



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
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TO: SENATOR LENA C. TAYLOR

FROM: Ronald Sklansky, Senior Staff Attorney

RE: LRB-2894/1, Generally Relating to Municipal Court Elections, Judges, and Procedure

DATE: April 14, 2008

This memorandum, prepared at your request, reviews the provisions of LRB-2894/1, generally relating to municipal court elections, judges, and procedure. You have noted that the analysis of the bill by the Legislative Reference Bureau (LRB) describes the changes effected by the bill without, in many cases, describing current law. You have asked for a description of current law with respect to each discussion point raised in the analysis prepared by the LRB.

1. Current law provides that when a person fills a municipal judge vacancy through a special election, the person serves for the residue of the unexpired term. The bill provides that the person will serve for a full term commencing on the first day of May following the special election.
2. Current law does not specifically make municipal courts subject to the authority of the Supreme Court, but provides in certain circumstances that the chief judge of a judicial administrative district has specified responsibilities. The bill provides that a municipal court is a coequal branch of municipal government, subject to the superintending authority of the Supreme Court, through the chief judge of a judicial administrative district.
3. Current law provides that a municipal court will become operative and function when a municipal governing body adopts an appropriate ordinance or bylaw. The bill provides that, in addition to the ordinance or bylaw, the municipal governing body also must receive a certification from the chief judge of the judicial administrative district that the court meets statutory requirements and must provide written notification to the Director of State Courts of the adoption of the ordinance or bylaw.
4. Current law provides that the municipal court must be maintained at the expense of the governing municipality. The bill specifically provides in addition that the budget of the municipal court must be separate from the budget of all other municipal departments.

5. Current law provides that a municipal court must appoint a guardian ad litem for any defendant the court has reason to believe is mentally incompetent. The bill provides that a social worker also may be appointed, but the purpose of either appointment is to determine whether a defendant lacks substantial mental capacity to understand the proceedings or assist in his or her defense. A determination of incompetency will result in suspended proceedings and the cost of the appointment must be paid by the governing municipality.

6. Under current law, a municipal court judge must be elected for a term of two years, unless a longer term, not exceeding four years, is provided by ordinance or bylaw. The bill provides that the term will be for four years.

7. Current law requires a municipal court judge to execute and file a bond before taking office. The bill removes this requirement.

8. Current law provides that a municipal court judge has countywide jurisdiction. The bill provides that a municipal court judge will have statewide jurisdiction.

9. In general, current law provides that a municipal governing body must provide an adequate office and courtroom for a municipal court judge. The judge may not share this place with a practicing attorney, unless the attorney is the judge's law partner. The bill removes the prohibition on a municipal court judge holding court or keeping an office with any practicing attorney.

10. Current law requires a municipal court judge to appoint clerks and deputies that are authorized by the municipal governing body. The bill provides that the municipal governing body must authorize at least one clerk for each court. The municipal court judge retains authority over the conditions of employment. Current law requires a municipal court judge to participate in continuing education required by the Supreme Court. The bill also requires court clerks to participate in this education.

11. The bill newly requires a municipal court judge to store all records in the office of the court clerk or in another appropriate facility designated by the municipal governing body. Access to the records is restricted to court personnel except as authorized by the judge or by law.

12. Current law requires a municipal court judge to be properly attired in a robe or other suitable clothing. The bill requires the judge to wear a black robe while presiding, except when exceptional circumstances exist.

13. Current law requires a municipal governing body to provide a courtroom for a municipal court judge. It must be in a public building if a suitable public building is available within the same municipality. The bill requires that the court must be in an adequate facility and must be located in an area separate from the police department.

14. The bill newly requires that every municipal court must have a telephone number separate from the telephone number of any other governmental department.

15. Prior to the 2007 Session of the Legislature, the statutes allowed a municipal court to require a person who violated an ordinance to make a contribution to a crime-prevention organization instead of

paying a forfeiture or court costs. The bill repeals this provision; however, the provision already has been repealed by 2007 Wisconsin Act 84.

16. Under current law, a municipal court will obtain personal jurisdiction over a defendant if the defendant: (a) is served with appropriate documentation; (b) is arrested and brought before the court (or in a first class city brought before the court through interactive video and audio transmission); or (c) voluntarily appears. The bill provides, in addition to current law, that the court will obtain personal jurisdiction if: (a) the defendant has appeared personally in any municipal court through interactive video and audio transmission; (b) the defendant has acknowledged receipt of the appropriate documentation; or (c) the appropriate documentation has been sent to the defendant by first class mail. A person who has received notice only through mail may not lose his or her operating privilege or be imprisoned for failure to pay a monetary judgment imposed by the municipal court.

