty, he or she may file a request to waive those costs. This matter is set for a ☐ pretrial ☐ trial on __________ at __________.

____
Municipal Court Judge

____
Date

FORM Q
(2024)

STATE OF WISCONSIN DEFOREST/WINDSOR MUNICIPAL COURT DANE COUNTY

120 S. STEVENSON STREET DEFOREST, WI 53532

(608) 846-6782

SUMMONS TO APPEAR FOR
INDIGENCE/GOOD CAUSE HEARING

DeForest/Windsor Municipal Court

vs.

Citation# **Citation**

Name: **Defendant**

Offense: **Offense**

The court has granted you an extension for time to pay your court-ordered financial commitments or perform other ordered tasks. In the event you have not fully complied, including paying all amounts owed, by the time of the hearing indicated below, you are ordered to appear in person before the Honorable Jason Hanson in the DeForest/Windsor Municipal Court, at the address above, to show good cause for your failure to comply, such as indigence or other inability, and in order to seek some sort of alternative means of satisfying the judgment.

This hearing has been scheduled for___________________________ at _____________.

IF YOU FAIL TO APPEAR OR FAIL TO SHOW GOOD CAUSE, THE COURT MAY SUSPEND YOUR DRIVER'S LICENSE, SUSPEND YOUR HUNTING/FISHING LICENSE, ISSUE A WARRANT FOR YOUR ARREST, ENTER YOUR FORFEITURE INTO THE LOTTERY/TAX INTERCEPT PROGRAM, ISSUE A GARNISHMENT TO YOUR EMPLOYER, AND/OR REFER YOUR CASE TO A COLLECTIONS AGENCY, INCLUDING THE WISCONSIN DEPARTMENT OF REVENUE'S DEBT COLLECTION PROGRAM. A DELINQUENT COLLECTION FEE OF 15% OF THE UNPAID BALANCE OR $35.00, WHICHEVER IS GREATER, WILL BE ADDED TO YOUR ACCOUNT.

Collection action may include one or all of the following, some of which result in additional fees being added to your account:

- *Interception of your Wisconsin tax refunds.*
- *Attachment of wages or other compensation being paid to you.*
- *Garnishment, seizure or levy against your property, including bank accounts and IRAs.*
- *Filing a delinquent tax warrant with the Clerk of Courts in the county in which you reside and/or own property. This warrant will act as judgment and lien on any real and personal property that you own and may affect your credit rating.*

Dated at the Village of DeForest, Wisconsin, this _______________, 20_____.

Notes:

BY THE COURT:

Hon. Jason Hanson
DeForest/Windsor Municipal Court
Municipal Court Judge

FORM S
(2024)

STATE OF WISCONSIN __________ MUNICIPAL COURT _________COUNTY

____
Plaintiff,
vs.
____
Defendant.

WRIT OF COMMITMENT

Case No.

THE STATE OF WISCONSIN TO ANY LAW ENFORCEMENT OFFICER AND THE KEEPER OF THE (JAIL) (HOUSE OF CORRECTIONS) OF _____________COUNTY:

WHEREAS, the (city, town, village) of ____________________, on the ______ day of ________________________, 20 ____, recovered a judgment in the Court above named against the defendant ______(name of defendant)_______ for the sum of _______________ dollars and cents for violation of Section __________ of the (city, town, village) Municipal Code in that he/she did ____

AND WHEREAS the said defendant is in default of payment thereof,

THEREFORE, YOU ARE COMMANDED to convey and deliver the said defendant _________ _____________________________ to the custody of the keeper of the (House of Corrections) (__________ county jail) and you, the said keeper, are hereby commanded to receive the said defendant into your custody in said jail, and keep him/her there safely until the expiration of _____________ days unless the said judgment, together with all costs and fees are sooner paid, or he/she is discharged by due course of law.

A JUDICIAL DETERMINATION HAS BEEN MADE THAT:

_____The defendant has the ability to pay the forfeiture and failed to do so

_____The defendant has the ability to do community service in lieu of payment of the forfeiture and failed to do so

_____The defendant, being personally notified, failed to appear for a good cause/indigency hearing, thus waiving that right.

_____The defendant failed, without good cause, to complete an assessment or treatment program related to alcohol or drugs.

Dated at ____________________, Wisconsin, this ______ day of _______________, 20_____.

BY THE COURT:

____
Hon. (Name of Municipal Judge)
Municipal Judge, (Municipality)

FORM T
(2024)

STATE OF WISCONSIN _____________ MUNICIPAL COURT _____________ COUNTY

Since most people are concerned about appearing in court, I offer the following procedures and rules to help you understand how the court functions. The court has jurisdiction of traffic and non-traffic ordinance violations in this municipality. You have the right to be represented by an attorney, or you may go ahead without one. If you want an attorney, you must retain one at your own expense. The court will not provide you with an attorney.

INITIAL APPEARANCE

At the initial appearance, the defendant may enter a plea. Only those cases where the defendant enters a guilty or no contest plea will be heard. Where the defendant enters a not guilty plea, the case will be scheduled for trial at a later date. At the trial, the municipal attorney will be present, along with witnesses. You should also have your witnesses present at that time. If you are cited for a violation of Operating Under the Influence and plead not guilty, you may request a jury trial before the county circuit court. A timely written request and payment of the required fees must be made within ten (10) days of the initial appearance.

PLEAS

If you plead guilty, it is an admission of the charges against you.

A plea of no contest is similar to a plea of guilty and I will treat it the same as a guilty plea. However, you will not be admitting your civil liability for use in other litigation, which should be expected where personal injury or property damage is involved.

Where pleas of guilty and no contest are made, a money judgment (forfeiture) is entered against you. You will be given an opportunity to tell me any mitigating circumstances surrounding the charge.

If you plead not guilty it means that you believe that the charge against you is not correct. If you are in doubt as to which plea to enter, I suggest you plead not guilty or ask for an adjournment so you can review your case and make an intelligent plea at the adjourned date. If you plead not guilty, the municipality must prove your guilt by "clear and convincing evidence". In short, the facts proven by the municipality must indicate that it is highly probable that you committed the ordinance violation.

COURT PROCEDURE

First, those pleading not guilty will be given a trial date and excused. Those defendants pleading guilty or no contest will remain. When your name is called, please come before the bench. I will inform you of the charges and of the consequences of your plea; i.e., traffic demerit points, minimum and maximum forfeitures, etc. The bailiff will then advise me of the facts of the violation. You may make a brief statement and I will then review your past record, if any, and depending on the seriousness of the present charge and any past record, I will render my judgment accordingly.

Upon a finding of guilty, a forfeiture plus costs may be imposed. Forfeitures are payable immediately. However, I may defer payment for a reasonable time to another court date. If you fail to pay your forfeiture and do not appear at the extension time, you may be committed to jail or, in some cases, your driver's license shall be suspended for up to one year. If you fail to pay your forfeiture due to poverty, you may request that the court allow you to pay your forfeiture through an installment plan.

If because of poverty as defined in §814.29(1)(d) (receiving means-tested assistance or limited/no income) or unexpected circumstances, you are either unable to pay your forfeiture or keep up with an installment plan by your due date, you should notify the court in writing and an installment plan, community service or a stay may be provided.

TRAFFIC VIOLATIONS

If you are found guilty of a traffic offense, in addition to any judgment made by the court, the State Department of Transportation may assess demerit points against your driving record, which may result in the suspension or revocation of your driver license. The assessment of 12 demerit points in one year shall result in the loss of your license. Any person holding a probationary license will be assessed double the demerit points for the second and all subsequent moving violations. Juveniles cited for traffic ordinance violations are subject to the same forfeitures and court procedures as adults.

JUVENILES

The municipal court has jurisdiction of persons who are at least 12 years of age and less than 17 years of age charged with non-traffic ordinance violations. Juveniles have the same rights as adults with respect to pleas. They have a right to a private (closed) hearing. A money judgment may be entered against a juvenile found guilty of a non-traffic ordinance violation. If the offense is alcohol related, the driver license of the defendant may be suspended regardless of payment.

COURT CONDUCT

This is a court of law and the rules of proper decorum and evidence will be followed. Please remain quiet while the court is in session and give others the courtesy to be heard and present their case. Eating and smoking are prohibited in the courtroom. Persons who fail to conduct themselves in an orderly manner shall be cited for contempt.

TRIALS

At trial the prosecution will produce its witnesses to testify as to the facts and circumstances surrounding your case. You or your lawyer will be permitted to cross examine each witness. When the prosecution has completed its case, you and your witnesses will be given the opportunity to testify and will be subjected to cross examination by the prosecution. After all the evidence has been presented, the prosecution and the defense will be given an opportunity to summarize their respective cases to the court through brief argument. Thereafter, the court will determine your innocence or guilt. If the court finds you not guilty, you will be discharged and the complaint against you dismissed. If you are found guilty, the court will impose a penalty, taking into consideration the seriousness of the violation, the hazardous condition, if any, which may have existed at the time, and your past record. If necessary, you may have up to 60 days to pay the forfeiture and costs.

If because of poverty as defined in §814.29(1)(d) (receiving means-tested assistance or limited/no income) or unexpected circumstances, you are either unable to pay your forfeiture or keep up with an installment plan by your due date, you should notify the court in writing and an installment plan, community service or a stay may be provided.

APPEALS

If you are found guilty after trial, you have the right to appeal your case to the county circuit court. All appeals must be filed in writing within 20 days after judgment. You must file your Notice of Appeal with this municipal court. If you fail to meet this time limit, you have lost your right to appeal. The appeal fee, and bond, if ordered, must be posted upon filing the appeal. You have the right to a 6-person jury trial on appeal, upon payment of appropriate fees.

It is hoped that your appearance in municipal court will be a beneficial and learning experience for you.

PROPOSED OPENING COMMENTS

Good evening (morning, afternoon). We will call the court to order at this time.

My name is ________________________. I am the municipal judge for the ____________ of ________________. I would like to go over some of the procedures that we follow in our court. These procedures are set forth in the form that was available as you entered the courtroom.

When your case is called, please come forward. You will be asked to enter a plea of guilty, not guilty or no contest. If you plead guilty or no contest, I will review the facts of your case, find you guilty, and impose an appropriate forfeiture. A plea of no contest is similar to a guilty plea but a conviction arising from a no contest plea cannot be used against you in a civil action such as may be involved if the citation arose from a traffic accident.

If you plead not guilty, we can set your case over to our next court session for a pre-trial. That date is ________________________, at which time both you and the (village/town/city) will be able to discuss the merits of the case, and any defenses thereto. The parties may reach a pre-trial agreement at that time.

If you plead not guilty, and do not wish a pre-trial, we will set your case over to our next court session for trial. That date is ______________________, at which time both you and the (village/town/city) will be able to present any witnesses and any other evidence relating to your case.

