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Testimony before the Senate Committee on Insurance, Financial Services, Government Oversight and Courts
State Senator André Jacque
September 19th, 2019

Chairman Craig and Members of the Senate Committee on Insurance, Financial Services, Government Oversight and Courts,

Thank you for holding this hearing and the opportunity to testify before you today in support of Senate Bill 214. This bi-partisan legislation makes changes to the statutes in order to provide consistency and clarity in areas that apply to our state's judges and court system. Roughly ten years ago, the Wisconsin Municipal Judges Association worked with the Legislature and other stakeholders in developing a comprehensive revision of municipal court procedure, which was adopted as 2009 Wisconsin Act 402. However, several procedural issues still remain and need to be addressed, and ideally in a way that minimally effects courts and interested parties.

SB 214, which has been requested by the Wisconsin Municipal Judges as a trailer bill of sorts, has several provisions to do just that. Some of these include changes to municipal ordinance enforcement and municipal court procedures such as the formation or dissolution of joint municipal courts; specifying that municipal court budgets must be separate from, or appear on a separate line item from municipal prosecuting attorneys and municipal law enforcement agencies; allowing for non-OWI municipal citations from an OWI offense to be tried with the OWI offense in circuit court; and ensuring that no municipal court clerk may appear in attire that suggests he or she is a law enforcement officer or employee of a law enforcement agency.

Additionally, working with the stakeholders from feedback received in the Assembly Public Hearing, we have introduced an amendment that the Municipal Judges would like to have adopted to the Municipal Judge bill. These provisions and others in the legislation, individually and collectively, promote statutory clarity, best practices, system efficiency, and cost reduction all while protecting the rights of both municipalities and defendants. We ask that you join your colleagues in supporting this legislation crafted working with the Wisconsin Municipal Judges Association to address these procedural issues. Thank you for your consideration of Senate Bill 214.

Wisconsin Municipal Judges Association

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Testimony in Support of 2019 Senate Bill 214

Mr. Chairman and Members of the Senate Committee on Insurance, Financial Services, Government Oversight and Courts:

We are proud to be here today on behalf of the Wisconsin Municipal Judges Association in support of Senate Bill 214. The Wisconsin Municipal Judges Association is comprised of the vast majority of the judges of the approximately 240 municipal courts across the State of Wisconsin. Those courts handle about one-half million citations per year, including ordinances similar to misdemeanor violations, like disorderly conduct, first offense OWI and other traffic cases, and juvenile matters.

This bill is the product of two separate, but related processes. About ten years ago, our Association worked with the Legislature and other stakeholders in developing a comprehensive revision of municipal court procedure, adopted as 2009 Wisconsin Act 402. Since then, we have identified some improvements and have tried to structure the proposals in a way that addresses non-controversial, non-partisan procedural matters, rather than substantive law issues. In that way, we view today's bill as a trailer bill, of sorts.

Separately, the state court system's Committee of Chief Judges and District Court Administrators created a subcommittee on municipal courts, designed to identify areas in need of clarification or improvement as it relates to municipal courts. Two of our Association's Legislative Committee members, Judges Hanson and Meurer, are also members of the subcommittee, along with a number of chief judges, district court administrators, and others. The subcommittee vetted the WMJA proposals and requested three additional provisions, which are included in the bill and supported by the Association. Further, as a result of the public hearing on the companion Assembly bill (AB 204), we are aware of a proposed amendment to the bill, which we also fully support.

The bill contains more than 40 sections, so it seems imprudent to attempt to discuss them individually. That said, we believe that the bill promotes clarity, best practices, system efficiency, cost reduction, and the rights of both municipalities and defendants. It balances these interests in various ways, depending on the specific provisions, but these principles are behind each proposal.

The Association strongly thanks the bill's bi-partisan sponsors, including Senators Feyen and Risser, who are on this Committee. Representative Thiesfeldt and his staff, along with Senator Jacque, were instrumental in getting the bill introduced. We appreciate the opportunity to address the committee today and are prepared to answer any questions.

