

FIRST REGULAR SESSION

# HOUSE BILL NO. 1300

## 98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE GARDNER.

2582L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To amend chapter 479, RSMo, by adding thereto forty-six new sections relating to the municipal courts bill of rights.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 479, RSMo, is amended by adding thereto forty-six new sections,  
2 to be known as sections 479.400, 479.402, 479.404, 479.406, 479.408, 479.410, 479.412,  
3 479.414, 479.416, 479.418, 479.420, 479.422, 479.424, 479.426, 479.428, 479.430, 479.432,  
4 479.434, 479.436, 479.438, 479.440, 479.442, 479.444, 479.446, 479.448, 479.450, 479.452,  
5 479.454, 479.456, 479.458, 479.460, 479.462, 479.464, 479.466, 479.468, 479.470, 479.472,  
6 479.474, 479.476, 479.478, 479.480, 479.482, 479.484, 479.486, 479.488, and 479.490, to read  
7 as follows:

**479.400. 1. Sections 479.400 to 479.490 shall be known and may be cited as the**  
2 **"Municipal Courts Bill of Rights".**

3 **2. Sections 479.400 to 479.490 shall govern the procedure in all courts of this state**  
4 **having original jurisdiction of ordinance violations.**

5 **3. Sections 479.400 to 479.490 shall be construed to secure the just, speedy, and**  
6 **inexpensive determination of ordinance violations.**

**479.402. As used in sections 479.400 to 479.490, the following terms shall mean:**

2 **(1) "Clerk", any duly appointed court clerk or court administrator or any deputy**  
3 **or division court clerk serving courts to which sections 479.400 to 479.490 applies;**

4 **(2) "Corrections official", a person in control of a detention facility;**

5 **(3) "County", includes the City of St. Louis;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

6 (4) "Court", a division of the circuit court having jurisdiction to hear ordinance  
7 violations;

8 (5) "Detention facility", any jail, workhouse, lockup or other facility normally  
9 operated to hold sentenced offenders or that is used to confine adults awaiting trial;

10 (6) "Law", includes constitutions, statutes, ordinances, judicial decisions and  
11 sections 479.400 to 479.490;

12 (7) "Municipal division", any division of the circuit court presided over by a judge  
13 having original jurisdiction to hear and determine municipal ordinance violations;

14 (8) "Municipality", includes all charter, first, second, third and fourth class cities,  
15 towns, and villages;

16 (9) "Ordinance", a law enacted by a municipality or county;

17 (10) "Peace Officer", includes police officers, members of the state highway patrol,  
18 sheriffs, marshals, constables, and their deputies;

19 (11) "Person", includes corporations;

20 (12) "Prosecutor", any attorney or counselor who represents any county, city,  
21 town, or village in the prosecution of a person for a violation of an ordinance;

22 (13) "Violation", any ordinance violation within the jurisdiction of any court to  
23 which sections 479.400 to 479.490 applies.

479.404. 1. In computing any period of time prescribed or allowed by sections  
2 479.400 to 479.490, by order of court, or by any applicable statute, the day of the act, event,  
3 or default after which the designated period of time begins to run is not to be included.  
4 The last day of the period so computed is to be included, unless it is a Saturday, Sunday,  
5 or a legal holiday, in which event the period runs until the end of the next day that is  
6 neither a Saturday, Sunday nor a legal holiday. When the period of time prescribed or  
7 allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall  
8 be excluded in the computation.

9 2. When by sections 479.400 to 479.490 or by a notice given thereunder or by order  
10 of court an act is required or allowed to be done at or within a specified time, the court for  
11 cause shown may at any time in its discretion:

12 (1) With or without motion or notice order the period enlarged if request therefor  
13 is made before the expiration of the period originally prescribed or as extended by a  
14 previous order; or

15 (2) Upon notice and motion made after the expiration of the specified period permit  
16 the act to be done where the failure to act was the result of excusable neglect;

17

18 but the court shall not enlarge the period for filing an application for trial de novo.

19           **3. When a party has the right or is required to do some act or take some action**  
20 **within a prescribed period after the service of a notice or other paper upon the party and**  
21 **the notice or paper is served by mail, three days shall be added to the prescribed period.**

**479.406. 1. The court shall be deemed always open for the purpose of filing proper**  
2 **papers, the issuance and return of process, and for the making of motions, applications,**  
3 **and orders.**

4           **2. All motions and applications filed in the clerk's office for issuing process, for**  
5 **issuing final process to enforce judgments, and for other proceedings that do not require**  
6 **an order of the court are grantable by the clerk, but such action by the clerk may be**  
7 **suspended, altered or rescinded by the judge upon cause shown.**

**479.408. Every officer to whom any writ of process or order shall be directed and**  
2 **delivered for service under sections 479.400 to 479.490 shall make return thereof in**  
3 **writing, showing the time, place, and manner of service thereof, and shall sign such return**  
4 **and file the same with the clerk.**

**479.410. Every person arrested and held in custody by any peace officer in any**  
2 **detention facility, police station, or any other place, upon or without a warrant or other**  
3 **process for the alleged commission of an ordinance violation, or upon suspicion thereof,**  
4 **shall promptly, upon request, be permitted to consult with counsel or other persons and,**  
5 **for such purpose, to use a telephone.**

**479.412. Proceedings under sections 479.412 to 479.432 shall be informal, and**  
2 **technical rules of evidence need not apply.**

**479.414. 1. Any person arrested for an ordinance violation shall be entitled to be**  
2 **released from custody pending trial. The person is also entitled to be released pending trial**  
3 **de novo, review, and appeal. As each court enters a judgment, it shall review the**  
4 **conditions of release and may modify them as provided in section 479.422.**

5           **2. If an arresting officer has not released a person, the court shall order the person**  
6 **released upon the person's written promise to appear unless the court finds:**

7           **(1) The promise alone is not sufficient reasonably to assure the appearance of the**  
8 **person; or**