Those of you who are here facing traffic offenses should understand that you will lose demerit points upon conviction of most such offenses. If you lose 12 points in any one year period, you will lose your license to drive in Wisconsin for a certain period of time. All probationary license holders will be assessed regular demerit points for the first violation, and for subsequent offenses, the points will double.

If I impose a forfeiture, you may have time to pay it if you need time and request time to pay the forfeiture. If you fail to pay the forfeiture imposed and don't request an extension, or an installment payment plan, you may lose your license for one (1) year or until you pay the forfeiture. If you don't have a license, or under other circumstances, you may be sent to jail for a period of time equal to one day for each $50 that remains unpaid.

If because of poverty as defined in §814.29(1)(d) (receiving means-tested assistance or limited/no income) or unexpected circumstances, you are either unable to pay your forfeiture or keep up with an installment plan by your due date, you should notify the court in writing and an installment plan, community service or a stay may be provided.

If you are here for an initial appearance, you have a right to request that your case be set over to another date, either to consult with a lawyer or for some other reason.

Those of you charged with operating under the influence are entitled to request a jury trial in the circuit court upon payment of the proper fees. All other cases will be handled in this court with the right to appeal my ruling to the circuit court.

Will the clerk please call the first case.

STATE OF WISCONSIN _________________MUNICIPALITY _______________COUNTY

MUNICIPAL COURT CLERK
APPOINTMENT FORM

Under the authority of §755.10 Wis. Stats., I hereby appoint

____ as clerk of the

municipal court of the _________________________ of _________________.
(Town, Village, City)

Dated this___________ day of __________________________, 20______.

____
Municipal Judge

FORM AA
(2024)

MUNICIPAL COURT CLERK'S OATH

Every official oath required by article IV, section 28, of the constitution or by any statute shall be in writing, subscribed and sworn to and except as provided otherwise by s. 757.02 and SCR 40.15, shall be in substantially the following form:

Form of written oath

State of Wisconsin,

County of ________________

I, the undersigned, who have been appointed to the office of municipal court clerk, but have not yet entered upon the duties thereof, swear (or affirm) that I will support the constitution of the United States and the constitution of the state of Wisconsin, and will faithfully discharge the duties of said office to the best of my ability. So help me God.

___________________________,

Subscribed and sworn to before me this _____ day of __________, __________
(month) (year)

____
(Signature)

Form of oral oath

If it is desired to administer the official oath orally in addition to the written oath prescribed above, it shall be in substantially the following form:
I, _______________________, swear (or affirm) that I will support the constitution of the United States and the constitution of the state of Wisconsin, and will faithfully and impartially discharge the duties of the office of municipal court clerk to the best of my ability. So help me God.

FORM AA
(2024)

STATE OF WISCONSIN **MUNICIPAL COURT** **COUNTY**

____
Plaintiff,

-vs-

____
Defendant.

DISQUALIFICATION/RECUSAL ORDER

Citation No. ______________________

---

1. Pursuant to requirements of 757.19(2)___________________, Municipal Judge of this Court, declares him/herself disqualified by statute to preside over the above captioned matter because:

2. The procedure for request of assignment of another judge is ordered to be undertaken forthwith.

Dated at _______________, Wisconsin, this ______ day of _________________, 20_____

BY THE COURT:

____
Honorable Municipal Judge

____
Municipal Court

FORM BB
(2024)

MUNICIPAL COURT

Municipal Judge **Court Clerk**

NOTICE OF REQUIREMENT & ORDER TO INSTALL IGNITION INTERLOCK DEVICE

This court has ordered that your operating privilege be restricted to operating only motor vehicles that are equipped with an ignition interlock device (IID).

This restriction on the operating privilege is in effect immediately and continues for one year beginning on the date that the Department of Transportation issues you a new license or an occupational license. The court may choose to order an IID restriction on all of the vehicles registered and/or titled in your name to begin immediately at time of conviction.

It is your responsibility to have the IID installed on all vehicles registered in your name unless exempted by the court. It is also your responsibility to pay all costs associated with the installation, service, repair, and removal of the device.

Below is a link to currently approved IID manufacturers that you can call for current installation and maintenance prices and the location of their respective installation service centers.

https://wisconsindot.gov/pages/about-wisdot/who-we-are/dsp/spec-svcs/chemtest.aspx

There are criminal penalties for non-compliance of the IID court order, or removal, disconnection, tampering or other circumvention of the IID. They include a fine of $150.00 to $600.00 and/or up to 6 months in jail, and a mandatory 6 month extension of the IID requirement

NOTE: During the time of the IID order you may not operate a motor vehicle if you have an alcohol level of .02 or more.

BY THE COURT:

____________________________ ________________
Judge Signature Date

FORM CC
(2024)

APPLICATION FOR IID COST REDUCTION & VEHICLE EXEMPTION

NOTICE: THERE ARE INSTRUCTIONS, DEFINITIONS AND MORE INFORMATION ON THE REVERSE SIDE.

Date:_________________________

First Name: __________________ MI: ___ Last Name:_________________________

Home Street Address:____

City, State, Zip: ____ Phone:_______________________

Name of Employer: ____ Phone:_______________________

Employer Address:____

Occupation:____________________________________

Average number of hours worked per week: ______ Hourly rate:_________

I receive a gross monthly income totaling the amount of $____________ from:

☐ Wages ☐ Social Security ☐ Unemployment Compensation ☐ Veteran's Benefits

☐ Pension ☐ SS Disability ☐ Student Loans/Grants ☐ Other:

Marital Status: ☐ Married ☐ Unmarried ☐ Separated

Is your spouse/significant other employed? ☐ Yes ☐ No If yes, occupation:

Spouse's or significant other's name of employer:

My household consists of myself and ______ others (list dependents only if "legal dependents."):

Full name: _________________________ Relationship to me: ____________ Under 18 ☐ Yes ☐ No

Full name: _________________________ Relationship to me: ____________ Under 18 ☐ Yes ☐ No

Full name: _________________________ Relationship to me: ____________ Under 18 ☐ Yes ☐ No

Full name: _________________________ Relationship to me: ____________ Under 18 ☐ Yes ☐ No

Full name: _________________________ Relationship to me: ____________ Under 18 ☐ Yes ☐ No

The other members of my household have a gross monthly income totaling $______________ from:

☐ Wages ☐ Social Security ☐ Unemployment Compensation ☐ Veteran's Benefits

☐ Pension ☐ SS Disability ☐ Student Loans/Grants ☐ Food Stamps

☐ Relief funded under state or county public assistance ☐ Other (explain):

NOTICE: THERE ARE INSTRUCTIONS, DEFINITIONS AND MORE INFORMATION, AND THIS APPLICATION NEEDS TO BE SIGNED ON THE REVERSE SIDE.

COST REDUCTION OF AN IID

You may qualify for a 50% reduction in the cost of installing and maintaining an IID on your vehicle or vehicles if the court finds that your household income is at or below 150% of the federal poverty guideline, below.

Family Size	Annual	Monthly		Family Size	Annual	Monthly
1	$15,060	$1,255		5	$36,580	$3,048
2	$20, 440	$1,703		6	$41,960	$3,4997
3	$25,820	$2,152		7	$47,340	$3,945
4	$31,200	$2,600		8	$52,720	$4,393

These amounts are based on the 2024 federal guidelines, which may increase by a small percentage each year.

GENERAL DEFINITIONS

A member of household is defined by state and federal laws. The Internal Revenue Service (IRS) defines a member of household as a person who is related to you or lives with you for the entire year as a member of your household. The IRS explains a member of household for tax purposes as follows: "If the person is not related to you, he or she must have lived in your home as a member of your household for the entire year (except for temporary absences, such as for vacation or school).

Household income counts all the income of all residents over the age of 18 in each household, including not only all wages and salaries, but such items as unemployment insurance, disability payments, child support payments, regular rental receipts, as well as any personal business, investment, or other kinds of income received routinely.

HOW TO APPLY FOR A REDUCTION and/or VEHICLE EXEMPTION.

Are you applying for a cost reduction of an IID? ___Yes ___No. For vehicle exemption? ___Yes ___No.

TO APPLY FOR COST REDUCTION *(not vehicle exemption), you must present to the court a completed application****.*** ***<u>A completed application means this form and financial proof</u>****, such as a recent pay stub received within the last 30 days and not less than the first page of your most recent federal income tax return (Form 1040 or 1040A) and, if applicable, a recent benefit letter for SSI or other benefits for yourself. You will also need to know the amount of income/benefits for all adult members of your household.*

TO APPLY FOR VEHICLE EXEMPTION*, you need to provide the following information for each vehicle that you want to exempt: Year, make, vehicle identification number (VIN) and license plate number. The VIN can be found on the title to your vehicle or the bottom of your windshield. Example: 2005 Chevrolet 1GNDV03E65D113775 515ABC*

NOTE: You may qualify to have one or more of your vehicles exempted, and/or any DOT stop orders blocking the transfer of vehicles titled in your name lifted, even if you do not qualify for a cost reduction in the installation and maintenance of an IID.

THE HEARING

The hearing generally will be held on the court date shown on your OWI citation***. If you have not completed this application in full or if you fail to bring the financial proof needed, your application cannot be processed.***

By signing this application, under penalties of law, you are declaring that this application and all associated documents are true, correct, and complete to the best of your knowledge and belief. Providing false information to a court could subject you to being charged with obstruction of justice under city ordinance or state statute, or contempt of court or perjury.

________________________ ____________________
Signature Date

FORM DD
(2024)

MUNICIPAL COURT

Municipal Judge **Court Clerk**

ORDER FOR INSTALLATION OF IGNITION INTERLOCK DEVICE AT REDUCED COST

The person named below has been ordered by the within court as required by Wisconsin statutes to have an ignition interlock device (IID) installed on a motor vehicle.

The court has determined that the person is qualified for a 50% reduction in the cost of installing, servicing, repairing and removing the IID.

ACCORDINGLY, IT IS HEREBY ORDERED that an IID shall be installed and that the cost of installing, servicing, repairing, removing and all other associated costs of the IID shall be reduced by 50%. This order does not cover any costs arising out of unlawful tampering with the IID.

________________________________ ________________

Name of person Date of birth

BY THE COURT:

________________________ ________________

Judge's Signature Date

NOTICE: There are criminal penalties for non-compliance of the IID court order, or removal, disconnection, tampering or other circumvention of the IID. They include a fine of $150.00 to $600.00 and/or up to 6 months in jail, and a mandatory 6 month extension of the IID requirement

Below is a link to currently approved IID manufacturers that you can call for current installation and maintenance prices and the location of their respective installation service centers.

https://wisconsindot.gov/pages/about-wisdot/who-we-are/dsp/spec-svcs/chemtest.aspx

FORM EE
(2024)

STATE OF WISCONSIN _____________ MUNICIPAL COURT ________ COUNTY

_____________ OF ____________________

PLEA QUESTIONNAIRE
(OWI/PAC/RCS CASES)

vs.