Jason Hanson, Municipal Judge – Villages of DeForest and Windsor
Daniel Koval, Municipal Judge – City of Madison

Other Members of Legislative Committee (not present)
Jerry Jaye, Municipal Judge – Lakeside Municipal Court (Fond du Lac & Green Lake Counties)
Robert Kupfer, Municipal Judge – Village and Town of Somers
Todd Meurer, Municipal Judge – Towns of Madison, Verona, and Middleton

Wisconsin Municipal Judges Association – Proposal for Trailer Bill
Produced by the WMJA Legislative Committee

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In Consultation with James Gramling, Retired Municipal Judge – City of Milwaukee

The Wisconsin Municipal Judges Association is comprised of the vast majority of the judges of the almost 240 municipal courts across the State of Wisconsin. Those courts handle approximately 500,000 citations per year, ranging from parking violations and juvenile offenses to traffic offenses, such as speeding and OWI.

Note: Our proposals are not by order of priority or importance, but are by order of statute number, to the extent possible.

Proposal #1:

Current law is inconsistent as to whether it is the judge or the municipal governing body that determines whether a personal appearance in court is mandatory for various offenses. This proposal would provide consistency with other provisions of the statutes by clarifying that the judge may decide whether particular offenses require an appearance.

Secs. 66.0113(1)(b)6. and 7.b. are modified to read:

6. The time at which the alleged violator may appear in court, and a statement as to whether the appearance is mandated by the judge.

7.b. That if the alleged violator makes such a deposit, he or she need not appear in court unless subsequently summoned or appearance is mandated by the judge.

Secs. 800.035(5)(a) is modified to read:

(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, require the defendant to appear in person before the court.

Proposal #2:

Current law allows the county to charge municipalities a daily bed cost for prisoners confined to the county jail for municipal charges. While practices vary across the State, some members report that some sheriffs impose the daily bed fee on municipalities even where there is an independent basis for confinement, such as a probation/parole hold (for which reimbursement is made by the State) or on criminal or other circuit court cases (for which the county is responsible). This change would allow for the municipality to be charged only if the municipal charge is the only reason for the person's confinement.

Sec. 303.18(2) is modified to read:

(2) Each city, village or town in the county shall, at a time designated by the county board, pay to the county the actual and reasonable costs of maintenance, as determined by ordinance of the county board, of all persons confined in the house of correction for the violation of any of the ordinances of the city, village or town during the preceding year, except that no costs are due for any period in which the person was also detained or confined for reasons other than the violation of a city, village or town ordinance.

Proposal #3:

Current law requires the installation of an ignition interlock device on all vehicles owned or operated by an offender convicted of OWI, if the offender's alcohol concentration was .15% or greater, if the offender refused chemical testing, or if the offender has a prior OWI conviction. An offender cannot get an occupational or other license until they have proven that such a device is installed in all vehicles titled to them. Current law allows the Court to enter an order exempting particular vehicles upon a finding of hardship. This order does not allow the offender to drive a vehicle without a device, but allows for the offender to be licensed without having to prove installation on particular vehicles. There are certain types of vehicles, most notably motorcycles, for which no device has been approved by the Wisconsin Department of Transportation. This modification would eliminate the need for a specific court order exempting a vehicle for which it is impossible to install an approved device. Based on a conversation with DOT legal counsel, it is our understanding that DOT is not opposed to this proposal.

Sec. 343.301(2) is created to read:
(2) If the department has not approved an ignition interlock device capable of being installed on a particular type of vehicle, the department shall deem any such vehicle exempt from the order under sub. (1g).

Proposal #4:

Current law specifies that a municipality must separate the operation of the municipal court from general government options for budget purposes. This is intended to ensure proper separation of powers, to avoid use of the court as a profit center, and to separate the court's receipts from the costs of law enforcement and prosecution. While municipalities are generally complying with the existing statutory language, some municipalities treat the municipal prosecutor's budget as part of the court budget or include the court budget as part of the law enforcement budget. This would emphasize that, while the governing body sets the budget, the operation of the municipal court must be on either a separate budget from the other branches of government or a separate line item from all other departments.

