

State of Wisconsin



1997 Assembly Bill 785

Date of enactment: **June 15, 1998**
Date of publication*: **June 29, 1998**

1997 WISCONSIN ACT 290

AN ACT *to repeal* 778.25 (2) (h), 778.25 (4), 778.25 (6) and 778.25 (8) (c); and *to amend* 343.305 (9) (a) (intro.), 778.25 (5), 778.25 (9), 807.10 (3), 879.23 (4) (b), 895.04 (2) and 948.31 (2) of the statutes; **relating to:** the location of refusal hearings, the citation procedure used for certain violations, judgments regarding minors and interference with custody of a nonmarital child (suggested as remedial legislation by the director of state courts).

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

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

SECTION 1. 343.305 (9) (a) (intro.) of the statutes is amended to read:

343.305 (9) (a) (intro.) If a person refuses to take a test under sub. (3) (a), the law enforcement officer shall immediately take possession of the person's license and prepare a notice of intent to revoke, by court order under sub. (10), the person's operating privilege. If the person was driving or operating a commercial motor vehicle, the officer shall issue an out-of-service order to the person for the 24 hours after the refusal and notify the department in the manner prescribed by the department. The officer shall issue a copy of the notice of intent to revoke the privilege to the person and submit or mail a copy with the person's license to the circuit court for the county in which the refusal is arrest under sub. (3) (a) was made. The officer shall also mail a copy of the notice of intent

to revoke to the district attorney for that county and the department. The notice of intent to revoke the person's operating privilege shall contain substantially all of the following information:

NOTE: The amendment to this statute changes current law to require an arresting officer in an operating while intoxicated case to submit or mail a copy of a notice of intent to revoke a person's operating privilege to the circuit court for the county in which the arrest is made, rather than to the circuit court for the county in which a refusal to take a test to determine the presence of alcohol in one's blood is made. According to the director of state courts, this revision to the statute reflects actual practice, and avoids the problem of having 2 different courts handling the refusal and the arrest in an operating while intoxicated case.

SECTION 2. 778.25 (2) (h) of the statutes, as affected by 1997 Wisconsin Act 27, is repealed.

SECTION 3. 778.25 (4) of the statutes, as affected by 1997 Wisconsin Act 27, is repealed.

SECTION 4. 778.25 (5) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

778.25 (5) ~~Except as provided by sub. (6) a~~ A person receiving a deposit shall prepare a receipt in triplicate showing the purpose for which the deposit is made, stating that the defendant may inquire at the office of the clerk of court regarding the disposition of the deposit, and notifying the defendant that if he or she fails to appear in court at the time fixed in the citation he or she will be

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

deemed to have tendered a plea of no contest and submitted to a forfeiture, penalty assessment, jail assessment and crime laboratories and drug law enforcement assessment plus costs, including any applicable fees prescribed in ch. 814, not to exceed the amount of the deposit which the court may accept. The original of the receipt shall be delivered to the defendant in person or by mail. If the defendant pays by check, the check is the receipt.

SECTION 5. 778.25 (6) of the statutes, as affected by 1997 Wisconsin Act 27, is repealed.

SECTION 6. 778.25 (8) (c) of the statutes, as affected by 1997 Wisconsin Act 27, is repealed.

SECTION 7. 778.25 (9) of the statutes is amended to read:

778.25 (9) If a citation or summons is issued to a defendant under this section and he or she is unable to appear in court on the day specified, the defendant may enter a plea of not guilty by mailing a letter stating that inability to the judge court at the address indicated on the citation. The letter must show the defendant's return address. The letter may include a request for trial during normal daytime business hours. Upon receipt of the letter, the judge court shall reply by letter notice to the defendant's address setting forth a time and place for trial, and the time shall be during normal business hours if so requested. The date of the trial shall be at least 10 days from after the mailing by date on which the judge court sent the notice. Nothing in this subsection forbids the setting of the trial at any time convenient to all parties concerned.

NOTE: 1991 Wisconsin Act 134 was remedial legislation which conformed the citation procedure under ch. 778 to the changes made to the uniform traffic citation procedure by 1989 Wisconsin Act 170. One of these provisions removed the stipulation-by-signature requirement on the back of the citation for certain forfeitures. According to the director of state courts, the provisions in SECTIONS 2 to 7 of this bill change certain provisions in ch. 778 to reflect the changes which were made to the stipulation-by-signature requirement in 1991 Wisconsin Act 134.

SECTION 8. 807.10 (3) of the statutes is amended to read:

807.10 (3) If the amount awarded to a minor by judgment or by an order of the court approving a compromise settlement of a claim or cause of action of the minor does not exceed ~~\$5,000~~ \$10,000 (exclusive of interest and costs and disbursements), and if there is no general guardian of the ward, the court may upon application by the guardian ad litem after judgment, or in the order approving settlement, fix and allow the expenses of the action, including attorney fees and fees of guardian ad litem, authorize the payment of the total recovery to the clerk of the court, authorize and direct the guardian ad litem upon the payment to satisfy and discharge the judgment, or to execute releases to the parties entitled thereto and enter into a stipulation dismissing the action upon its merits. The order shall also direct the clerk upon the pay-

ment to pay the costs and disbursements and expenses of the action and to dispose of the balance in one of the manners provided in s. 880.04 (2) as selected by the court. The fee for the clerk's services for handling, depositing and disbursing funds under this subsection is prescribed in s. 814.61 (12) (a).