____

Citation No. _______________
____

I have been cited for allegedly Operating Under the Influence of an Intoxicant/Drug/Controlled Substances, Operating with a Prohibited Alcohol Concentration, Operating with a Restricted Controlled Substances, or a similar offense under the local ordinance adopting Wis. Stat. §346.63.

I am aware that I have the right to consult with and be represented by an attorney at my own expense. I understand that I may ask the judge to consider a new court date, if necessary. I am aware that I could demand that this case be transferred to circuit court for a jury trial.

I am aware that if I am found guilty, either by pleading no contest or guilty or after a trial, I will be ordered to pay a fine, complete an alcohol and other drug assessment and any follow-up indicated by the assessment, and to attend a victim impact panel. I am also aware that my driver license will be revoked. If I refused to submit to chemical testing or if my alcohol concentration at the time of driving was .15 or greater, I am also aware that I will be required to install an ignition interlock device in any vehicle owned or operated by me.

I wish to enter one of the following pleas:

_____ Not Guilty _____ Guilty _____ No Contest

I have never been convicted, found guilty, entered a plea of no contest or guilty, paid a fine or court costs, or violated a condition of bail/bond, been determined to have violated, or had my driver's license revoked or suspended, in connection with any alcohol, drug, or controlled substance related driving, nor is any such case pending, either in Wisconsin or anywhere else.

_____ True

_____ False
Please Explain: ____

Date: ______________________________

____
Defendant

FORM FF
(2024)

TABLE OF DEPARTMENT OF TRANSPORTATION (DOT) AND DEPARTMENT OF HEALTH SERVICES (DHS) FORMS

		Ivory Pages	
		Form No.	**Form Date**
DOT FORMS			
1	Court Order of Revocation/Suspension Conviction Status Report	MV 3029	8/2019
3	DOT Request for Forms	DT 1435	10/2013
4	Court Order for Intoxicated Driver Assessment and Driver Safety Plan	MV 3632	3/2021
DHS FORMS			
10	DHS Court Order for Assessment	F-20933	2/2017
11	DHS Request for Forms	F-80025A	7/2018

☐ 1. **MV3029 - Court Order of Revocation/Suspension**
☐ 2. **MV3435 - Conviction Status Report**

MV3029 - 8/2019 / MV3435 - 8/2019 Ch. 346 Wis. Stats.

Mail To: Citations and Withdrawals
Wisconsin Department of Transportation
P.O. Box 7917
Madison, WI 53707-7917

3. Court Name, Address, City, State, ZIP Code	4. Court (Area Code) Telephone #	5. Agent #
	6. County	7. Court #
	8. Court Case #	9. Branch #
10. Driver Name (First, MI, Last), Address, City, State, ZIP Code	11. Birth Date	12. Individual/Non
	13. Federal Employer Identification Number	

14. Driver License Number | 15. Jurisdiction | 16. Race | 17. Sex | 18. Height | 19. Weight | 20. Hair | 21. Eyes

22. **Withdrawal Order Basis**

☐ D ☐ JEC
☐ FD ☐ JID
☐ FPS ☐ OTH
☐ IC ☐ RMC
☐ ICU ☐ T
☐ JA ☐ UCD

25. Amount Due
☐ FPF:
☐ FPJ:
☐ FPN:

23. **Court Withdrawal Directive**

☐ 1 Failure to pay has been paid
Date paid:___________
☐ 2 Revocation/suspension reported in error
☐ 3 Vacate court order of revocation/suspension
☐ 13 Court ordered revocation/suspension
☐ 14 Court ordered rev/sus amended
☐ 17 Report driver license/vehicle restriction
☐ 18 Stay revocation/suspension
☐ 20 Remove driver license/vehicle restriction

24. **Court Violation Directive**

☐ 4 Vacate conviction
☐ 5 Reopened conviction set for further proceedings
☐ 6 Reopened conviction dismissed
☐ 7 Reopened conviction amended
☐ 8 Appealed conviction set for further proceedings
☐ 9 Appealed conviction dismissed
☐ 10 Appealed conviction affirmed
☐ 11 Conviction reported in error
☐ 12 Conviction reported in error and corrected
☐ 15 Report of conviction
☐ 16 Report of mandatory conviction

MV3435 Only - Previously Reported Data

26. Withdrawal Basis___________ 27. Court Case #___________ 28. Uniform Traffic Citation #___________
29. Violation Date___________ 30. Statute #___________ 31. Municipal Citation #___________
32. Conviction Date___________ 33. Statute Severity___________ 34. Local Ordinance #___________
35. Trans Rule___________ 36. Trans Rule Severity___________ 37. Operating as Class A B C D M O
38. Description of Charge

Conviction Data

39. Violation Date	40. Uniform Traffic Citation #		41. Municipal Citation #	42. Criminal Complaint Issued ☐ Yes ☐ No
43. Conviction Date	44. Statute #		45. Statute Severity	46. DOT #
47. Trans Rule	48. Trans Rule Severity	49. Local Ordinance #	50. Hazmat #	51. Zones ☐ School ☐ Construction ☐ Utility ☐ Railroad
52. Description of Charge			53. If Speeding MPH Over	
Operating As 54. Class A B C D M O	55. Endorsement F H N P S T		56. Counts of	

Withdrawal Data

☐ 57. Revoked ☐ 58. Suspended
☐ 62. Passenger under 16 in vehicle
☐ 64. Penalty Enhanced
65. Accident Severity (when applicable):
☐ Fatality to another - F
☐ Personal Injury to another - PI
☐ Property Damage to another - PD

59. Effective Date___________
63. Prohibited Alcohol Content___________
66. Refusal Date___________
☐ Person failed to request hearing
☐ Hearing held; Refusal unreasonable
☐ Court ordered assessment
☐ Refusal vacated

60. Time Period___________
☐ Days ☐ Mths ☐ Years
67. Jail Time___________
☐ Days ☐ Mths ☐ Years
68. ☐ IID Duration___________
☐ Days ☐ Mths ☐ Years
☐ Veh Restr Now or Eff ___________
☐ Sobriety Ct Eff ___________

61. Effective Date Method
☐ 1 Consecutive
☐ 2 Concurrent
☐ 3 Date of Notification by DOT
☐ 4 Date of Application
☐ 5 Consecutive & After Application
☐ 6 DOT Sets Date

69. Special Instructions

X___________________________
(70. Judge or Court Clerk) (71. Date)

FORM 1
(2024)

REQUEST FOR FORMS

Wisconsin Department of Transportation
DT1435 10/2013

(Area Code) Telephone Number	(Area Code) FAX Number
Contact Name, Company / Organization, Street Address, City, State, ZIP Code	

☐ Check if this is a residential address.

Send Your Order To:

Fax: (608) 246-5632

Mail: Maps and Publications Sales
Wisconsin Department of Transportation
PO Box 7713
Madison, WI 53707-7713

Email: **materials-mgt.dbm@dot.wi.gov**

All forms listed are available for free distribution.
For a complete list of forms go to:
http://wisconsindot.gov/Pages/global-footer/formdocs/default.aspx

Questions about completing a form, or its content, contact:

(608) 266-1466 about **Vehicle** Information Forms
(608) 266-2353 about **Driver** Information Forms
(608) 267-9760 about SP Forms = **Law Enforcement**
(608) 246-3265 about **Your Order**

QUAN.	FORM #	TITLE
_____	MV1	Wisconsin Title and License Plate Application
_____	MV1252	Division of Motor Vehicle Return Envelope – #10
_____	MV2119	Replacement Title Application
_____	MV2184	Salesperson/Representative License Application
_____	MV2488	Vehicle Transfer and Odometer Mileage Statement
_____	MV2502	Notice of Unpaid Citation, continuous, 3-ply *(police only)*
_____	MV2505	Temporary License Plate Application
_____	MV2652	Civilian License Plate Application
_____	MV2673	Major Parts Statement, Repaired Salvage Vehicle or Homemade
_____	MV2679	Notice of Unpaid Citation, continuous, 1-part *(police only)*
_____	MV2833	Vehicle Action Notice *(police only)*
_____	MV2858	Endangered Resources License Plate Application
_____	MV2859	Salvage Vehicle Pictures Statement (*police only)*
_____	MV2916	Ducks Unlimited License Plate Application
_____	MV2917	Green Bay Packers License Plate Application
_____	MV2929	WI National Guard License Plate Application
_____	MV2930	U.S. Veteran Motorcycle License Plate Application
_____	MV2948	Title Mailing Label *(Limit 200 labels) (Authorized Agent)*
_____	MV2951	Gold Star License Plate Application
_____	MV2954	Wisconsin Salutes Veterans License Plate Application
_____	MV2957	Wisconsin Women's Health Foundation License Plate Application
_____	MV2960	Golf Wisconsin License Plate Application
_____	MV2961	Civil Air Patrol License Plate Application
_____	MV3001	Wisconsin Driver License (DL) Application
_____	MV3004	Wisconsin Identification Card (ID) Application
_____	MV3027	Occupational Operator License Application
_____	MV3030B	Physical Examination Report for S or P Endorsement
_____	MV3030V	Certificate of Vision Examination by Competent Authority
_____	MV3058	Address Change Notice
_____	MV3118	Sponsorship Withdrawal
_____	MV3141	Driver Condition or Behavior Report
_____	MV3230	Commercial Driver Certification Tier of Operations
_____	MV3396	Notice of Intent to Revoke *(police only)*
_____	MV3505	Occupational License Information
_____	MV3530	Administrative Review Request *(Includes MV3519) (police only)*
_____	MV3581	Voluntary Temporary Surrender of License
_____	MV3592	Request to Withhold Name and Address
_____	MV3598	Ignition Interlock Device Installation/Removal Record
_____	MV3631	Driver Safety Plan Report *(assessment agencies)*
_____	MV3632	Court Order for Intoxicated Driver Assessment and Driver Safety Plan *(courts or assessment agencies)*
_____	MV3633	Driver Safety Plan Order *(assessment agencies) (also in Spanish)*
_____	MV3634	Order for Assessment and Driver Safety Plan Report *(assessment agencies) (also in Spanish)*
_____	MV3644	Medical Examination Report
_____	MV3649	WI Assessment of the Impaired Driver *(assessment agencies)*
_____	MV3735	Hazardous Material Endorsement Application
_____	MV3740	Wisconsin School Bus Disqualifications
_____	MV4000	Numbered - Police Report of Motor Vehicle Traffic Accident (*pads of 25) (police only)*
_____	MV4002	Driver's Report of Accident (police only)
_____	MV4004	WI Motor Vehicle Accident Report Supplement *(police only)*
_____	MV4061	Motorcycle Inspection Certification *(privately owned only)*
_____	SP4005	Alcohol/Drug Influence Report *(police only)*
_____	SP4127	Bail Bond Envelope *(police only)*
_____	SP4162	Motor Bus / Human Service Vehicle Inspection *(police only)*
_____	SP4197	Informing the Accused *(police only)*
_____	SP4337	Agreement to Undertake Responsibility *(police only)*
_____	SP4356	Field Sobriety Test Record Notebook *(police only)*
_____	DT1435	Request for Forms
_____	DT1692	State Highway Property Damage Tag *(police only)*