Secs. 755.01(1) is modified to read:

(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 prosecutor or the police department.

Proposal #5:

Current law allows multiple municipalities to form joint municipal courts and many such courts exist throughout the State. Current law also contemplates that municipalities may elect to leave a joint court or that the various municipalities in a joint court may elect to dissolve the court. No orderly procedure exists for doing so and this has led to some chaos and legal issues in the past. This proposal would preserve the ability to leave or dissolve a joint court, but only at the end of the judge's term (so as to avoid the undoing of a multi-community election by one municipality) and so that the decision to do so is known prior to the publication of the upcoming election (so as to avoid the decision being made after the candidates are known).

Sec. 755.01(4) is modified to read:

(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) and to the director of state courts. Discontinuation of such an agreement shall be effective at the end of the term for which the judge has been elected or appointed and only if the ordinance or bylaw discontinuing the agreement is submitted to the appropriate filing officer 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. [s. 11.0102 (1) (c)].

Proposal #6:

Public confidence, the appearance of propriety, and proper separation of powers are enhanced if the municipal court clerk is viewed as an agent of the court, rather than as an agent of the police. Current law recognizes that the clerk shall not wear anything implying that they are a police officer. It is common for smaller municipalities to have a single employee serve as a part-time municipal court clerk and as a part-time police department records clerk. There is nothing improper about this practice, but the law should be clear that the employee should not wear any sort of law enforcement clothing or insignia while performing duties as municipal court clerk.

Secs. 755.17(1m) is modified to read:

(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.

Proposal #7:

Most, but not all, municipalities provide an armed officer to serve as a bailiff for court sessions. Some use an officer from the municipal police department, others contract with private security firms. Either way, for the safety of all concerned and with a rapid increase in the number of court-related security incidents over the last several years, an armed officer should be present for any session of court, unless found unnecessary by the judge for a particular case or situation.

Secs. 755.17 (2) is modified to read:

(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. The governing body shall provide an armed officer for all court sessions, unless otherwise requested by the municipal judge.

Proposal #8:

Current law makes reference to municipal judges in Chapter 799, which pertains to small claims court proceedings. Municipal judges do not jurisdiction over small claims cases, though they did prior to the massive court system reorganization in 1978. It is believed that the language is a holdover from before the reorganization and should be cleaned up. Our proposal accomplishes that without making any changes to the meaning of the section.

Sec. 799.29(2) is modified to read:

(2) Stipulations. The court~~, judge~~ or ~~municipal~~ judge having trial jurisdiction to recover a forfeiture may, with or without notice, for good cause shown by affidavit and upon just terms, within 30 days after the stipulation has been entered into, relieve any person from the stipulation or any order, judgment or conviction entered or made thereon. Where the stipulation was made without appearance in or having been filed in court, the court~~, judge~~ or ~~municipal~~ judge may order a written complaint to be filed and set the matter for trial. The stipulation or a copy shall, in such cases, be filed with the court~~, judge~~ or municipal judge and costs and fees shall be taxed as provided by law.

Proposal #9:

Current law contains various provisions regarding the calculation of time periods and deadlines for actions in circuit court. No similar provision exists for municipal court proceedings. This means that the deadline for filing the very same document can be different in municipal court than it is in circuit court. This leads to confusion, can yield unfair results, and has created some litigation in the past. Our proposal is for the municipal courts to be governed by the same rules so that deadlines are consistent regardless of whether a citation happens to be in municipal court versus in circuit court.

Sec. 800.005 is created to read:

800.005 Time The provisions of s. 801.15 (1) and (5) apply to actions in municipal court.

Proposal #10:

The municipal court is tasked with providing defendants various pieces of information at the outset of a case. The court is further tasked with providing written notice of any scheduled court hearing, such as a pre-trial conference or the trial, but many defendants move while a case is pending and do not receive the notice. This results in missed court appearances and costly rescheduling of trials. Current law provides the defendant with no obligation to inform the court of a move. This provision would provide that obligation.