9           **(2) The person poses a danger to a crime victim, the community, or any other**  
10 **person.**

11           **3. If the court determines that the imposition of conditions assures that the**  
12 **defendant is reasonably likely to appear and does not pose a danger to a crime victim, the**  
13 **community or any other person, the court shall impose conditions for the release of the**  
14 **person. The appropriate conditions shall include one or more of the following:**

15           **(1) Place the person in the custody of a designated person or organization agreeing**  
16 **to supervise the person;**

17           **(2) Place restrictions on the travel, association, or place of abode of the person**  
18 **during the period of release;**

19           **(3) Require the execution of a bond in a stated amount with sufficient solvent**  
20 **sureties, or the deposit in the registry of the court of the sum in cash or negotiable bonds**  
21 **of the United States or the state of Missouri or any political subdivision thereof;**

22           **(4) Require the person to report regularly to some officer of the court or peace**  
23 **officer in such manner as the court directs;**

24           **(5) Require the execution of a bond in a stated amount and the deposit in the**  
25 **registry of the court of ten percent, or such lesser sum as the court directs, of such sum in**  
26 **cash or negotiable bonds of the United States or the state of Missouri or any political**  
27 **subdivision thereof;**

28           **(6) Impose any other conditions deemed reasonably necessary, including but not**  
29 **limited to a condition requiring that the person return to custody after specified hours.**

30           **4. In determining which conditions of release will reasonably assure appearance,**  
31 **the court shall, on the basis of available information, take into account the nature and**  
32 **circumstances of the violation, the weight of the evidence against the person, the person's**  
33 **family ties, employment, financial resources, character, mental condition, the length of the**  
34 **person's residence in the community, the person's record of convictions, and record of**  
35 **appearance at court proceedings or flight to avoid prosecution or failure to appear at court**  
36 **proceedings.**

37           **5. A court releasing a person under this section shall enter an order stating the**  
38 **conditions imposed. The court shall inform such person of the conditions imposed and of**  
39 **the penalties applicable to violations of the conditions of release and shall advise that a**  
40 **warrant for arrest shall be issued immediately upon any such violation.**

**479.416. 1. The court issuing a warrant for the arrest of any accused shall set the**  
2 **conditions for release of the accused. The conditions of release shall be stated on the**  
3 **warrant of arrest. The court shall impose one of the following conditions:**

4           **(1) The written promise of the accused to appear; or**

5           **(2) The execution of a bond in a stated amount under subdivision (3) of subsection**  
6 **3 of section 479.414; or**

7           **(3) The execution of a bond in a stated amount under subdivision (5) of subsection**  
8 **3 of section 479.414.**

9

10 The court may impose additional conditions for release as provided in subsection 3 of  
11 section 479.414.

12 2. If the arrest of the accused upon warrant occurs in a county other than that in  
13 which the ordinance violation occurred, the peace officer making the arrest shall promptly  
14 release the accused in accordance with the release conditions or bail prescribed on the  
15 warrant; but if none, the peace officer shall take the accused before the court in such  
16 county having jurisdiction of ordinance violations, to admit the accused to bail in such sum  
17 as the court may determine will likely ensure appearance of the accused. Bail, if taken by  
18 the peace officer making the arrest or if taken by a judge in such county, shall be promptly  
19 forwarded to the court from which the warrant was issued.

479.418. When an arrest is made without a warrant, the peace officer may accept  
2 bond in accordance with a bail schedule furnished by the court having jurisdiction.

479.420. The court that sets the conditions for release, or clerk or peace officer  
2 when authorized, may accept the conditions for release and release the accused.

479.422. 1. Upon motion by the prosecutor or by the accused, or upon the court's  
2 own motion, the court in which the proceeding is pending may modify the requirements  
3 for release after notice to the parties and hearing when the court finds that:

- 4 (1) New, different, or additional requirements for release are necessary;
- 5 (2) The conditions for release that have been set are excessive;
- 6 (3) The accused has failed to comply with or has violated the conditions for the  
7 accused's release; or
- 8 (4) The accused has been convicted of the ordinance violation charged.

9 2. When the court increases the requirements for release or new requirements are  
10 set, the accused shall be remanded to the custody of the corrections official until  
11 compliance with the modified conditions. If the accused is not in custody, the court may  
12 order that a warrant for the arrest of the accused be issued.

479.424. An accused for whom conditions for release are imposed and who after  
2 twenty-four hours from the time of the release hearing continues to be detained on charges  
3 as a result of the accused's inability to meet the conditions for release shall, upon  
4 application, be entitled to have the conditions reviewed by the court that imposed them.  
5 The application shall be determined promptly.

479.426. The court may order the arrest of an accused who has been released if it  
2 shall appear to the court that:

- 3 (1) There has been a breach of any condition for the release; or
- 4 (2) The bail shall be increased or new or additional security be required or new  
5 conditions for release be imposed.

6 The accused, upon application, shall be entitled to a hearing concerning the reasons for the  
7 issuance of the order.

2 **479.428. 1. If a court shall fail to set conditions for release or shall set inadequate  
3 or excessive conditions, an application may be filed in a higher court by the accused or by  
4 the prosecutor stating the grounds for the application and the relief sought. A copy of the  
5 application and the notice of the time when it will be presented to the court shall be served  
6 on all parties.**

6 **2. If the higher court finds that the accused is entitled to be released and no  
7 conditions therefor have been set or that the conditions are excessive or inadequate, the  
8 court shall make an order setting or modifying conditions for the release of the accused.**

9 **3. At the time of complying with the conditions of release set by the higher court,  
10 the accused shall file with the clerk a signed and acknowledged written instrument in  
11 which the accused shall specify the post office address to which all notices in connection  
12 with the case thereafter may be mailed. Proof of mailing notice to the accused at that  
13 address shall constitute sufficient notice to the accused in all cases where notice is required  
14 under sections 479.400 to 479.490.**