OTHER PUBLICATIONS

QUAN.	FORM #	TITLE
_____	8340-C130	Manual for Motor Vehicle Salesperson
_____	BDS126	Wisconsin Motorist Handbook *(available only on line and at DMV service centers)*
_____	BDS316	Acceptable Documents for Driver License / ID card
_____	BDS347	Be A Rebel, Wear Your Seatbelt
_____	BDS348	Be A Rebel, Drive Safely
_____	BDS349	Be A Rebel, Drive Sober
_____	BDS352	Motor Vehicle Insurance Requirements
_____	OPA0311	Flashing Yellow Arrow Info at a glance
_____	OPA0511	511 Traveler Info at Your Fingertips

FORMS NO LONGER PRINTED

The following forms are no longer printed. They are available only online at: http://wisconsindot.gov/Pages/global-footer/formdocs/default.aspx

MV2016	Substitute Renewal Notice/Non-Operation Statement
MV2026	Duplication Certificate of Registration Application
MV2118	Replacement License Plate Information and Application
MV2172	U.S. Disabled Veteran Parking License Plate Information and Application
MV2300	Statement of Transfer of Vehicles to a Surviving Spouse, Domestic Partner or Heir
MV2323	Collector License Plate Information and Application
MV2388	Hobbyist License Plate Information and Application
MV2419	Abandoned/Unregistered Vehicle Transfer Certificate (available on WILENET)
MV2428	Personalized License Plate Information and Application
MV2459	Junked Vehicle Bill of Sale
MV2489	Statement of Intent
MV2505	Temporary License Plate Application
MV2514	License Plate Cancellation Application
MV2548	Permanent Disability Parking ID Application
MV2653	Military License Plate Information and Application
MV2724	University License Plate Application
MV2752	Information on Parking Privileges for Persons with Physical Disabilities
MV2849	Title Application/Notice *(Insurance companies only)*
MV2881	Involuntary Lien Transfers and Abandonment of Property to a Landlord *(Combines MV2878, MV2879, MV2880 and MV2887)*
MV2899	Celebrate Children License Plate Application
MV2933	Temporary Disability Parking ID Application
MV3480	Wisconsin Motor Vehicle Fatal Supplement Report
MV3617	Order for Ignition Interlock Exemptions and Removing Title Transfer Stops *(police/courts only)*
MV4062	Milwaukee Brewers License Plate Application
BDS122	Instructions for completing a traffic accident report

Obtain Traffic Citation Books (MV4016) or order
24 Hour Out-of-Service Motor Vehicle (MV3546) from Traffic Citation Unit: **(608) 266-8793**.
Dealers obtain License Plates and Date/Month stickers from Plate Issue Unit: **(608) 266-1471**.

Comments or write in documents not listed above:

COURT ORDER FOR IDP RELATED OFFENSE DRIVER ASSESSMENT AND DRIVER SAFETY PLAN

Wisconsin Department of Transportation
MV3632 3/2021 s.343.30(1q) or 343.305(10) Wis. Stats.

INDIVIDUAL

Name (Last, First, MI)	Birth Date (M M - D D - Y Y Y Y)	Sex	Driver License Number (1 2 3 4 - 5 6 7 8 - 9 10 11 12 - 13 14)	State

Address, City, State, ZIP Code	County of Residence	(Area Code) Telephone Number

COURT

Convicting Court Name	Convicting Court Address, Street, City, ZIP Code

Judge	Court (Area Code) Telephone Number

Citation Number	Court Case Number	Non-UTC Number	Conviction Date (m/d/yyyy)

ARREST INFORMATION

Arrest Date(s)	BAC Level or CS

FIRST	SECOND	THIRD OR MORE	OFFENSE
☐	☐	☐	**Implied Consent Refusal** - s.343.305(10) Wis. Stats.
			Operating while under the influence
☐	☐	☐	- s.346.63(1)(a) Wis. Stats.
☐	☐	☐	- s.346.63(1)(am) Wis. Stats.
☐	☐	☐	- s.346.63(1)(b) Wis. Stats.
☐	☐	☐	**Causing Injury** - s.346.63(2) Wis. Stats.
☐	☐	☐	**Causing Injury/Great Bodily** - s.940.25 Wis. Stats.
☐	☐	☐	**Causing Homicide** - s.940.09 Wis. Stats.

Referred to Assessment Facility – Name
Street Address
City, State, ZIP Code
(Area Code) Telephone Number

Information Attached for Assessment Facility:

☐ Accident Report ☐ Citation
☐ Complaint ☐ Driver Record
☐ Related Offenses ☐ Other:

Having been found guilty or having had an adverse finding for the above indicated offense, you are ordered to submit and comply with an assessment by the approved public treatment facility for your county of residence, as defined in s.51.45(2)(c), Wis. Stats. (or, as referred, to your state of residence). If you are a member or the relative of a member of a federally recognized American Indian tribe or band, you may receive the assessment required under this subdivision from an approved tribal treatment facility as defined in s.51.01(2c). You are further ordered to submit and comply with the development of a driver safety plan.
The purpose of the assessment is to examine your use of alcohol or controlled substances and to develop a driver safety plan. Based on the assessment findings, your plan will involve attendance at a school under s.345.60, Wis. Stats. (or an educational program in another state), treatment, or both. This order and referral shall also serve as notice to you, encouraging your cooperation, since noncompliance with the assessment or the driver safety plan or failure to complete the driver safety plan within 12 months will result in withdrawal of your operating privileges by the Wisconsin Department of Transportation for an indefinite period until you are in compliance. The assessment facility's report on the assessment and the driver safety plan or referral will be submitted within 14 days to the Wisconsin Department of Transportation, the county department under s.51.42, Wis. Stats., or its approved agency, the driver safety plan provider, and yourself.

BY THE COURT: X ______________________ ______________
(Judge/Court Commissioner Signature) (Date – m/d/yyyy)

I agree to contact the above-named assessment facility, or if applicable, an approved tribal treatment facility **within 72 hours** to set an appointment for the assessment or request a transfer. I am aware that a fee is charged and must be paid to comply with assessment or any referral. I understand that the assessment facility will report to the Wisconsin Department of Transportation my compliance status and any referral. My failure to participate will result in the Wisconsin Department of Transportation's indefinite withdrawal of my Wisconsin operating privileges until I do satisfactorily complete assessment and my driver safety plan.

X ______________________ ______________
(Defendant Signature) (Date – m/d/yyyy)

Distribution: 1 – Court; 2 – Assessment Facility; 3 – Defendant
GF-176 (CCAP), Court Order for IDP Related Offense Driver Assessment and Driver Safety Plan.

This form shall not be modified. It may be supplemented with additional material.

DEPARTMENT OF HEALTH SERVICES **STATE OF WISCONSIN**
Division of Mental Health and Substance Abuse Services
F-20933 (02/2017)

COURT ORDER FOR ASSESSMENT

Use of form: Completion of this form meets the requirements of Wisconsin Statutes, s. 23.33(13)(e), 30.80(6)(d), 961.472 or 350.11(3)(d).

Name (Last, First, MI)		Birthdate (mm/dd/yyyy)	Occupation
Address (Street or RFD, City, State, ZIP Code		Telephone Number	County of Residence
Date of Arrest (mm/dd/yyyy)	List BAC Level or Controlled Substance	Case Number	Date of Conviction (mm/dd/yyyy)
Court of Conviction	Address - Court (Street, City, State, Zip Code)		

[Motorized Recreational Vehicles (MRV) includes boats, snowmobiles, and all terrain vehicles]
Having been found guilty or having had an adverse finding for a violation requiring assessment, namely:
(Check the appropriate statute.)

	Offense: First	Second	Third or More
☐ Implied Consent Refusal: MRV			
s. 23.33 (4p)(e), 30.684(5), 350.104(5) Wisconsin Statutes	☐	☐	☐
a local ordinance in conformity therewith	☐		
☐ Operating While Under the Influence: MRV			
s. 23.33(4)(c)(a), 30.681(1), 350.101(1) Wisconsin Statutes	☐	☐	☐
a local ordinance in conformity therewith	☐		
☐ Causing Injury: MRV - s. 23.33(4c)(b), 30.681(2), or 350.101(1) Wisconsin Statutes	☐	☐	☐
☐ Causing Homicide: MRV - s. 940.09 Wisconsin Statutes	☐	☐	☐
☐ Causing Great Bodily Harm: MRV - s. 940.25 Wisconsin Statutes	☐	☐	☐
☐ Possession of Controlled Substance - s. 961.41(3g)(am), (c), (d), or (g) Wisconsin Statutes.	☐	☐	☐

You are hereby ordered by Judge ______________________________ of the ______________
Court, telephone ______________, to submit and comply with an assessment by an approved public treatment facility as defined in s. 51.45(2)(c), Wisconsin Statutes, ☐ development of a treatment plan recommendation, if needed, and ☐ treatment plan completion, if needed.

The purpose of the assessment is to examine your use of intoxicants including controlled substances. Based on the assessment findings, a treatment plan recommendation may be made. This order and referral shall also serve as notice to you encouraging your cooperation, and any non-compliance with the assessment or treatment plan (if needed) will be reported to this court. For any intoxicated motorized recreational vehicle violation, your failure to comply will result in the court's consideration of invoking contempt of court proceedings under Chapter 785. For a violation under the Controlled Substance Chapter, your failure to comply will limit this court's ability to determine whether treatment is appropriate and sentencing considerations should be made. The assessment facility's report on the assessment and any treatment recommendation plan will be submitted within 14 days to the staff of the county department under s. 51.42, the recommended plan provider, this court and / or the Probation Department when required, and yourself.

You are hereby referred to:

____
Name - Assessment Facility

______________________________ ______________
Address - Facility (Street, City, State, Zip Code Telephone Number

______________________________ ______________
SIGNATURE - Court Official Date Signed

I agree to contact the above-named assessment facility within 72 hours to set an appointment for the assessment. I am aware that a fee is charged and that I am responsible for appropriate payment. I understand that my failure to participate will result in the court's consideration of contempt of court proceedings or revising my sentence. I also understand that any information I divulge during this assessment is protected by federal (Title 42 CFR Part 2) and state confidentiality regulations and laws and may not be used as evidence in any further prosecution.