Sec. 800.035(2)(a)5. is created to read:

5. Inform the defendant that he or she must notify the court in writing within 5 days of any change of address during the pendency of the case.

Proposal #11:

2017 Wisconsin Act 40 eliminated the expectation that a trial would be held at the defendant's initial court appearance for traffic offenses in circuit court. This proposal would similarly remove that expectation in cases heard in municipal court.

Sec. 800.035(2)(e) is modified to read:

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

Proposal #12:

Under current law, for most offenses, an offender must go through the municipal court process before seeking a jury trial in circuit court. However, an offender charged with an OWI offense may elect to skip municipal court and have their case transferred directly to municipal court for a jury trial. It is very common for OWI offenders to be issued non-OWI citations out of the same incident, such as for the traffic offense that led to the stop or a drug citation based on items seized during the stop. Current law requires that the non-OWI "companion" citations stay in municipal court, such that the municipality must actively prosecute the defendant in multiple courts, with the potential for inconsistent pre-trial rulings and multiple trials. This proposal would simply provide that, if an OWI offender seeks a direct transfer to circuit court for a jury trial, the non-OWI charges would be similarly transferred.

Secs. 800.035(5)(c) is modified to read:

(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 ~~judge~~ 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).

Proposal #13:

Current law allows a defendant to seek substitution of the municipal judge. This results in the case being reassigned to another municipal judge. This proposal clarifies that this is only a change in the judge (sitting in the original court in lieu of the original judge), not a reassignment of the case to another court, and that the original municipality maintains responsibility for the prosecution and handling of the case.

Sec. 800.05(3) is modified to read:

(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 ~~court~~ all the records in the action. Upon receipt of the records, the new judge shall specify the court's location in which the case will be heard. In all such cases, the parties shall remain the same, the prosecutor of the transferring court shall be responsible for prosecution ~~in~~ before the new judge ~~court~~, and the judgment, if any, shall be payable to the transferring court.

Proposal #14:

Under current law, the court may allow a party, witness, or interpreter to appear by telephone or audiovisual means upon a finding of "good cause". The current law borrows the definition of "good cause" from a provision in the circuit court code, but only by cross-reference. Municipal court proceedings often involve defendants for whom physical or financial limitations inhibit their ability to appear in person. This proposal replaces the cross-reference with the specific factors found in the circuit court code and adds physical or financial limitations as a factor to consider.

Sec. 800.085(2) is modified to read:

(2) The court finds good cause, ~~after considering the factors under s. 807.13 (2) (c).~~ Appropriate considerations are:
(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) With regard to the physical presence of the defendant or counsel, financial or physical limitations on the ability to be present;
(i) Such other factors as the court may, in each individual case, determine to be relevant.

Proposal #15:

Current law very reasonably provides escalating penalty structures for various types of repeat offenses. In some cases, the escalating penalty structure is arranged so that a first offense may be handled as an ordinance violation in municipal court, while subsequent offenses must be treated as criminal offenses. One example is sec. 66.0107(bm) and (bn), which provides that the municipality lacks jurisdiction over marijuana and synthetic cannabinoids cases where the defendant has a prior conviction, except under certain conditions.

A more serious example is found in OWI cases. As we all know, sec. 346.65 provides for first-offense OWI cases to be treated as non-criminal matters, while all subsequent offenses are criminal offenses. Whether due to poor record keeping from other states, poor access to out-of-state driving record information, defendants having multiple OWI cases in different courts at the same time, or the expansive definition of what counts as a prior OWI conviction under Wisconsin law, law enforcement officers and the courts are often not aware of all of the defendant's prior convictions. This can result in improper convictions for first-offense OWI when it should have been handled more seriously. That's bad enough, but what happens later is worse. There have been many, many trial-level and appellate cases where a multiple OWI offender has been later (long after the statute of limitations has expired) able to vacate the improperly entered first-offense OWI conviction on the grounds that the court had no jurisdiction to enter it because it should have been treated as a criminal offense. In other words, they are able to successfully use the fact that they were treated too leniently years earlier as the basis for having the too-lenient conviction not counted as a prior offense when setting the penalties for a new offense.