2 **479.430. When any person is released by a court other than the court in which the  
3 person is to appear, the clerk of the releasing court shall transmit a record of the release,  
4 together with any conditions imposed, to the clerk of the court in which the person released  
5 is required to appear.**

2 **479.432. 1. The clerk of the court in which the accused is required to appear shall  
3 file all bonds. All bonds taken by a peace officer shall be certified by such officer and  
4 transmitted forthwith to the clerk of the court in which the accused is required to appear.  
5 When cash or securities specified in sections 479.400 to 479.490 are taken they shall be  
6 delivered forthwith to the clerk of the court in which the accused is required to appear and  
7 deposited in the registry of the court.**

7 **2. Whenever the surety upon any bond shall desire to surrender the principal, the  
8 surety may procure from the clerk a certified copy of said bond, by virtue of which such  
9 surety, or any person authorized by the surety, may take the principal into custody. If a  
10 bond is forfeited for the failure of the principal to appear as required by the bond and the  
11 surety produces the principal prior to the rendition of judgment upon the forfeiture and  
12 the surety pays all costs and expenses caused by the principal's failure to appear, the surety  
13 is discharged from further liability. When surrendering the principal to the peace officer,  
14 the surety shall deliver a certified copy of the bond and the peace officer shall take the  
15 principal into custody and acknowledge acceptance of the principal in writing. Any  
16 principal so surrendered may be conditionally released under sections 479.400 to 479.490.**

17           **3. (1) If there is a breach of a condition of a bond, the court in which the case is**  
18 **pending may declare a forfeiture of the bond. The court may direct that a forfeiture be set**  
19 **aside upon such conditions as the court may impose, if it appears that justice does not**  
20 **require the enforcement of the forfeiture. When a forfeiture has not been set aside, the**  
21 **court on the prosecutor's motion may enter a judgment of default and execution may issue**  
22 **thereon.**

23           **(2) By entering into a bond the obligors submit to the jurisdiction of the court in**  
24 **which the defendant is required to appear and irrevocably appoint the clerk as their agent**  
25 **upon whom any papers affecting their liability may be served. Their liability may be**  
26 **enforced on the prosecutor's motion without the necessity of an independent action. The**  
27 **motion and notice of the hearing as the court prescribes may be served on the clerk, who**  
28 **shall forthwith mail a copy to each of the obligors.**

29           **4. When the conditions of the bond have been satisfied the court shall release the**  
30 **obligors. When a forfeiture of the bond is set aside, the court may release the obligors.**  
31 **Any surety may be released upon depositing cash in the amount of the bond or by a timely**  
32 **surrender of the defendant.**

33           **5. Any defendant who has been released pending further proceedings and any**  
34 **surety for such defendant shall give written notice to the clerk of the court in which the**  
35 **case is pending of any change of address.**

36           **6. A person shall not be accepted as a surety on any bail bond unless the person:**

37           **(1) Is reputable, at least twenty-one years of age and a resident of the state of**  
38 **Missouri;**

39           **(2) Has net assets with a value in excess of exemptions at least equal to the amount**  
40 **of the bond that are subject to execution in the state of Missouri;**

41           **(3) Has not, within the past fifteen years, been found guilty of or pleaded guilty or**  
42 **nolo contendere to:**

43           **(a) Any felony of this state or the United States; or**

44           **(b) Any other crime of this state or the United States involving moral turpitude,**  
45 **whether or not a sentence was imposed;**

46           **(4) Has no outstanding forfeiture or unsatisfied judgment thereon entered upon any**  
47 **bail bond in any court of this state or of the United States.**

48

49 **A lawyer, or an elected or appointed official or employee of the state of Missouri or any**  
50 **county or other political subdivision thereof shall not be accepted as a surety on any bail**  
51 **bond; except that, such disqualification shall not apply if the principal is the spouse, child**

52 or family member of the surety. If there is more than one surety, the aggregate net worth  
53 of the sureties in excess of exemptions shall be at least equal to the amount of the bond.

54 7. (1) If the surety has on file an affidavit relating to all bonds in force on the first  
55 day of the then current calendar month, the separate affidavit as to other bonds executed  
56 during such calendar month may be limited to the requirements of paragraph (e) this  
57 subdivision and appropriate reference shall be made therein to the separate affidavit of  
58 qualification currently relied upon to establish the surety's qualifications. The judge, clerk  
59 or officer who is authorized to take and approve the bond shall administer the oath to such  
60 affidavit. The affidavit shall be on a suitable form, which shall be provided. In addition  
61 to the matters specified in subsection 6 of this section, it shall contain:

62 (a) An accurate legal description of the real estate that the surety proposes to justify  
63 as to the surety's sufficiency, together with a description of the improvements located  
64 thereon, and the location of the property by street address if it is located in a city or town;

65 (b) The latest assessed value of such property;

66 (c) An accurate description of the personal property that the surety proposes to  
67 justify as to the surety's sufficiency and a statement of its reasonable market value;

68 (d) A list of all bail bonds upon which the surety is surety and upon which the  
69 surety's obligation remains undischarged, the amount of each bond, the name of the  
70 principal or defendant, the ordinance violation charged, and the court in which such bond  
71 is pending; and

72 (e) A statement whether or not the surety or anyone for the surety's use has been  
73 promised or has received any consideration or security for suretyship, and if so, the nature  
74 and amount thereof, and the name of the person by whom such promise was made or from  
75 whom such security or consideration was received.

76 (2) The judge, clerk, or officer to whom such affidavit of justification is submitted  
77 may make such additional investigation concerning the qualifications of the surety as  
78 thought to be necessary and, for such purpose, shall have authority to administer all  
79 necessary oaths.

80 (3) No bond shall be approved unless the surety thereon appears to be qualified  
81 under the requirements of sections 479.412 to 479.432.