______________________________ ______________
SIGNATURE - Defendant Date Signed

Information attached for assessment facility:
☐ Citation ☐ Police report ☐ Other
☐ Complaint ☐ Related offenses
☐ Accident report ☐ Driving record

Distribution: Original - Court Copies - Client, Recommended plan provider, Probation Agent, Assessment facility / 51.42 staff

DEPARTMENT OF HEALTH SERVICES
Division of Enterprise Services
F-80025A (07/2018)

STATE OF WISCONSIN

FORMS / PUBLICATIONS ORDER

Name – Requester/Contact	Name – Business or Agency
Street Address (*Packages will not be delivered to PO Boxes*)	Street Address Line 2 Select One

City	State	Zip Code

Date Requested	Phone Number – Requester	Email Address – Requester

INSTRUCTIONS FOR COMPLETION: Do not order more than a **3- to 6-month** supply. **Order quantity by each, not carton or box.**

Quantity *(each)*	Form / Publication Number	Form / Publication Title

INSTRUCTIONS FOR SUBMISSION: Select the appropriate email below, attach this completed order form, and send. You will receive an emailed response once your order has been processed.

Send **ALL** order requests (**EXCEPT** Vital Records and WIC) to:
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FORM 11
(2024)

DRIVER LICENSING ABBREVIATION CODES WITH CHARGE POINTS

BDS109 12/2023 WISCONSIN DEPARTMENT OF TRANSPORTATION

Convictions / Withdrawals

Charge ACD	Charge Code	Description	Demerit Points	HTO
004 U31	ACF	**Accident Conviction Fatal** 343.315(2)(a)8	0	
005 D10	ADL	**Altering Driver License** 343.43(1)(g)	0-M	
021 U01	AEO	**Attempt to Elude Officer - owner** 346.175(1)(a)	0	
021 U01	AEO	**Attempt to Elude Officer** 346.04(2t)	6	MINOR
021 U01	AEO	**Attempt to Elude Officer** 346.04(3)	6-M	MAJOR
211	AFA	**Appear for Exam for Another** 343.16(7)(b)	0	
121 A98	BAC	**Blood Alcohol Content** 343.305(7)		
007 N82	BI	**Backing Illegally** 346.87	2	MINOR
130 A04	CA	**Commercial Alcohol** 346.63(5)(a)	0	MINOR
131 A98	CAC	**Commercial Blood Alcohol Content** 345.305(7)		
132 A21	CAD	**Comm. Alcohol Causing Death** 940.09(1)(bm), (e)	0-M	MAJOR
133 A21	CAH	**Comm. Alcohol Causing Great Bodily Harm** **0-m** 940.25(1)(bm), (e)	0-M	MAJOR
134 A21	CAI	**Comm. Alcohol Causing Injury** 346.63(6)(a)	6-M	MINOR
135 A21	CBH	**Comm. OWI Causing Great Bodily Harm** 940.25(1)(a), (am), (b), (c), (cm), (d)	0-M	MAJOR
136 M81	CCD	**Comm. Careless Driving (out-of-state only)**	0	
137 A50	CCF	**Comm. Controlled Substance Felony**	0-M	MAJOR
138 A22	CCS	**Comm. OWI Controlled Substance** 346.63(1)(am)	6-M	MAJOR
010 M81	CD	**Careless Driving (out-of-state only)**	0	
139 M42	CDL	**Comm. Deviating from Lane of Traffic** 346.13(1), (2), (3); 346.34(1)(a)3	4	MINOR
190 B08	CDS	**Comm. Duty Upon Striking Property** 346.69	0	
332 D45	CFA	**Commercial Failure to Appear** 343.315(2)(L)	0	
140 M34	CFC	**Comm. Following Too Closely** 346.14(2)(a)	3	MINOR
009 M56	CFH	**Crossing Fire Hose** 346.91	2	MINOR
339 B74	CFI	**Forge or Alter Proof of Insurance** 344.64(1)	0	
336 D53	CFP	**Commercial Failure to Pay** 343.315(2)(L)	0	
141 B61	CFR	**Comm. Failure to Report Accident - Operator** 346.70(1)	6	MINOR
141 B61	CFR	**Comm. Failure to Report Accident** 346.70(1), 346.70(1m)(a)1, (2), (3)	0	

Convictions / Withdrawals

Charge ACD	Charge Code	Description	Demerit Points	HTO
142 B01	CFS	**Comm. Failure to Stop after Accident** **6-m** **(Attended Veh)** 346.67(1)	6-M	MAJOR
185 B05	CFU	**Comm. Failure to Stop after Accident** **6** **(Unattended Veh)** 346.68	6	MINOR
143 U07	CHI	**Comm. Negligent Homicide Intoxicated** 940.09(1)(a), (am), (b), (c), (cm), (d)	0-M	MAJOR
144 A12	CIC	**Comm. Implied Consent** 343.305(9)(a), (9)(am), (10), (10)(b)	0	MAJOR
145 A21	CII	**Comm. OWI Causing Injury** 346.63(2)(a)1, 2, 3	6-M	MAJOR
146 A12	CIN	**Comm. Implied Consent - Not a Drop** 346.63(7)(a)1, 2, 3	0	
147 S94	CIS	**Comm. Imprudent Speed** 346.57(2)	4	MINOR
337 D56	CNC	**Commercial Failure to Comply** 343.315(2)(L)	0	
115 D36	CNI	**Compulsory Insurance - No Insurance** 344.62(1)	0	
201 B74	CNP	**Compulsory Insurance - No Proof of Insurance** **0** 344.62(2)	0	
148 A26	COO	**Comm. 0.0 - Not a Drop** 346.63(7)(a)1, 2	0	
149 A31	CPB	**Comm. Possession of Intox. Beverage** 346.63(7)(a)3	3	MINOR
150 M70	CPI	**Comm. Passing Illegally** 346.07(2), (3); 346.075(1), (2); 346.08; 346.09; 346.10(1), (2), (3), (4); 346.24(3); 346.48(3)	3	MINOR
151 M84	CRD	**Comm. Reckless Driving** 346.62(4)	6-M	MAJOR
151 M84	CRD	**Comm. Reckless Driving** 346.62(2), (2m), (3)	6	MAJOR
152 S92	CSE	**Comm. Speeding Excess (20 or more over)** 346.57(4)(a - k), (5)	6	MINOR
153 S92	CSI	**Comm. Speeding Intermediate (15-19 over)** 346.57(4)(a - k), (5)	4	MINOR
106 F02	CSR	**Child Safety Restraint** 347.48(4)(a)1, (4)(a)2, (4)(am)	0	
154 S94	CTF	**Comm. Too Fast for Conditions** 346.57(3)	4	MINOR
349 M86	CTU	**Comm. Telephone Use While Driving** 346.89(4)(b)2	4	MINOR
155 B56	CUL	**Comm. Unlawful License** 343.05(2)(a)1, 2, 4; 343.18(1)	3	
156 U03	CVF	**Comm. Vehicle used in Commission of Felony** 941.30(1), 943.23(2), (3)	0-M	MAJOR
270	CVL	**Curfew Violation** Local Ordinance	0	
157 A21	CWI	**Comm. Operating while Intoxicated** 346.63(1)(a), (am)	6-M	MAJOR

Footnotes

1. m = mandatory
2. CUL, DS, FDL, GCV, GPV, IB, IE, OAR, OML, OSB, OWD, OWL, OWS, UA, VOO, VOR and pointable non-s.346 violations of FOS, IL, IR and POH were HTO minors prior to 7/27/05.
3. FRA violations on or after 8/1/2012 are assessed 6 points for operator.

Convictions / Withdrawals

Charge ACD	Charge Code	Description	Demerit Points	HTO
188 A33	D	**Drug Conviction 17 yrs or older on date of violation** 961	0	
015 M14	DAT	**Driving against Traffic (one way street)** 346.04(2)	3	MINOR
261 M02	DDH	**Driving on Divided Highway in such a space or barrier except through an opening, etc** 346.15	0	
013 M42	DLT	**Deviating from Lane of Traffic** 346.13(1), (2), (3); 346.34(1)(a)3	4	MINOR
272	DOF	**Interference w/Signs and Signals** 346.42	0	
014 M58	DOW	**Driving over Walk** 346.12; 346.94(1), (12)	2	MINOR
081	DS	**Defective Speedometer** 347.41	2	
189 B08	DSP	**Duty Upon Striking Property** 346.69	0	
016 N72	DWS	**Driving on Wrong Side of Highway** 346.05(1), (3); 346.06; 346.15	4	MINOR
094 D02	FA	**Falsified App (Mandatory only if Driver License or Registration Related)** 343.14(5), 345.17, 343.19(2), 343.25(1)	0-M	MAJOR
017	FAR	**Falsified Accident Report** 346.70(5)	0	
273 D02	FAV	**Fraudulent Application** 341.60	0	
018	FD	**Found Delinquent** 938.355(2)(b)7	0	
019 E54	FDL	**Failure to Dim Lights** 347.12(1), (2)	3	
264 M32	FEM	**Following Emergency Vehicle** 346.90	0	
114 F04	FFS	**Failure to Fasten Seat Belt** 347.48(2m)(b), (c), (d)	0	
020 N40	FGS	**Failure to Give Signal** 346.07(1), 346.34(1)(b), (2), 346.48(2)(a)	3	MINOR
258	FNC	**Failure to Notify of Address or Name change** 341.335(1); 343.22(2)(a), (b), (2m), (3)	0	
022 M14	FOS	**Failure to Obey Traffic Sign or Signal** 346.04(1), (2); 346.16(1), (2)(a); 346.37(1)(b), (c)1, (c)3, (d)1, (3); 346.39(1); 346.45(1), (2); 346.46(1), (2), (2m), (3), (4)(a); 346.79(5); 346.80(4); 943.21(1m)(d)- fraud on gas station	3	MINOR
022 M14	FOS	**Failure to Obey Traffic Sign or Signal** 346.44(1), (2) Railroad	6	MINOR
022 M14	FOS	**Failure to Obey Traffic Sign or Signal** 348.19(3);TR312.04	3	
022 M14	FOS	**Failure to Obey Traffic Sign or Signal** 346.465(1)	0	
024 B61	FRA	**Failure to Report Accident – Operator** 346.70(1)	6	MINOR
024 B61	FRA	**Failure to Report Accident** 346.70(1), 346.70(1m)(a)1, (2), (3)	0	