This is confusing, so here's a not-strained example:

- The defendant is convicted of OWI in Georgia in 2010.

- The defendant is charged with OWI offenses in Rosendale and Milwaukee a few weeks apart in 2012, but neither court is aware of the other Wisconsin case or the prior Georgia case. The defendant is convicted of first-offense OWI in municipal court in both Rosendale and Milwaukee.

- The defendant is arrested for OWI in 2018.

In this situation, the defendant is initially properly charged in circuit court with OWI-4th offense, as all of these prior convictions are now on his driving record. Pursuant to the escalating penalty structure and case law interpreting it, the Rosendale and Milwaukee judgments are void as a matter of law and shall not be given effect, yet the 3-year statute of limitations for prosecuting those offenses as misdemeanor OWI-2 and OWI-3 offenses has expired. The defendant is ultimately convicted of a misdemeanor OWI-2 offense for the 2018 arrest.

Of course, the defendant is in the very best position to know whether they have other cases pending or have prior convictions. While no court ever intends to act without jurisdiction or intends to undermine the escalating penalty scheme, a defendant should not be permitted to conceal a crucial fact, get a lesser penalty thereby, and later use the lesser penalty as a legal basis to get an even lesser penalty on a more serious offense. This proposal would not undo the fact that they got away with the first lesser penalty, but would allow the inadvertent conviction to stand for subsequent purposes.

Sec. 800.09(4) is created to read:

(4) Notwithstanding s. 755.045, s. 800.115(2), or any other statute, no judgment alleged by the defendant to be void due to the existence of a conviction, suspension, or revocation arising from another matter that the existed at the time of the 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 prosecutor prior to the entry of judgment.

Proposal #16:

Current law allows a municipal court to order restitution in cases involving damage to property or physical injuries. While arguably implied by the existing language, our proposal would make plain that restitution is also available in cases involving theft or the death of a person.

Sec. 800.093(1)(b) is modified to read:

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

Proposal #17:

Current law provides the municipal court with a number of tools to use to collect unpaid forfeitures. While a court can use drivers license suspensions and jail commitments in most situations, those particular tools cannot be used in cases where the original summons or citation was served by mail. Our proposal would reinstate the ability to impose license suspensions or jail commitments in cases where the original pleading was sent through the mail, but only if the defendant has participated in the case in some way or has been personally served with notice of their right to come before the court.

Our proposal would also create a presumption that a defendant would be given 60 days to pay a judgment before the court would order license suspensions or jail commitments for failure to pay. This is common practice, but would provide for a uniform standard, while still allowing an exception when warranted in a particular case.

Another tool provided by current law is the ability to use the Wisconsin Department of Revenue's State Debt Collection program to collect unpaid forfeitures. The program uses tax refunds, wage garnishments, payment plans, account seizures, and other methods to collect funds owed to the state and municipalities, but the language in the existing municipal court statute simply refers to tax offsets. While already implied by language in sec. 71.935, our proposal would clarify that the full range of options used by DOR to collect municipal debt is available to cases referred to DOR by municipal courts.

Lastly, current law provides for the municipality to use the circuit court judgment and lien docket as a method to collect unpaid municipal court judgments. In some municipalities, collection is done by the municipal attorney or by the municipal administration. In others, the court is responsible for collecting on its judgments. This proposal would clarify that the municipal court itself can docket the judgment in circuit court and would exempt the court and municipality from payment of the $5 fee ordinarily charged by the clerk of circuit court for docketing judgments in ordinary civil lawsuits.

Sec. 800.095(3), (6), and (7) are modified to read:

(3) Subsections (1) (a) and (b) do~~es~~ not apply:
(a) to orders for restitution under s. 800.093. ~~or in~~
(b) in 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 by some means in the action or was personally served with a copy of the judgment and notice of the right to request review of the factors in sub. (1)(b)2.
(c) within 60 days of the judgment under sec. 800.09(1b), unless the court finds good cause and orders otherwise.