82 8. When a surety is accepted upon a bond, the surety shall execute an affidavit of  
83 justification that shall be attached to the bond and filed therewith by the clerk of the court  
84 in accordance with the provisions of subsection 1 of this section. A duplicate copy of such  
85 affidavit shall be preserved in a separate file in the office of the clerk of the court in which  
86 such bond is first filed, indexed alphabetically by the names of the sureties. Such file shall  
87 be open to the inspection of any interested person.



88           **9. (1) Any corporation qualified under the provisions of section 379.010, including**  
89 **the requirement that it produce evidence of its solvency satisfactory to the court, shall be**  
90 **qualified to act as a surety upon any bail bond taken under the provisions of sections**  
91 **479.400 to 479.490. Any such bond shall be executed by a surety company in the manner**  
92 **provided by law.**

93           **(2) An agent acting on behalf of such a corporation shall be subject to the**  
94 **qualifications set forth in Supreme Court Rule 37.29(a), (c) and (d) and, in addition, shall**  
95 **be licensed as a bail bond agent as required by law.**

**479.434. A violation notice shall be in writing and shall:**

- 2           **(1) State the name and address of the court;**  
3           **(2) State the name of the prosecuting county or municipality;**  
4           **(3) State the name of the accused or, if not known, designate the accused by any**  
5 **name or description by which the accused can be identified with reasonable certainty;**  
6           **(4) State the date and place of the ordinance violation as definitely as can be done;**  
7           **(5) State the facts that support a finding of probable cause to believe the ordinance**  
8 **violation was committed and that the accused committed it;**  
9           **(6) State that the facts contained therein are true;**  
10          **(7) Be signed and on a form bearing notice that false statements made therein are**  
11 **punishable by law;**  
12          **(8) Cite the chapter and section of the ordinance alleged to have been violated and**  
13 **the chapter and section that fixes the penalty or punishment; and**  
14          **(9) State other legal penalties prescribed by law may be imposed for failure to**  
15 **appear and dispose of the violation.**

**479.436. All ordinance violations shall be prosecuted by information. An**  
2 **information charging the commission of an ordinance violation may be based on the**  
3 **prosecutor's information and belief that the ordinance violation was committed. The**  
4 **information shall be supported by a violation notice as prescribed by section 479.434.**

**479.438. 1. The information shall be in writing, signed by the prosecutor and filed**  
2 **in the court having jurisdiction of the ordinance violation.**

3           **2. The information shall:**

- 4           **(1) State the name of the defendant or, if not known, designate the defendant by**  
5 **any name or description by which the defendant can be identified with reasonable**  
6 **certainty;**  
7           **(2) State plainly, concisely, and definitely the essential facts constituting the**  
8 **ordinance violation charged, including facts necessary for any enhanced punishment;**

9           **(3) State the date and place of the ordinance violation charged as definitely as can**  
10 **be done;**

11           **(4) Cite the chapter and section of the ordinance alleged to have been violated and**  
12 **the chapter and section providing the penalty or punishment.**

13           **3. All ordinance violations that are of the same or similar character or based on the**  
14 **same act or on two or more acts that are part of the same transaction or on two or more**  
15 **acts or transactions that are connected or that constitute parts of a common scheme or plan**  
16 **may be charged in the same information in separate counts.**

17           **4. Two or more defendants may be charged in the same information if they are**  
18 **alleged to have participated in the same act or transaction or in the same series of acts or**  
19 **transactions constituting an ordinance violation or violations. Such defendants may be**  
20 **charged in one or more counts together or separately, and all of the defendants need not**  
21 **be charged in each count.**

22           **5. Any defendant charged in an information under an incorrect name may furnish**  
23 **the defendant's correct name, and the correct name shall be substituted in the information.**  
24 **The defendant's failure to furnish the correct name shall not invalidate the proceedings.**

25           **6. Any information charging an ordinance violation may be amended at any time**  
26 **before verdict or finding if:**

27           **(1) No additional or different ordinance violation is charged; and**

28           **(2) A defendant's substantial rights are not thereby prejudiced.**

29

30 **No such amendment shall cause delay of a trial unless the court finds that a defendant**  
31 **needs further time to prepare a defense by reason of such amendment.**

32           **7. If the original information is unavailable for any reason, a copy, certified by the**  
33 **clerk or by the prosecutor, may be substituted.**

34           **8. An information shall not be invalid, nor shall the trial, judgment, or other**  
35 **proceedings on the information be stayed, because of any defect that does not prejudice the**  
36 **substantial rights of the defendant.**

**479.440. The summons shall:**

2           **(1) Be in writing and in the name of the prosecuting county or municipality;**

3           **(2) State the name of the person summoned and the address, if known;**

4           **(3) Describe the ordinance violation charged;**

5           **(4) Be signed by a judge or by a clerk of the court when directed by a judge; and**

6           **(5) Command the person to appear before the court at a stated time and place in**

7 **response thereto.**

**479.442. When an information charging the commission of an ordinance violation is filed under subsection 3 of section 479.438, a summons shall be issued unless the court finds that there are:**

**(1) Sufficient facts stated to show probable cause that an ordinance violation has been committed; and**

**(2) Reasonable grounds for the court to believe that the defendant will not appear upon the summons, or a showing has been made to the court that the accused poses a danger to a crime victim, the community, or any other person.**

**If the court so finds, a warrant for the arrest of the defendant may be issued.**

**479.444. A summons may be served by:**

**(1) The clerk mailing it to defendant's last known address by first class mail; or**

**(2) An officer in the manner provided by Supreme Court Rule 54.13 or Supreme Court Rule 54.14.**

**If the defendant fails to appear in response to a summons and upon a finding of probable cause that an ordinance violation has been committed, the court may issue an arrest warrant.**

**479.446. 1. The warrant of arrest shall be in writing and issued in the name of the prosecuting county or municipality. It may be directed to any peace officer in the state.**