Convictions / Withdrawals

Charge ACD	Charge Code	Description	Demerit Points	HTO
025 B01	FSA	**Fail to Stop after Acc (Attended Veh) (Mandatory if personal injury)** 346.67(1)	6-M	MAJOR
026 M75	FSB	**Failure to Stop for School Bus** 346.48(1)	4	MINOR
026 M75	FSB	**Failure to Stop for School Bus (Owner)** 346.485(1)	0	
184 B01	FSU	**Failure to Stop after Accident (Unattended Vehicle)** 346.68	6	MINOR
027 M34	FTC	**Following too Closely** 346.14(1), (2)(a); 346.90; 346.915(2)	3	MINOR
028	FTT	**Failure to Transfer Title** 342.15(1), (2); 342.05(4)	0	
029 D72	FVC	**Failure to keep Vehicle under Control** 346.57(2)	4	MINOR
262 M18	FYL	**Flashing Yellow (caution signal) Violation** 346.39(2)	0	
033 N01	FYR	**Failure to Yield Right of Way** 346.195(1), 346.205(1) - Owner; 346.455(1), (2); 346.457(1) – Owner	0	
033 N01	FYR	**Failure to Yield Right of Way** 346.06; 346.18(1), (2), (3), (3m), (4), (5), (6), (7)(a), (7)(b); 346.19 (1), (2); 346.20(1), (2), (3), (4); 346.21; 346.23(1), (2); 346.24(1); 346.26(1); 346.27; 346.28(2); 346.32; 346.37(1)(a)1, (c)3, (d)1; 346.38(1); 346.455(1), (2); 346.47(1), (2)	4	MINOR
086 A21	GBH	**Great Bodily Harm** 940.25(1)(a), (am), (b), (c), (cm), (d)	0-M	MAJOR
202 D29	GCV	**GDL Curfew Violation** 343.085(2m)(a)2	3	
203 D29	GPV	**GDL Passenger Violation** 343.07(1g)(a)1, 2, 3; 343.07(1g)(bm); 343.07(1g)(d)1, 2; 343.07(4)(b)1, 2; 343.085(2m)(a)1a, 1b, 1c	3	
158 A98	HAC	**Haz Commercial Blood Alcohol Content** 343.305(7)		
159 A21	HAD	**Haz Comm. Alcohol Causing Death** 940.09(1)(bm), (e)	0-M	MAJOR
160 A21	HAH	**Haz Comm. Alcohol Causing Great Bodily Harm** 940.25(1)(bm), (e)	0-M	MAJOR
161 A21	HAI	**Haz Comm. Alcohol Causing Injury** 346.63(6)(a)	6-M	MINOR
162 A21	HBH	**Haz Comm. OWI Causing Great Bodily Harm** 940.25(1)(a), (am), (b), (c), (cm), (d)	0-M	MAJOR
163 A04	HCA	**Haz Comm. Alcohol** 346.63(5)(a)	0	MINOR
164 A50	HCF	**Haz Comm. Controlled Substance Felony**	0-M	MAJOR
165 A22	HCS	**Haz Comm. OWI Controlled Substance** 346.63(1)(am)	6-M	MAJOR
191 B08	HDS	**Haz Comm. Duty Upon Striking Property** 346.69	0	
166 B61	HFR	**Haz Comm. Failure to Report Accident** 346.70(1), 346.70(1m)(a)1, (2), (3)	0	
166 B61	HFR	**Haz Comm. Failure to Report Accident - Operator** 346.70(1)	6	
167 B01	HFS	**Haz Comm. Failure to Stop after Accident (Attended Vehicle)** 346.67(1)	6-M	MAJOR
186 B01	HFU	**Haz Comm. Failure to Stop after Accident (Unattended Veh)** 346.68	6	MINOR
168 U07	HHI	**Haz Comm. Negligent Homicide Intoxicated** 940.09(1)(a), (am), (b), (c), (cm), (d)	0-M	MAJOR
169 A12	HIC	**Haz Comm. Implied Consent** 343.305(9)(a), (9)(am), (10), (10)(b)	0	MAJOR

Footnotes

1. m = mandatory
2. CUL, DS, FDL, GCV, GPV, IB, IE, OAR, OML, OSB, OWD, OWL, OWS, UA, VOO, VOR and pointable non-s.346 violations of FOS, IL, IR and POH were HTO minors prior to 7/27/05.
3. FRA violations on or after 8/1/2012 are assessed 6 points for operator.

Convictions / Withdrawals

Charge ACD	Charge Code	Description	Demerit Points	HTO
170 A21	HII	**Haz Comm. OWI Causing Injury** 346.63(2)(a)1, (2)(a)2, (2)(a)(3),	6-M	MAJOR
171 A12	HIN	**Haz Comm. Implied Consent (Not a Drop)** 346.63(7)(a)1, 2, 3	0	
172 U03	HVF	**Haz Comm. Vehicle Used in Commission of Felony** 943.23(2), (3), 941.30(1)	0-M	MAJOR
173 A21	HWI	**Haz Comm. Operating while Intoxicated** 346.63(1)(a), (am)	6-M	MAJOR
031 E31	IB	**Improper Brakes** 347.35(1), (2), (3), (4), (5); 347.36; 347.489(2)	3	
091 A12	IC	**Implied Consent** 343.305(10)	0	MAJOR
109 A12	ICU	**Implied Consent Underage** 343.305(10)(em)	0	
032 M82	ID	**Inattentive Driving** 346.89(1), (3)(a), (4), (5)	4	MINOR
187 A41	IDT	**Ignition/immobilization Device Tampering** 347.413(1); 347.417(1)	0	
030 E70	IE	**Improper Equipment** 347.20(1), (2); 347.28(1), (2); 347.29(1); 347.38(1), (2), (4); 347.40(1), (2) ,(3); 347.42; 347.46(1), (2); 347.47(1), (2), (3), (4); 347.485(2)(a), (b); 347.486(2); 347.488(1), (2), (3)	2	
030 E70	IE	**Improper Equipment** 347.15(2); 347.17(1), (2); 347.19(1), (2); 347.43(1); 347.45(1), (2), (4); 347.455(1), (4); 347.485(1)(a), (am); 347.486(1); 347.487; 347.48(1)(a), (b), (2)	0	
215	IH	**Imminent Hazard** 343.315(2)(k)	0	
034 A31	IIV	**Intoxicant in Vehicle – Underage Person** 346.93(1), (2f)	0	
035 E55	IL	**No or Improper Lights** 347.06(1), (3); 347.07; 347.09; 347.10(2); 347.11(1), (2), (3), (4); 347.115(night); 347.13(1); 347.14; 347.15(1); 347.16(1)(a), (b), (2)(a); 347.25(1), (1m), (1r)(a), (1s), (2), (4), (5); 347.26(2), (3), (4), (6), (8), (9), (11); 347.489(1)	3	
035 E55	IL	**No or Improper Lights** 346.595(5) daylight hours; 347.13(3)	0	
035 E55	IL	**No or Improper Lights** 346.48(2)(b)1,(2)(b)2,(2)(bm),(2)(c); 346.595(5) nighttime	3	MINOR
036	IM	**Improper Muffler** 347.486(3); 347.39(1), (2)	0	
037	IP	**Improper Plates** 341.045; 341.15(1), (1m)(a), (b), (2), (3)(a), (b); 341.61(2), (3), (4), (5)	0	
353 M86	IPW	**Improper Use Phone While Driving in Work Zone** 346.89(4m)	4	MINOR
038 F06	IR	**Illegal Riding on Motorcycle/Moped – Passenger** 347.487; 346.595(2), (3), (3m), (4)	0	
038 F06	IR	**Illegal Riding on Motorcycle/Moped – Operator** 346.595(1), (6)	2	MINOR
039 S94	IS	**Imprudent Speed** 346.57(2)	4	MINOR
077 N50	IT	**Illegal Turn** 346.31(1), (2), (3), (4); 346.32(1); 346.33(1)(a), (b), (c), (d), (2); 346.34(1)(a)1, 2; 346.37(1)(c)3	3	MINOR
291 M24	IUC	**Insufficient undercarriage clearance** 346.52(1)(i)	0	
041 D16	IUL	**Illegal use of Operator's License** 343.43(1)(a), (c), (e), (f)	0-M	
112 A35	IVO	**Intoxicant in Vehicle – operator** 346.935(1), (2), (3)	0	

Convictions / Withdrawals

Charge ACD	Charge Code	Description	Demerit Points	HTO
113 A35	IVP	**Intoxicant in Vehicle – passenger** 346.935(1), (2), (3)	0	
103	JA	**Juvenile Alcohol** 125.07(4)(a), (4)(b); 125.09(2)	0	
178 A33	JCS	**Juvenile Controlled Substances** Ch. 961 Under 17 yrs. on date of violation.	0	
111 B41	JID	**Juvenile ID** 125.085(3)(b)	0	
042	LH	**Littering Highway** 346.94(5), (7)	0	
079 B78	LNP	**License Not on Person** 343.18(1)	0	
043 D16	LOL	**Loaning of License** 343.43(1)(b)	0-M	
204	MDO	**Miscellaneous Driving Offenses** 346.15; 346.39(2); 346.922; 346.94(13)	0	
040	MSC	**Miscellaneous** 346.94(20)(a)	0	
045 U07	NH	**Negligent Homicide** 940.06; 940.10	0-M	MAJOR
120 U07	NHI	**Negligent Homicide Intoxicated** 940.09(1)(a), (am), (b), (c), (cm), (d)	0-M	MAJOR
268	NSW	**No Siren on Bicycle or Motorbike** 347.489(3)	0	
044 B25	OAR	**Operating after Revocation** 343.44(1)(b)	3	
174 A22	OCS	**OWI Controlled Substance** 346.63(1)(am)	6-M	MAJOR
107 A21	OII	**Operating while Intoxicated causing Injury** 346.63(2)(a)1, (2)(a)2, (2)(a)3	6-M	MAJOR
175 D07	OML	**Operating with Multiple Licenses** 343.05(1)	3	
209	ORS	**Operating while Registration Suspended** 341.03(1)	0	
048 B91	OSB	**Operating w/o School Bus License/ Endorsement** 343.12(1)(a)	3	
331 B27	OSO	**Out-of-Service Order** 343.44(1)(c)	3	
049 F34	OT	**Obstructing Traffic** 346.59(1), (2)	2	MINOR
050 D70	OV	**Obstructed View or Control** 346.88(1), (3), (4); Tr305.32(4)(a), (4)(b)2, (5)(a), (b) Tr305.34(6)	2	MINOR
183 B24	OWD	**Operating While Disqualified** 343.44(1)(d)	3	
055 A21	OWI	**Operating under influence of Intoxicant/Controlled Substance** 346.63(1)(a), (am)	6-M	MAJOR
053 B51	OWL	**Operating w/o Driver License** 343.05(3)(a), (b), (c)	3	
052 B26	OWS	**Operating while Suspended** 343.44(1)(a)	3	
056 D78	P	**Perjury**	0-M	MAJOR
212 A21	PAC	**Prohibited Alcohol Concentration** 346.63(1)(b)	6-M	MAJOR
088 M70	PI	**Passing Illegally** 346.07(2), (3); 346.072(1m)(a), (b); 346.075(1), (2); 346.08(1), (2), (3); 346.09(1), (2), (3), (4); 346.10; 346.11; 346.24(3); 346.48(3)	3	MINOR
266	PLS	**Projecting Loads on Side of Vehicle** 348.09(1)	0	
059	POH	**Parking on Highway** 346.475; 346.51(1); 346.52(1)(f); 347.27; 347.29(4),(5)	0	

Footnotes

1. m = mandatory
2. CUL, DS, FDL, GCV, GPV, IB, IE, OAR, OML, OSB, OWD, OWL, OWS, UA, VOO, VOR and pointable non-s.346 violations of FOS, IL, IR and POH were HTO minors prior to 7/27/05.
3. FRA violations on or after 8/1/2012 are assessed 6 points for operator.