NOTE: This amendment allows a court in a civil action to authorize payment of the total recovery of a child to the clerk of court and the disbursal of that recovery to pay expenses of the action and to pay the balance to the guardian of the minor, to the person having actual custody of the minor or to the minor, if the total amount of the recovery is less than \$10,000.

SECTION 9. 879.23 (4) (b) of the statutes is amended to read:

879.23 (4) (b) In matters relating to the probate of an estate in which a minor has an interest that is unlikely to exceed ~~\$1,000~~ \$10,000 in value, the guardian ad litem shall be a surviving parent, unless the court finds that no surviving parent is qualified and willing to serve as the guardian ad litem. If no parent of the minor is qualified and willing to serve as guardian ad litem, the guardian ad litem shall be an attorney as provided in par. (a).

NOTE: This amendment provides that in matters relating to the probate of an estate in which a minor has an interest that is unlikely to exceed \$10,000 in value, the guardian ad litem shall be a surviving parent, unless no surviving parent is qualified and willing to serve.

SECTION 10. 895.04 (2) of the statutes is amended to read:

895.04 (2) If the deceased leaves surviving a spouse, and minor children under 18 years of age with whose support the deceased was legally charged, the court before whom the action is pending, or if no action is pending, any court of record, in recognition of the duty and responsibility of a parent to support minor children, shall determine the amount, if any, to be set aside for the protection of such children after considering the age of such children, the amount involved, the capacity and integrity of the surviving spouse, and any other facts or information it may have or receive, and such amount may be impressed by creation of an appropriate lien in favor of such children or otherwise protected as circumstances may warrant, but such amount shall not be in excess of 50% of the net amount received after deduction of costs of collection. If there are no such surviving minor children, the amount recovered shall belong and be paid to the spouse of the deceased; if no spouse survives, to the deceased's lineal heirs as determined by s. 852.01; if no lineal heirs survive, to the deceased's brothers and sisters. If any such relative dies before judgment in the action, the relative next in order shall be entitled to recover for the wrongful death. A surviving nonresident alien spouse and minor children shall be entitled to the benefits of this section. In cases subject to s. 102.29 this subsection shall apply only to the surviving spouse's interest in the amount recovered. If the amount allocated to any child under this subsection is less than ~~\$1,500~~ \$10,000, s.

807.10 may be applied. Every settlement in wrongful death cases in which the deceased leaves minor children under 18 years of age shall be void unless approved by a court of record authorized to act hereunder.

NOTE: This amendment allows a court to authorize the payment of the total recovery of a child in a wrongful death action to the clerk of court and the disbursement of that recovery to pay expenses of the action and to pay the balance to the guardian of the minor, to the person having actual custody of the minor, or to the minor, if the total amount of recovery is less than \$10,000.

NOTE: The amendments in SECTIONS 8 to 10 of this bill update statutes relating to judgments regarding minors. In 1989, Wisconsin Act 138, s. 880.04 (2) of the statutes was amended to provide for certain dispositions of the estate of a minor if the value of the minor's estate is \$10,000 or less. According to the director of state courts, because the statutes amended in SECTIONS 8 to 10 reference each other or s. 880.04 (2), the judgment amounts in these statutes should be consistent and therefore revised to use the same \$10,000 amount.

SECTION 11. 948.31 (2) of the statutes is amended to read:

948.31 (2) Whoever causes a child to leave, takes a child away or withholds a child for more than 12 hours from the child's parents, or ~~the child's mother,~~ in the case of a nonmarital child ~~where~~ whose parents do not subsequently intermarry under s. 767.60, from the child's mother or, if he has been granted legal custody, the child's father, without the consent of the parents ~~or,~~ the mother

or the father with legal custody, is guilty of a Class E felony. This subsection is not applicable if legal custody has been granted by court order to the person taking or withholding the child.

NOTE: Under current law, a person who causes a child to leave, takes a child away or withholds a child for more than 12 hours from the child's parents without their consent is guilty of a Class E felony. The penalty also applies if any of these actions is taken with respect to a nonmarital child whose parents have not subsequently intermarried but only if the person affected by those actions is the child's mother. The statute does not include a father of a nonmarital child who has been granted legal custody. This SECTION includes the father of a nonmarital child in the protections of the statute if he has been granted legal custody of the child.

SECTION 12. Initial applicability.

(1) CITATION PROCEDURES. The treatment of section 778.25 (2) (h), (4), (5), (6), (8) (c) and (9) of the statutes first applies to forfeitures imposed on the effective date of this subsection.

(2) JUDGMENTS REGARDING MINORS. The treatment of sections 807.10 (3) and 895.04 (2) of the statutes first applies to judgments or court orders rendered on the effective date of this subsection.

(3) INTERFERENCE WITH CUSTODY. The treatment of section 948.31 (2) of the statutes first applies to offenses committed on the effective date of this subsection.