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

(7) In addition to the procedures under this section, 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 in s. 806.12.

Sec. 814.61(5)(c) is created to read:

(c) This subsection does not apply to any judgment rendered in a municipal court.

Proposal #18:

Current law allows a municipal court to grant motions to reopen judgments under certain circumstances and allows the court to order payment of costs in those situations. Our proposal would disallow the court from requiring a fee to file the motion. It would also require the court to consider the actual costs associated with the motion and the defendant's ability to pay the costs. This will provide fairer access to the court, while preserving the court's ability to assess costs in warranted situations. The proposal would also provide cost-savings and efficiency for the court and parties by not requiring an in-person hearing for all such motions.

Secs. 800.115(4) and (5) are modified to read:

(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 said costs. No costs may be imposed as a requirement of filing the motion.

(5) Upon ~~receiving or~~ making a motion under this section, the court shall provide notice to all parties and schedule a hearing on the motion. 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, ~~shall provide notice to all parties and~~ schedule a hearing on the motion, or enter an order based on written submissions from the parties.

Proposal #19:

Current law provides that trials or other proceedings with sworn testimony must be recorded by electronic means. This would expand the requirement to include hearings on whether to reopen a judgment and hearings to determine ability to pay. This would allow for better record-making and appellate review of these decisions at little to no additional cost to the municipality.

Sec. 800.13(1) is modified to read:

(1) Every proceeding in which testimony is taken under oath or affirmation, hearings on motions brought under s. 800.115, and hearings regarding whether the defendant is unable to pay the judgment because of poverty, in a municipal court shall be recorded by electronic means for purposes of appeal.

Proposal #20:

Current law provides a procedure for appealing municipal court decisions to circuit court. The existing procedure is silent on some points and is cumbersome with respect to others. Instead of trying to parse the various words of the existing scheme using strikeouts and inserts, we propose starting over with sec. 800.14 as follows:

Sub. (1) of our proposal is identical to sub. (1) in the existing statute.
Sub. (2) of our proposal clarifies what must be filed in order to perfect the appeal and sets a time period for the court to transmit the case to circuit court. The existing statute was unclear on when the appeal is perfected and was silent on the timeframe for getting the case to circuit court. Our proposal also eliminates the existing law's requirement that the court set a bond pending appeal. It is our opinion that the bond requirement served very little purpose, sometimes served as a barrier to an appeal, and was sometimes invoked based less on the need for bond and more because the existing law lacked the ability to deny a stay of the judgment pending appeal.

Sub. (3) of our proposal creates a method for handling stays of municipal court judgments pending appeal. The proposal provides that the judgment is stayed, but gives the municipal court and the circuit court with authority to order otherwise.

Sub. (4) of our proposal pertains to the types of proceedings available on an appeal to circuit court when a trial has been held in municipal court. Existing law provides that the appeal will be based on a circuit court review of the municipal court record unless one of the parties requests a new bench trial or jury trial. Our proposal is the same, except that a jury trial is unavailable to a defendant charged with an OWI offense who did not request a direct transfer to circuit court for a jury trial at the outset of the case. We have found that it is very common for OWI defendants to not seek a jury trial at the beginning of the case and use the municipal court trial as a discovery device or as a "dry run" of their anticipated jury trial in circuit court. This is very costly to the municipal court and municipality, both financially and in terms of time, is therefore a very expensive subversion of the sec. 345.421 prohibition on most forms of discovery in these cases. Our proposal preserves the defendant's ability (and right under the Wisconsin constitution) to a jury trial on such cases, but requires the defendant to make that election at the beginning of the case, and similarly preserves the municipality's ability to seek a jury trial at the circuit court level.

Sub. (5) of our proposal retains the current law's process for having the circuit court review the municipal court record in appeals involving non-trial decisions or where neither party seeks a new trial in circuit court. In those situations, the current law requires the municipal court to order the preparation of a transcript of any proceedings, at great upfront cost to the municipality and ultimately at great cost to the appellant. Our proposal would instead leave the decision whether to require the production of a transcript to the circuit court judge, who should be in a better position to decide whether to simply use the electronic recording of the municipal court proceeding,

whether the appeal can be decided on the basis of other items in the record, and ultimately whether preparation of the transcript is necessary to deciding the matter.