Convictions / Withdrawals

Charge ACD	Charge Code	Description	Demerit Points	HTO
061	PUP	**Permitting Unauthorized Person to Operate** 343.45(1), (2); 346.925(1)	0	
062 S95	R	**Racing** 346.94(2)	6	MINOR
063 M84	RD	**Reckless Driving** 346.62(4)	6-M	MAJOR
063 M84	RD	**Reckless Driving** 346.62(2), (2m), (3)	6	MAJOR
263	RPS	**Restrictions on Parking & Stopping** 346.55(1)	0	
290 M22	RRF	**Railroad Failure to Stop** 346.45(1)(a), (am), (b), (c), (d), (e); 346.45(2)	3	MINOR
289 M23	RRG	**Railroad Grade Violation - Fail to Stop** 346.44(2)	6	
289 M23	RRG	**Railroad Grade Violation - Insufficient Space** 346.44(2)	3	MINOR
257	RRP	**Reproducing Evidence of Registration Prohibited** 341.615	0	
288 M20	RRS	**Railroad Sign Violation** **Fail to obey RR crossing restrictions** 346.44(1)(a), (b)	6	
271	RVL	**Roadway Violation** 346.29(2)	0	
066 S92	S	**Speeding (1-10 mph over limit)** 346.57(4)(a-k), (5); 346.58	3	MINOR
065 S92	SE	**Speeding Excess (20 mph or more over limit)** 346.57(4)(a-k), (5); 346.58	6	MINOR
068 S92	SI	**Speeding Intermediate (11-19 mph over limit)** 346.57(4)(a-k), (5); 346.58	4	MINOR
267	SLL	**Special Limitations on Load** 348.10(1), (2), (3), (4)	0	
260	SLR	**Fail/Return License or Registration** 344.45(1)	0	
064	SO	**Sex Offense** 940.225, 948.02, 948.025, 948.07	0	
269 E50	SVL	**Signal Violation** 346.35; 346.42	0	
122	T	**Truancy** 118.163(2)(a), (2m)(a)	0	
265 F05	TCC	**Transporting Children in Cargo Areas of Motor Vehicle** 346.922(1)	0	
067 S94	TFC	**Too Fast for Conditions** 346.57(3)	4	MINOR
069 N84	TPV	**Transporting Person or Vehicle Illegally** 346.92(1); 346.94(8), (8m), (11), (15)	2	MINOR
340 M85	TWD	**Texting While Driving** 346.89(3)(a)	4	MINOR
060 S97	UA	**Unnecessary Acceleration (ordinance violation)** TR101.02(2)(j) (spinning donuts, exhibition of power, squealing tires)	4	
207	UAL	**Underage Alcohol** 125.07(4)(a), (4)(b); 125.09(2)(b)	0	
108 A60	UAO	**Underage Alcohol Operation** 346.63(2m)	4	MINOR
210	UCD	**Underage Consent Decree** 938.32(2)(a), (c)	0	
208 B41	UID	**Underage ID** 125.085(3)(b)	0	
110	UN	**Unnecessary Noise (ordinance violation)** 346.94(16); 346.945 - Owner	0	
342 M86	UTD	**Use Telephone While Driving with Probationary/Instructional Permit** 346.89(4)(a)	4	MINOR

Convictions / Withdrawals

Charge ACD	Charge Code	Description	Demerit Points	HTO
256	UTR	**Unlawful Transfer of Evidence of Registration** 341.605(1), (2)	0	
072	UV	**Unregistered Vehicle** 341.04(1), (2)	0	
074 D29	VOR	**Violation of Restriction** 343.43(1)(d)	3	
075 U03	VUF	**Vehicle used in Commission of Felony (Operating w/o Owners Consent)** 941.30(1), (2); 943.23(2), (3)	0-M	MAJOR

Footnotes

1. m = mandatory
2. CUL, DS, FDL, GCV, GPV, IB, IE, OAR, OML, OSB, OWD, OWL, OWS, UA, VOO, VOR and pointable non-s.346 violations of FOS, IL, IR and POH were HTO minors prior to 7/27/05.
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Withdrawals Only

Charge	Charge Code	Description
318	3AR	**Three arrests for operating while intoxicated within 12 month period** Tr107.08(1)(c); 343.06(1)(e)
198	ALC	**Alcohol Related Incident Cancellation** TR 107.08
195	AFU	**DSP-Assessment Agency Follow-up Required** 343.06(1)(d)
320	CLA	**Class - Voluntary Temporary Surrender - Specific to one or more classes and endorsements** 343.265(1m)
275	DCI	**Damage Judgment Default on Court-Ordered Installment Agreement** 344.27
279	DCO	**DJN default on non-individual CIAG** 344.27
083	DED	**Deceased**
089	DI	**Driver Interview**
277	DJB	**DJN Bankruptcy Case Dismissed**
012	DJN	**Damage Judgment – Negligent Operation** 344.25
278	DJO	**DJN Non-individual** 344.25
276	DPI	**Damage Judgment Default on Private Installment Agreement** 344.25
280	DPO	**DJN default on non-individual PIAG** 344.27
292	DQ2	**Disqualification Two Railroad Grade Crossing violations within 3 years** 343.315(2)(j)
293	DQ3	**Disqualification Three Railroad Grade Crossing violations within 3 years** 343.315(2)(j)
325	DQ4	**Disqualification – Accumulation of two or more major offenses** 343.315
326	DQ5	**Disqualification - Additional major offense after reinstatement** 343.315
327	DQ6	**Disqualification - Accumulation of 2 out-of-service orders within 10 years** 343.315
328	DQ7	**Disqualification - Accumulation of out-of-service orders with passenger of HME** 343.315
329	DQ8	**Disqualification - Accumulation of 3 out-of-service orders within 10 years** 343.315
330	DQ9	**Imminent Hazard** 343.315
182	DQF	**Disqualification** 343.315
011	DR	**Driver Record, Accumulation of Points** Tr. 101
321	EDT	**Endorsements – Voluntary Temporary Surrender – Specific to one or more endorsements** 343.265(1m)
003	F	**Fatal Accident**
095	FAE	**Failure to Appear Exam – Failure to comply with request**

Withdrawals Only

Charge	Charge Code	Description
294	FAK	**License or ID issued under AKA situation** 343.25(4)
295	FAP	**Failure to schedule appointment after failing a written or road test** 343.25(7); 343.16(5)(b)
343	FCC	**Failure to Complete Course** 343.25(4)
296	FKS	**Failure to take knowledge and sign recognition test** 343.25(7); 343.16(5)(b)
297	FOL	**Fraudulently obtained license** 343.25(7)
206	FPD	**Failure to Pay Driver Improvement Surcharge** 343.30(1z)
023	FPF	**Failure to Pay Forfeiture** 345.47(1)(b)
087	FPJ	**Failure to Pay Forfeiture Juvenile** 938.17(2)(d); 938.34(8); 938.343(2)
123	FPN	**Failure to Pay Forfeiture Non-Traffic** 800.09(1)(c); 800.095(4)(b)4
205	FPS	**Failure to Pay Child Support** 767; 769; 948.22(7)
298	FRE	**Failure to take complete re-examination** 343.25(7); 343.16(5)(b)
299	FRI	**Failure to submit required information** 343.25(7); 343.16(5)(b)
300	FRT	**Failure to take road test** 343.25(7); 343.16(5)(b)
214	FSH	**Failure to Surrender Hazardous Material Endorsement** 343.125(4)
082	HTO	**Habitual Traffic Offender**
338	IID	**No IID As Required** 343.25(4)
199	INC	**Insurance Cancelled**
200	INF	**Insurance Only**
322	INS	**Insurance Voluntary Temporary Surrender - Specific to Insurance reasons** 343.265(1m)
301	LBA	**No basic rider – over 18** 343.25(4)
303	LBC	**Bad or unpaid check** 343.25(4)
302	LBR	**No basic rider - under 18** 343.25(4)
304	LED	**No longer enrolled in driver's Education** 343.25(4)
305	LGL	**Not violation free for 6 months** 343.25(4)
306	LHE	**Law prohibits H endorsement** 343.25(4)
307	LID	**Sponsor deceased** 343.25(4)
308	LIE	**License issued in error** 343.25(4)
309	LIP	**License issuance prohibited** 343.06(1)(h); 343.25(4); 343.16(5)(b); Tr112.10(3)(c)(1)
310	LIS	**Improper sponsorship** 343.25(4)
311	LMR	**Misrepresentation** 343.25(4)
093	LPI	**Law Prohibits Issuance** 343.25(4)

Footnotes

1. m = mandatory
2. CUL, DS, FDL, GCV, GPV, IB, IE, OAR, OML, OSB, OWD, OWL, OWS, UA, VOO, VOR and pointable non-s.346 violations of FOS, IL, IR and POH were HTO minors prior to 7/27/05.
3. FRA violations on or after 8/1/2012 are assessed 6 points for operator.

Withdrawals Only

Charge	Charge Code	Description
312	LPO	**Occupational license withdrawn by court order** 343.30(3)
313	LPS	**P and or S endorsement for conviction that affects endorsements** 343.25(4)
356	LR1	**Lifetime Revocation 1** 343.31(1m)(b)
357	LR2	**Lifetime Revocation 2** 343.31(1m)(c)
314	LSE	**S endorsement because of felony Conviction** 343.25(4)
085	MOS	**Moved Out-of-State**
319	NC1	**Failure to comply with the Driver Safety Plan within 1 year** Tr107.08(1)(h); 343.06(1)(f)
194	NCA	**Non-Compliance - New Arrest while in Plan** 343.06(1)(e); Tr107.08(1)(h), Tr107.08(a)(hm)
197	NCE	**Non-Compliance - Pay Education Fee** 343.30(1q)(d)
101	NCF	**Noncompliance with Assessment Fee** 343.30(1q)(d)
102	NCI	**Non-Compliance with Assessment Interview**
100	NCP	**Non-Compliance with Driver Safety Plan** TR107.08(1)(h); 343.06(1)(f)
196	NCT	**Non-Compliance - Pay Treatment Fee** 343.30(1q)(d)
002	NFI	**Nonfatal Accident**
352	NID	**Surrendered ID Card**
333	NLP	**No Legal Presence** 343.14(2)(es); 343.25(4)
341	NMC	**No Medical Certificate** 343.065(3)(a)
104	OCR	**Occupational-Court Ordered Revocation**
281	OSJ	**Out-of-state judgment certified by state** 344.25
286	OSS	**Safety Responsibility - Driver, Out-of-state** 344.19(3)
001	PD	**Property Damage Accident**
334	RID	**Real ID Surrendered**
213	RHT	**Repeat Habitual Traffic Offender** 351.07(2)
046	RLI	**Reinstated License Issued**
323	RLP	**Record licensing problem Voluntary Temporary Surrender - Specific to medical reasons** 343.265(1m)
284	SDD	**Safety Responsibility - Driver/Owner Default** 344.18(3)
260	SLR	**Surrender of Licenses and Registration Upon Revocation or Suspension**
283	SOD	**SR Owner Default on Installment** 344.18(3)