**2. The warrant shall:**

**(1) Contain the name of the person to be arrested or, if not known, any name or description by which the defendant can be identified with reasonable certainty;**

**(2) Describe the ordinance violation charged in the information;**

**(3) State the date when issued and the jurisdiction where issued;**

**(4) Command that the defendant named or described therein be arrested and brought forthwith before the court designated in the warrant;**

**(5) Specify the conditions of release; and**

**(6) Be signed by a judge or by a clerk of the court when directed by the judge for a specific warrant.**

**3. All warrants ordered for an ordinance violation may be directed to any peace officer in the state.**

**4. The warrant shall be executed by the arrest of the defendant.**

**5. A warrant may be executed anywhere in the state by any peace officer. The peace officer need not possess the warrant at the time of the arrest, but upon request the officer shall show the warrant to the defendant as soon as possible. If the peace officer**

19 does not possess the warrant at the time of the arrest, the officer shall inform the defendant  
20 of the ordinance violation charged and the fact that a warrant has been issued.

479.448. 1. A person arrested under a warrant for an ordinance violation who does  
2 not satisfy conditions for release shall be brought as soon as practicable before a judge of  
3 the court from which the warrant was issued. The warrant, with proper return thereon,  
4 shall be filed with the court.

5 2. Upon the defendant's initial appearance, the judge shall inform the defendant  
6 of:

- 7 (1) The ordinance violation charged;
- 8 (2) The right to retain counsel;
- 9 (3) The right to request the appointment of counsel if:
  - 10 (a) The defendant is indigent and unable to employ counsel; and
  - 11 (b) There is a possibility of a jail sentence; and
- 12 (4) The right to remain silent.

479.450. Arraignment shall be conducted in open court and shall consist of reading  
2 the information to the defendant or stating the substance of the charge and calling on the  
3 defendant to plead thereto. The defendant shall be afforded a reasonable time to examine  
4 the charge before the defendant is called upon to plead.

479.452. 1. In a prosecution for an ordinance violation, the defendant shall have  
2 the right to appear and defend in person and by counsel.

3 2. If any person charged with an ordinance violation, whose conviction would  
4 possibly result in confinement, shall be without counsel upon a first appearance before a  
5 judge, it shall be the duty of the judge to advise the defendant of the right to counsel and  
6 of the willingness of the judge to appoint counsel to represent the defendant if the  
7 defendant is unable to employ counsel. Upon a showing of indigency, it shall be the duty  
8 of the judge to appoint counsel to represent the defendant.

9 3. If, after being informed of the right to counsel, the defendant requests to proceed  
10 without the benefit of counsel and the judge finds that the defendant has knowingly,  
11 voluntarily and intelligently waived the defendant's right to have counsel, the judge shall  
12 have no duty to appoint counsel. If at any stage of the proceedings it appears to the judge  
13 before whom the matter is then pending that because of the gravity of the ordinance  
14 violation charged and other circumstances affecting the defendant the failure to appoint  
15 counsel may result in injustice to the defendant, the judge shall then appoint counsel.  
16 Appointed counsel shall be allowed a reasonable time in which to prepare the defense.

479.454. 1. Pleadings shall be the information and plea thereto.

2           **2. (1) Any defense or objection that is capable of determination without trial of the**  
3 **general issue may be raised before trial by motion.**

4           **(2) Defenses and objections based on defects in the institution of the prosecution**  
5 **or in the information other than that it fails to show jurisdiction in the court or to charge**  
6 **an ordinance violation may be raised only by motion before trial. The motion shall include**  
7 **all such defenses and objections then available to the defendant. Failure to present any**  
8 **such defense or objection as herein provided constitutes a waiver thereof, but the court for**  
9 **cause shown may grant relief from the waiver.**

10           **(3) The motion shall be made before the plea is entered, but the judge may permit**  
11 **it to be made within a reasonable time thereafter.**

12           **(4) The motion shall be heard and determined before trial on application of the**  
13 **prosecutor or the defendant, unless the court orders that the hearing and determination**  
14 **be deferred until the trial.**

15           **(5) Lack of jurisdiction or the failure of the information to charge an ordinance**  
16 **violation shall be noticed by the court at any time during the pendency of the proceeding.**

**479.456. Requests that evidence be suppressed shall be raised by motion before**  
2 **trial; however, the court in the exercise of discretion may entertain a motion to suppress**  
3 **evidence at any time during trial.**

**479.458. 1. This section governs the procedure for disqualification of a judge in all**  
2 **ordinance violation cases, except those heard de novo or those in which there is a timely**  
3 **exercise of a right to a jury trial.**

4           **2. If the judge is related to any defendant or has an interest in or has been counsel**  
5 **in the case, the judge shall recuse.**

6           **3. A change of judge shall be ordered upon the filing of a written application**  
7 **therefor by any party. The applicant need not allege or prove any reason for such change.**  
8 **The application need not be verified and may be signed by any party or an attorney for any**  
9 **party. The application shall be filed not later than ten days after the initial plea is entered.**  
10 **If the designation of the trial judge occurs less than ten days before trial, the application**  
11 **may be filed any time prior to trial. If the designation of the trial judge occurs more than**  
12 **ten days after the initial plea is entered, the application shall be filed within ten days of the**  
13 **designation of the trial judge or prior to the commencement of any proceeding on the**  
14 **record, whichever is earlier. No party shall be allowed more than one change of judge**  
15 **under this subsection. However, no party shall be precluded from requesting any change**  
16 **of judge for cause at any time.**

17           **4. When a timely application for a change of judge is filed or a judge recuses, the**  
18 **judge shall:**

19 (1) Comply with any circuit court rule that provides for the assignment of a judge;  
20 or

21 (2) Notify the presiding judge of the circuit who shall designate a judge to hear the  
22 case or request the court to transfer a judge to hear the case.

23 5. If an associate circuit judge or a circuit judge is designated to try the case, the  
24 designated judge shall determine the location of the trial at a place within the county.