17. The bill newly requires a law enforcement officer or municipal employee who serves a summons to indicate the method of service on the copy of the documents filed or transmitted to the municipal court.

18. Current law describes the commencement of a municipal court action in terms of a municipal court obtaining personal jurisdiction over a defendant. The bill differentiates between commencement of an action and obtaining personal jurisdiction over a defendant. For purposes of commencement of the action, the bill provides that ordinance violation cases are commenced when a complaint or citation is filed with or transmitted to the municipal court.

19. Current law provides that a citation include various pieces of information, including the date, time, and place for a court appearance and a notice to appear. The bill removes the phrase “notice to appear” and provides that the citation include a statement as to whether an appearance is mandated by the judge.

20. The bill newly requires that the citation form include the identification of any person issued to a defendant or the license number of the defendant, if applicable.

21. Current law provides that a citation or complaint may be amended once prior to the initial appearance of a defendant. Otherwise, an amendment may be made only at the discretion of the court or by written consent of the defendant. The bill provides that, after the initial appearance, a 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 the document to conform to the evidence while allowing parties an opportunity to present evidence with respect to the amendment.

22. The bill newly requires that a copy of an amended complaint made before an initial appearance be served on the defendant or sent to the defendant by first class mail.

23. Current law provides that a person may enter an initial appearance in person. The bill provides that a person may also make an appearance by submitting a written response to a citation or complaint.

24. The bill newly specifies that a municipal court may schedule a pretrial conference. If the parties reach an agreement, 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 an agreement, the court must schedule the action for further proceedings.

25. Current law generally provides that a person may request one substitution of a municipal judge. The bill provides that in such a case, the parties must remain the same, the prosecutor of the transferring court will be responsible for the prosecution in the new court, and the judgment, if any, must be payable to the transferring court.

26. The bill newly provides that if a municipal court judge disqualifies himself or herself, the case will be transferred in the same manner as a judge substitution transfer.

27. Current law provides that if a municipal court judge will be temporarily absent, the judge may deliver a pending action to the circuit court of the county and the circuit court may try the action or the judge may, with the approval of the chief judge of the judicial administrative district, appoint another person to perform his or her duties for a period not to exceed 30 days. The bill provides that in a case of temporary absence, the municipal court judge may, by written request, subject to the order of the chief judge of the judicial administrative district, designate another municipal judge from any municipality within the state to perform his or her duties for a period not to exceed 30 days.

28. Current law provides that if there is a permanent vacancy, the chief judge of the judicial administrative district may, upon request by the municipal governing body, designate another municipal court judge until the municipal governing body fills the vacancy by temporary appointment. The bill provides that the chief judge need not wait for a request from the municipal governing body before designating another municipal court judge to perform the duties of an absent municipal court judge. The interim municipal court judge may come from any municipality in the state.

29. Under current law, a person is eligible to serve as a temporary reserve municipal court judge if: (a) the person has served a total of eight or more years as a municipal court judge; or (b) the person has served four or more years as a municipal court judge and was not defeated at the most recent time he or she sought election to the judicial office. The bill provides that a person is eligible if he or she has served a total of four or more years as a municipal court judge.

30. Current law provides that a municipal governing body may provide a prosecutor in a municipal court. The bill requires the municipal governing body to provide a prosecutor. The bill also provides that a party, witness, or interpreter may appear by telephone or by audiovisual means if: (a) the parties so stipulate; or (b) the court finds good cause after considering specified factors.

31. The bill newly provides that if either party intends to call an expert witness, the party must, at least 20 days before trial disclose relevant written or recorded statements of the expert and, if the expert witness does not prepare a report or statement, disclose a written summary of the expert's findings or of the subject matter of his or her testimony. These documents must include the results of any physical or mental examination, scientific test, experiment, or comparison that a party intends to offer in evidence at trial.

32. Current law provides that if a judgment is not paid, a municipal court may order a defendant to perform community service work, if the defendant agrees to perform this work. Community service work in lieu of restitution may be performed only if agreed to by the entity receiving the service and by the person to whom restitution is owed. The bill removes the requirement that the defendant must agree

to perform the service and removes the requirement that the performance of community service work in lieu of restitution be agreed to by the organization receiving the service.