Sub. (6) of our proposal retains the existing law's provisions that a defendant claiming inability to pay the appeal fee or jury fee may seek an order from the circuit court waiving those fees. Consistent with our approach that transcript issues should be determined by the circuit court judge, our proposal also provides that the circuit court is to decide whether to waive the transcript costs instead of the municipal court.

Sub. (7) of our proposal is identical to sub. (6) of the existing statute, which pertains to the process for certifying the appeal results back to the municipal court.

Sec. 800.14 is repealed and recreated to read:

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.
(2) Upon receipt of the notice of appeal and any required fees, and after the 20 day time period in sub. (4) has passed if a trial has been held, the appeal has been perfected. Within 30 days, the municipal court shall transmit the case to the circuit court as described in sub. (5), and shall comply with the requirements of s. 343.325, if applicable.
(3) Upon perfection of the appeal under sub. (2), 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 circuit court or unless ordered by the circuit court thereafter.
(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 subd. (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 at least include 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 under SCR 71.04 (10), at the cost of the appellant, from the electronic recording. The transcript shall be deemed accurate unless determined otherwise by the municipal court, by request of either party or the circuit court.

(6) A defendant claiming an inability to pay with regard to the transcript fee, the appeal fee, or jury fee may petition the circuit court for a waiver.

(7) 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.

Proposal #21:
It is standard practice for OWI cases that are transferred directly to circuit court to be subject to a $5 circuit court filing fee, as with any other municipal ordinance citation filed in municipal court, and for any forfeitures collected by the circuit court to be transmitted to the prosecuting municipality. This is implied by current law, but there has been some confusion about this across the State. Our proposal would clarify the matter.

Secs. 814.63(2) and (3) are modified to read:

(2) Upon the disposition of a forfeiture action in circuit court for violation of a county, town, city, village, town sanitary district, or public inland lake protection and rehabilitation district ordinance, except for an action for a financial responsibility violation under s. 344.62 (2) or for a violation under s. 343.51 (1m) (b) or a safety belt use violation under s. 347.48 (2m) or for a case transferred under s. 800.035 (5)(c), the county, town, city, village, town sanitary district, or public inland lake protection and rehabilitation district shall pay a nonrefundable fee of $5 to the clerk of circuit court.

(3) In forfeiture actions in which a county, town, city, village, town sanitary district or public inland lake protection and rehabilitation district prevails, costs and disbursements shall be allowed to the county, town, city, village, town sanitary district or public inland lake protection and rehabilitation district subject only to sub. (2) and such other limitation as the court may direct. For a case transferred under s. 800.035 (5)(c), the court shall disburse all forfeitures it collects to the municipality.

Proposal #22:

Current law provides no mechanism for issuing a subpoena requiring the attendance of a municipal court defendant who lives out of state. This allows an out of state defendant to vigorously defend the case (through defense counsel) while depriving the court and municipality of the ability to obtain their relevant testimony. As municipal court cases are civil in nature, a defendant has no right to refuse to testify, but there is no method for compelling their appearance. Further, current law requires personal service of a defendant who is a Wisconsin resident, even if that defendant is represented in the case by a Wisconsin lawyer. This can be costly and is not necessary to provide proper notice of the need for their testimony. Our proposal would allow for an out of state defendant to be subpoenaed and would allow for any defendant to be served by mailing the subpoena to their attorney.

Sec. 885.04 is modified to read:

885.04 Municipal judge; subpoena served in state. A subpoena to require attendance before a municipal judge may be served anywhere in the state if authorized by the municipal judge, and shall require the attendance of any witness so served. <u>If the subpoena is for the attendance of the defendant, whether within or without the state, it may be served by mail on the defendant's attorney, and shall require the attendance of the defendant.</u>