479.460. Discovery shall be permitted solely in the judge's discretion as justice  
2 requires.

479.462. The prosecutor and the defendant shall be entitled to process for witnesses  
2 as follows:

3 (1) A subpoena shall be issued by the clerk under the seal of the court. It shall state  
4 the name of the court and the title of the proceedings and shall command each person to  
5 whom it is directed to attend and give testimony at the time and place specified therein.  
6 The clerk shall issue a subpoena, signed and sealed but otherwise in blank to a party  
7 requesting it, who shall fill in the blanks before it is served;

8 (2) A subpoena duces tecum may also command the person to whom it is directed  
9 to produce the books, papers, documents, or other objects designated therein;

10 (3) The court may quash or modify a subpoena if compliance would be  
11 unreasonable or oppressive. The court may direct that books, papers, documents, or  
12 objects designated in a subpoena duces tecum be produced before the court at a time prior  
13 to the trial or prior to the time when they are offered in evidence. Upon their production  
14 the court may permit the books, papers, documents, or objects, or portions thereof to be  
15 inspected by the parties or their attorneys;

16 (4) A subpoena may be served by any peace officer or by any other person who is  
17 not a party and who is not less than eighteen years of age. A subpoena may be served any  
18 place within the state. Fees and mileage need not be tendered to the witness upon service  
19 of a subpoena. The service of a subpoena shall be by reading the same or delivering a copy  
20 thereof to the person to be summoned. If the witness shall refuse to hear such subpoena  
21 read or to receive a copy thereof, the offer of the officer or other person to read the same  
22 or to deliver a copy thereof and such refusal shall be sufficient service of such subpoena;

23 (5) (a) Every officer to whom a subpoena is delivered for service shall make return  
24 thereof in writing as to the time, place, and manner of service of the subpoena, and shall  
25 sign the return.

26 (b) If a person other than an officer makes service of the subpoena, he or she shall  
27 make affidavit as to the time, place, and manner of service;

28           **(6) Any person who does not obey a subpoena without good cause shall be subject**  
29 **to contempt of court proceedings;**

30           **(7) (a) Whenever a witness in a proceeding has been once subpoenaed or required**  
31 **to give bail to appear before the court, the witness shall attend from time to time until the**  
32 **case is disposed or the witness is finally discharged by the judge. The witness shall be**  
33 **liable to attachment and bail may be forfeited for failure to appear if the witness has**  
34 **received notice of the time and place to appear.**

35           **(b) If the trial is continued, the judge shall orally notify such witnesses present as**  
36 **either party requests to attend on the new date set for hearing to give testimony. The oral**  
37 **notice shall be valid as a summons. The names of the witnesses so notified shall be entered**  
38 **on the docket.**

39           **(c) It shall be the sole responsibility of the respective parties or their attorneys to**  
40 **notify any witnesses not orally notified by the judge of the new date set for hearing, and**  
41 **court process shall be provided for such purpose when requested.**

**479.464. The prosecution and defense in each case shall have the right to a speedy**  
2 **trial. Continuances may be granted for good cause shown.**

**479.466. No defendant shall either be tried or permitted to enter a plea of guilty**  
2 **unless the defendant is personally present or the judge, defendant, and prosecutor consent**  
3 **to such trial or plea in the defendant's absence. The defendant's presence in the courtroom**  
4 **shall not be required in the event of a reduction of sentence.**

**479.468. 1. A defendant may plead not guilty or guilty. If a defendant refuses to**  
2 **plead or if a corporation fails to appear, the court shall enter a plea of not guilty.**

3           **2. Except as provided in section 479.466, before accepting a plea of guilty, the judge**  
4 **shall address the defendant personally in open court. The judge shall inform the defendant**  
5 **of the following:**

6           **(1) The nature of the charge to which the plea is offered, the mandatory minimum**  
7 **penalty provided by law, if any, and the maximum possible penalty provided by law; and**

8           **(2) The defendant's right to be represented by an attorney and that the judge will**  
9 **appoint an attorney for the defendant if the defendant is indigent and if it appears to the**  
10 **judge that there would possibly be a jail sentence upon conviction; and**

11           **(3) That if the defendant pleads guilty there will not be a trial of any kind, so that**  
12 **by pleading guilty the defendant waives the right to a trial; and**

13           **(4) The defendant's right to plead not guilty or to persist in that plea if it has**  
14 **already been made.**

15

16 The judge shall further inform the defendant of any right to a jury trial, the right to  
17 present witnesses on behalf of the defendant, that the defendant has the right to confront  
18 and cross-examine witnesses against the defendant, that the defendant has the right to  
19 testify and that nobody can compel the defendant to testify. The judge shall determine  
20 whether the defendant understands, upon oral or written information provided, the  
21 matters presented.

22 3. Except as provided in section 479.466, the judge shall not accept a plea of guilty  
23 unless the judge finds that said plea is knowingly, voluntarily, and intelligently made and  
24 not the result of force or threats or promises.

25 4. (1) If the defendant would possibly receive a jail sentence upon conviction, the  
26 judge shall determine, before accepting the defendant's plea of guilty or not guilty, that the  
27 defendant has made a knowledgeable, voluntary, and intelligent waiver of the right to  
28 assistance of counsel.

29 (2) Prior to making the finding, the judge shall review with the defendant a written  
30 waiver of counsel.

31 (3) If the judge finds the waiver is knowingly, voluntarily, and intelligently made,  
32 the waiver shall be signed by the defendant, witnessed by the judge or the clerk at the  
33 judge's direction, and appropriately recorded.

34 5. (1) The judge shall not participate in any plea agreement discussions, but after  
35 a plea agreement has been reached the judge may discuss the agreement with the attorneys  
36 including any alternative that would be acceptable.