33. Current law provides that community service work will be measured by the minimum wage. The bill provides that a defendant will receive credit at the rate of not less than \$10 for each hour worked.

34. Current law provides that a municipal court may order restitution if a defendant is guilty of violating an ordinance that prohibits conduct that is the same as, or is similar to, conduct prohibited by state statute punishable by fine or imprisonment, or both. The bill amends this provision to provide that restitution may be ordered if the defendant is guilty of violating a nontraffic ordinance or an ordinance authorizing restitution for a drunk driving conviction.

35. Current law provides that when a defendant fails to pay a municipal court judgment, the court may order that the defendant's operating privilege be suspended until the obligation is met, except that the suspension may not exceed two years. The bill provides that the authority to impose a suspension does not apply if the ordinance violation in question was unrelated to the operation of a motor vehicle and the judgment is not ordered under the juvenile code. The bill also provides that nonmoving traffic offenses are considered to be related to the operation of a motor vehicle.

36. Current law provides that if a defendant fails to appear for a hearing concerning the nonpayment of a judgment or noncompliance with a work order, a municipal court may order the defendant be imprisoned for a maximum period of 90 days. The person will receive a credit of \$25 for each day of imprisonment that will offset the monetary costs of the judgment. The bill provides that a defendant may be imprisoned for a maximum period of 90 days for any one judgment and that the defendant will be credited \$50 each day. Imprisonment is allowed only if: (a) the defendant has the ability to pay; (b) the defendant has failed to perform community service; (c) the defendant has failed to attend an indigency hearing; or (d) the defendant has failed to complete an assessment or treatment program related to alcohol or drugs that was ordered in lieu of a monetary forfeiture.

37. The bill newly authorizes a municipal court, in a case of noncompliance with an order, to receive not more than 25% of the defendant's income for the payment of the judgment.

38. Under current law, a municipal court must, within seven days of receipt, transfer moneys it receives to the municipal treasurer. The bill increases this time period to 30 days.

39. Under current law, a transcript of a judgment in a municipal court must include the name, address, and vocation of the defendant. The bill removes the requirement to describe the vocation of the defendant.

40. In general, current law provides that a defendant in an action involving a statutory counterpart ordinance may ask to reopen a judgment no later than six months after the judgment was entered. A defendant may move for relief from a judgment at any time if: (a) a prior predicate judgment has been reversed or vacated; (b) prospective application of the judgment is no longer equitable; or (c) there are other reasons justifying relief from the operation of the judgment. The bill provides that any party, and the court on its own motion, may at any time move to reopen a judgment for good cause.

41. The bill newly requires a court to reopen a default judgment on the motion of the defendant, if the judgment is based upon service by mail. The bill also specifically provides that an appeal may not be taken from a default judgment.

42. Current law authorizes a municipal court judge to impose a sanction for contempt of court. The bill specifies that contempt means either: (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; or (b) refusal of a witness to appear without reasonable excuse.

43. Under current law, contempt of court may be punished by a forfeiture not to exceed \$50. The bill raises this maximum amount to \$200.

44. The bill newly provides that, for a witness who has refused to appear without reasonable excuse, a municipal court judge may issue a warrant to bring the witness before the court for the contempt and to testify and to order the witness to pay the costs of apprehending the witness, plus any forfeiture imposed for the contempt.

45. Current law requires a defendant to execute a bond in order to appeal a municipal court judgment. The bill requires that a bond must be executed at the discretion of the municipal court judge.

46. Under current law, execution of a municipal court judgment is stayed pending the final disposition of the appeal. The bill also provides that the enforcement of an order of the municipal court is stayed pending appeal.

47. Current law provides that an appeal to a circuit court will involve a new trial upon the request of either party. The bill provides that an appeal from a judgment where a trial has been held in a municipal court must be on the record unless, within 20 days after notice of appeal, either party requests that a new trial be held in the circuit court.

48. Current law provides that if an appeal is based upon a review of a transcript of the proceedings, a municipal court judge must direct that the transcript be prepared from an electronic recording and certify the transcript. The bill provides that either party may request that a transcript of the electronic recording be prepared and that the requester must include payment of the estimated cost of the transcript.

49. The bill newly provides that if an appellate decision requires payment of a forfeiture by the defendant, the forfeiture and attendant costs, fees, and surcharges must be paid directly to the governing municipality.

RS:jal