Withdrawals Only

Charge	Charge Code	Description
259	SOL	**Surrender of Licenses upon Cancellation, Revocation, or Suspension**
192	SR	**Safety Responsibility Suspension** 344.14
285	SRD	**SR Default on Installment** 344.18(3)
282	SRO	**SR Owner** 344.18
193	SRR	**Safety Responsibility Suspension – Includes Registration** 344.14
092	STM	**Suspension Terminated**
105	SVO	**Serious Violation with Occupational Holder** 343.31(2u)
090	TSS	**Traffic Safety School**
335	UDP	**Undeliverable Product**
097	UE	**Unsuccessful Driving Exam**
317	UEK	**Unsuccessful examination – Knowledge test** 343.16(5)(b); 343.25(4)
315	UER	**Unsuccessful examination - Road test** Tr112.14; 343.16(5)(b); 343.25(4)
316	UES	**Unsuccessful examination - Sign test** 343.16(5)(b); 343.25(4)
295	UKS	**Unsuccessful Knowledge and Sign Test** 343.16(5)(b); 343.16(6)(a); 343.25(4); Trans Rule 104.07 Trans Rule 104.07
073	VOO	**Violation of Occupational License** 343.10(8)(a); 343.43(1)(d)

Footnotes

1. m = mandatory
2. CUL, DS, FDL, GCV, GPV, IB, IE, OAR, OML, OSB, OWD, OWL, OWS, UA, VOO, VOR and pointable non-s.346 violations of FOS, IL, IR and POH were HTO minors prior to 7/27/05.
3. FRA violations on or after 8/1/2012 are assessed 6 points for operator.

72 Op. Att'y Gen. 129 (1983)

OAG 35-83

August 24, 1983

Mr. George E. Rice
Acting Corporation Counsel
Milwaukee County Courthouse
Milwaukee, WI 53233

Dear Mr. Rice

You request my opinion as to whether a municipality must pay the five dollar nonrefundable fee provided for in section 814.63(2), Stats., where a forfeiture action has been disposed of in circuit court after transfer from the municipal court of such municipality upon demand for jury.

I am of the opinion that a municipality must pay the fee in such a situation. Section 814.63(1), (2) and (4) provides:

Fees in forfeiture actions. (1) In all forfeiture actions in circuit court, the clerk of court shall collect a fee of $10 to be paid by the defendant when judgment is entered against the defendant.

(2) Upon the disposition of a forfeiture action in circuit court for violation of a municipal ordinance, the municipality shall pay a nonrefundable fee of $5 to the clerk of circuit court.

....

(4) In forfeiture actions in which a municipality prevails, costs and disbursements shall be allowed to the municipality subject only to such limitation as the court may direct.

This section was created by chapter 317, Laws of 1981, which included a number of provisions for increased fees to be collected in circuit courts for division between the county and state to cover part of the costs of operation of such courts. The costs of operating a circuit court with respect to handling forfeiture actions where a jury trial is demanded are substantially the same whether the action is started in circuit court or transferred from a municipal court upon demand for jury. Section 814.63 contains no language which exempts a municipality from payment of the nonrefundable fee of five dollars where the defendant exercises the right of transfer from municipal court to circuit court nor does it contain any language which exempts a municipality from payment of clerk's fees unless and until the defendant pays costs in the action.

The five dollar "nonrefundable fee" must be paid by the plaintiff municipality whose ordinance is involved. The fee is not to get into court but rather to voluntarily or involuntarily use the circuit court and, casually speaking, must be paid to get out of court. As the statute plainly states, the fee is not paid on filing, but rather "[u]pon the *disposition* of a forfeiture action in circuit court...." Sec. 814.63(2), Stats. Where the municipality prevails it can recover the fee from the

defendant under section 814.63(4). However, the fee must be paid to the clerk of circuit court "upon the disposition" of the action, which would include dismissal upon stipulation or for lack of prosecution and nonsuit. *Webster's Third New International Dictionary* 654 (4th ed. 1976) defines "disposition" as "the act or the power of disposing or disposing of or the state of being disposed or disposed of...."

Fee increases and sharing provisions in chapter 814 which resulted from enactment of chapter 317, Laws of 1981, became effective July 1, 1981. That chapter also amended sections 66.12(3)(a) and 778.195, Stats. (1979), which had provided that "the clerk's fee shall not exceed $5, except that a municipality need not advance clerk's fees, but shall be exempt from payment of the fees until the defendant pays costs under this section." The amendment of these sections, according to 1981 Senate Bill 767, was in part connected with the insertion in section 814.63(2) of the language "nonrefundable fee of $5" payable by the municipality "[u]pon the disposition of a forfeiture action in circuit court...." Section 66.12(3)(a) now provides: "Fees in forfeiture actions in circuit court for violations of ordinances are prescribed in s. 814.63(1) and (2)." Section 778.195 similarly provides: "Fees in forfeiture actions under this chapter are prescribed in s. 814.63."

You indicate that some municipalities agree that the fee applies where a municipality files the action in circuit court. They contend that it should not, however, apply where a municipality has gone to the expense of creating its own municipal court which it utilizes for forfeiture actions involving its ordinances and the defendant demands a jury trial which necessitates transfer to circuit court. In such a situation, section 800.04(1)(d) provides:

If the defendant 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 required fee for a jury is prescribed in s. 814.61(4).

The jury fee prescribed in section 814.61(4) is "$2 per juror demanded." This statute, in association with section 814.63(2), therefore requires transfer upon demand for jury trial and the appropriate payment of fees. Moreover, the plain language of section 814.63(2) makes it applicable to every disposition of a forfeiture action in a circuit court involving violation of a municipal ordinance other than appeals, reviews or new trials to or in circuit court which are subject to higher specific fees by reason of sections 814.61(8) and 814.65(5).

Sincerely yours,

Bronson C. La Follette
Attorney General

BCL:RJV:**ckm**

APPENDIX
2 (2024)

TIME PERIODS

In General:

§ 990.001(4) provides in part:

The time within which an act is to be done ... shall be computed by excluding the first day and including the last. If the last day falls on a Sunday or legal holiday the act may be done ... on the next secular day. When the last day...falls on a Saturday [and you do not have office hours on Saturday] ... such act may be done on the next succeeding day that is not a Sunday or a legal holiday.

Common Time Periods in Municipal Court:

Request to Substitute Judge	Not later than 7 days after initial appearance. 800.05(1)
OWI jury demand	Filed within 10 days of Court receipt of plea of not guilty. 800.035(3)(c)
Discovery	Filed within 30 days of initial appearance. 800.07
Motion to Reopen	Filed, in most cases, within 6 months of judgment. 800.115
Appeal	Filed within 20 days after judgment. 800.14

Request for Refusal Hearing:

Defendant must request hearing in writing within 10 days of issuance of "Notice of Intent to Revoke". 343.305(9)(a)4. Court lacks competency to hear a motion to extend 10 day time limit.

The statutes are ambiguous on the issue of how to count the 10-day limitations. § 801.15 clearly states that when a time period is less than 11 days, weekends are excluded. However, an argument can be made that § 801.15 only applies to actions in circuit court. *See*, § 801.01(2). If § 801.15 does not apply to municipal courts, the general counting of time provision in § 990.001(4) would apply. § 990.001(4) does NOT exclude weekends, unless the final day falls on a Sunday.

Because the 10-day time limit can not be extended and equal protection compels consistency in municipal and circuit courts, the Benchbook Committee recommends weekends be excluded when counting the 10-day period.

Costs in Municipal Court

Surcharge/Cost	Authorizing Statute	Amount	Exceptions	Distribution
Municipal Court Costs	814.65(1)	$15-$38 on each separate matter	Seatbelt Violations, 347.48(2m) No Proof of Insurance, 344.62(2) Physical Disability ID Card Violations, 343.51(1m)(b)	Pay $5 to State Treasurer Municipality Retains the Balance
Penalty Surcharge	757.05	26% of base forfeiture	Nonmoving Traffic Violations Smoking Violations, 101.123(2) or (2m) Seatbelt Violations, 347.48(2m) No Proof of Insurance, 344.62(2) Physical Disability ID Card Violations, 343.51(1m)(b)	Pay to State Treasurer
Jail Surcharge	302.46(1) 66.0114(3)(b)	$10 for each offense or 1% of any forfeiture over $1000	Nonmoving Traffic Violations No Proof of Insurance, 344.62(2) Smoking Violations, 101.123(2) or (2m) Seatbelt Violations, 347.48(2m) Physical Disability ID Card Violations, 343.51(1m)(b)	Pay to County Treasurer
Crime Laboratories & Drug Law Enforcement Surcharge	165.755 66.0114(3)(b)	$13 for each offense	Nonmoving Traffic Violations No Proof of Insurance, 344.62(2) Smoking Violations, 101.123(2) or (2m) Seatbelt Violations, 347.48(2m) Physical Disability ID Card Violations, 343.51(1m)(b)	Pay to State Treasurer

Surcharge/Cost	Authorizing Statute	Amount	Exceptions	Distribution
OWI/PAC Driver Improvement Surcharge	346.655(1) 814.67	$535	none	Pay 59.1% to State Treasurer Pay 40.9 to County Treasurer
Safe Ride Program Surcharge	346.657	$75	none	Pay to State Treasurer
Witness Fee	885.05-.07 814.67	$5	police officers	Pay to Witness
Witness Travel Expense	814.67	.20 per mile each way	police officers	Pay to Witness
Jury Fee (6-person jury only)	814.61(4)	$6 per juror		Pay to Clerk of Circuit Court
Interpreter Fee	814.67	Minimum is $10 per half day		Pay to Interpreter
Domestic Abuse Surcharge	973.055(1)	$100 if applicable		Pay to State Treasurer per 66.0114(1)(bm)
IID Surcharge	343.301(5)	$50 if applicable		Pay to County Treasurer
APPEALS	814.65(5)			Contact Clerk of Circuit Court for payment procedure
On the Record	814.61(8)	$ 40.00	No exceptions	
	814.85(1)	$ 68.00	Seatbelt Violations, 347.48(2m) No Proof of Insurance, 344.62(2) Physical Disability ID Card Violations, 343.51(1m)(b)	
	814.86(1)	$ 21.50	Same exceptions as 814.85(1) above	
		total $129.50		
New Trial	814.61(8)(am)	$ 55.00	No exceptions	
	814.85(1)	$ 68.00	Seatbelt Violations, 347.48(2m) No Proof of Insurance, 344.62(2) Physical Disability ID Card Violations, 343.51(1m)(b)	
	814.86(1)	$ 21.50	Same exceptions as 814.85(1) above	
		total $144.50		

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