37 (2) The prosecutor and the attorney for the defendant or the defendant acting pro  
38 se may engage in discussions with a view toward reaching an agreement that, upon the  
39 entering of a plea of guilty to a charged ordinance violation or to a lesser or related  
40 ordinance violation, the prosecutor will do any of the following:

41 (a) Dismiss other charges; or

42 (b) Make a recommendation, or agree not to oppose the defendant's request for a  
43 particular sentence with the understanding that such recommendation or request shall not  
44 be binding on the judge; or

45 (c) Agree that a specific sentence is the appropriate disposition of the case; or

46 (d) Make a recommendation for, or agree on, another appropriate disposition of  
47 the case.

48 (3) If the parties have reached a plea agreement, the judge shall require the  
49 disclosure of the agreement in open court or, on a showing of good cause, in camera at the  
50 time the plea is offered. If the agreement is under paragraph (b) of subdivision (2) of this  
51 subsection, the judge shall advise the defendant that the plea cannot be withdrawn if the



52 judge does not adopt the recommendation or request. Thereupon the judge may accept or  
53 reject the agreement or may defer a decision as to the acceptance or rejection until there  
54 has been an opportunity to consider the presentence report.

55 (4) If the judge accepts the plea agreement, the judge shall inform the defendant  
56 that the judge will embody in the judgment and sentence the disposition provided for in  
57 the plea agreement.

58 (5) If the judge rejects the plea agreement, the judge shall inform the parties of this  
59 fact, advise the defendant personally in open court or, on a showing of good cause, in  
60 camera that the judge is not bound by the plea agreement, afford the defendant the  
61 opportunity to then withdraw the plea if it is based on an agreement under paragraph (a),  
62 (c), or (d) of subdivision (2) of this subsection, and advise the defendant that if the  
63 defendant persists in the guilty plea, the disposition of the case may be less favorable to the  
64 defendant than that contemplated by the plea agreement.

65 (6) Except as otherwise provided in this subsection, evidence of a plea of guilty,  
66 later withdrawn, or of offer to plead guilty to the ordinance violation charged or of any  
67 other ordinance violation, or of statements made in connection with, and relevant to, any  
68 of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against  
69 the person who made the plea or offer. However, evidence of a statement made in  
70 connection with, and relevant to a plea of guilty, later withdrawn, or an offer to plead  
71 guilty to the ordinance violation charged or any other ordinance violation, is admissible  
72 in a criminal proceeding for perjury or false statement if the statement was made by the  
73 defendant under oath and in the presence of counsel.

74 6. The judge shall not enter a judgment upon a plea of guilty without first  
75 determining that there is a factual basis for the plea.

479.470. 1. If two or more defendants are charged in an information, all defendants  
2 shall be tried together unless the court orders a defendant to be tried separately. A  
3 defendant shall be ordered to be tried separately only if the defendant files a written  
4 motion requesting a separate trial and the court finds a probability of prejudice exists.

5 2. If a defendant is charged with more than one ordinance violation in the same  
6 information, the violations shall be tried jointly unless the court orders a violation to be  
7 tried separately. A violation shall be ordered to be tried separately only if:

8 (1) A party files a written motion requesting a separate trial of the offense;

9 (2) A party makes a particularized showing of substantial prejudice if the violation  
10 is not tried separately; and

11 (3) The court finds the existence of a bias or discrimination against the party that  
12 requires a separate trial of the violation.

479.472. 1. All trials of ordinance violations shall be held in open court in an orderly manner according to law.

2. If practical, traffic cases shall be heard and tried separately from other types of cases. Where a particular session of court has been designated a traffic case session, only traffic cases shall be tried except for good cause shown.

3. The judge shall determine all issues of fact in ordinance violation cases unless a jury trial is authorized by law and requested by the defendant.

4. A request for a jury trial shall be made by motion filed at least ten days prior to the scheduled trial date. If the designation of the trial date occurs less than ten days before trial, the application may be filed any time prior to trial. The judge shall promptly rule on a motion for jury trial. If the motion is sustained, the case shall be certified to the presiding judge for assignment for trial by jury unless otherwise provided by statute.

5. All jury trials shall proceed in the manner provided for the trial of a misdemeanor by the rules of criminal procedure.

6. If the defendant files a written motion so requesting and attaches thereto a waiver of the right to a jury trial, the case may be remanded to the municipal division for trial.

479.474. The order of trial in nonjury ordinance violation cases shall be as follows:

(1) The prosecutor may make an opening statement. The defendant may make an opening statement or reserve it;

(2) The prosecutor shall offer evidence;

(3) The defendant may move for judgment of acquittal;

(4) The defendant may make an opening statement, if reserved;

(5) Evidence may be offered on behalf of the defendant;

(6) The parties, respectively, may offer evidence in rebuttal;

(7) The defendant may move for judgment of acquittal;

(8) The court may fix the length of time for arguments and shall announce it to counsel. The prosecutor shall make the opening argument, the attorney for the defendant shall make an argument, and the prosecutor for the state shall conclude the argument. Each party may waive the right to argument;

(9) The judge pronounces judgment.

479.476. 1. If the defendant shall not avail himself or herself of the right to testify or of the testimony of the wife or husband on the trial in the case, it shall not be construed to affect the innocence or the guilt of the defendant nor shall the same raise any presumption of guilt, nor be referred to by any party or attorney in the case, nor be considered by the court or jury before whom the trial takes place.

6           **2. If the defendant does not testify and the defendant so requests, but not otherwise,**  
7 **the court shall instruct the jury in writing as follows:**

8           **"Under the law, a defendant has the right not to testify. No presumption of guilt**  
9 **may be raised and no inference of any kind may be drawn from the fact that defendant did**  
10 **not testify."**

**479.478. 1. (1) When a probation or parole officer is available to the judge and**  
2 **upon the direction of the judge, the officer shall make a presentence investigation and**  
3 **report to the judge before the imposition of sentence or the granting of probation. The**  
4 **report shall be submitted to the court only after the defendant has pleaded guilty or has**  
5 **been found guilty.**

6           **(2) The report of the presentence investigation shall contain such information as**  
7 **the judge shall request. Before making any authorized disposition, the judge, upon request**  
8 **of the defendant or the attorney for the defendant, shall allow the defendant and the**  
9 **attorney for the defendant access to the complete pre-sentence investigation report and**  
10 **recommendations.**

11           **2. Sentence shall be imposed without unreasonable delay. A defendant shall be**  
12 **personally present when sentence and judgment are pronounced unless the judge, the**  
13 **prosecutor, and the defendant consent to the absence of the defendant.**

14           **3. After imposing sentence, the judge shall advise the defendant of any right to trial**  
15 **de novo and the right of a defendant who is unable to pay the cost the right to proceed as**  
16 **an indigent.**

17           **4. A judgment of conviction shall set forth the plea, the verdict or findings, and the**  
18 **adjudication and sentence. If the defendant is found not guilty or for any other reason is**  
19 **entitled to be discharged, judgment shall be entered accordingly.**

20           **5. If authorized by law, the judge may suspend the imposition of sentence or**  
21 **execution of sentence and place the defendant on probation or parole for a term not to**  
22 **exceed two years.**

23           **6. The court in which any judgment, whether of imprisonment or fine, was**  
24 **rendered may grant, by an order entered of record and signed by the judge, a stay of**  
25 **execution upon such judgment or portion thereof for a specified period or periods of time,**  
26 **not to exceed six months. The judge may require the defendant to enter into a bond**  
27 **conditioned upon surrender of the defendant in execution upon such judgment on a day**  
28 **to be specified in such order.**

29           **7. When pronouncing sentence, the judge shall state whether the sentence shall run**  
30 **consecutively or concurrently with sentences on one or more ordinance violations for which**  
31 **the defendant is being sentenced or for which the defendant has been previously sentenced.**

32 **If the judge fails to do so at the time of pronouncing the sentences, the respective sentences**  
33 **shall run concurrently.**

2 **479.480. 1. When a fine is assessed for violation of an ordinance, it shall be within**  
3 **the discretion of the judge assessing the fine to provide for the payment of the fine on an**  
4 **installment basis under such terms and conditions as the judge may deem appropriate.**

5 **2. If it appears to the judge imposing judgment assessing a fine that the defendant**  
6 **does not have at that time the present means to satisfy the fine, the judge assessing the fine**  
7 **may order a stay of execution on the judgment and grant the defendant a specified period**  
8 **of time within which to satisfy the same.**

9 **3. If a defendant defaults in the payment of the fine, the judge may order the**  
10 **defendant to show cause why the defendant should not be held in contempt of court.**

11 **4. Upon default in the payment of a fine or any installment thereof, the fine may**  
12 **be collected by any means authorized by law, including means for the enforcement of**  
13 **money judgments.**

14 **479.482. When a defendant is sentenced to imprisonment, the clerk shall deliver to**  
15 **the corrections official a certified copy of the judgment and sentence, specifying credit for**  
16 **time served, and the corrections official shall confine the defendant in a detention facility**  
17 **or deliver the defendant as specified in the order.**

18 **479.484. 1. Within ten days after the entry of judgment and prior to the filing of**  
19 **application for trial de novo, the court may of its own initiative or on motion of a defendant**  
20 **set aside judgment upon any of the following grounds:**

21 **(1) That the facts stated in the information filed and upon which the cause was**  
22 **tried do not state an ordinance violation;**

23 **(2) That the court was without jurisdiction of the ordinance violation charged;**

24 **(3) To correct manifest injustice.**

25

26 **The court shall record the grounds upon which the order was entered.**

27 **2. A motion to withdraw a plea of guilty may be made only before sentence is**  
28 **imposed or when imposition of sentence is suspended, but to correct manifest injustice, the**  
29 **court after sentence may set aside the judgment of conviction and permit the defendant to**  
30 **withdraw the defendant's plea.**

31 **3. Clerical mistakes in the record and errors in the record arising from oversight**  
32 **or omission may be corrected by the court any time on the motion of any party and after**  
33 **such notice, if any, as the court orders.**

34 **479.486. 1. After commitment of a defendant to serve a sentence of imprisonment,**  
35 **the judge may commute the term of the sentence to the time then served.**

3           **2. A judge may revoke probation or parole upon compliance with section 559.036,**  
4 **but not otherwise; except that, notice of the hearing may be mailed in the same manner as**  
5 **a summons. The defendant may be conditionally released pending final hearing.**

**479.488. 1. An application for trial de novo shall be filed as provided by law. No**  
2 **judge may order an extension of time for filing or perfecting an application for trial de**  
3 **novo.**

4           **2. An application for trial de novo shall not be granted after the defendant satisfies**  
5 **any part of the penalty and costs of the judgment.**

6           **3. The filing of an application for trial de novo or review shall suspend the**  
7 **execution of the judgment of the municipal division. If the applicant for trial de novo**  
8 **withdraws the application, or if before commencement of trial, the court enters a finding**  
9 **that the applicant has abandoned the trial de novo, the case shall be remanded to the**  
10 **municipal division for execution of judgment.**

11           **4. When an application for trial de novo is filed, the clerk shall transmit the duly**  
12 **certified record to the clerk of the division designated to hear ordinance violations de novo.**  
13 **The failure of the clerk to transmit the record shall not affect the defendant's trial de novo.**

14           **5. All trials de novo shall proceed in the manner provided for the trial of a**  
15 **misdemeanor by the rules of criminal procedure.**

**479.490. 1. A criminal contempt may be punished summarily if the judge certifies**  
2 **that the judge saw or heard the conduct constituting the contempt and that it was**  
3 **committed in the judge's presence. The judgment of contempt and the order of**  
4 **commitment shall recite the facts and shall be signed by the judge and entered of record.**

5           **2. All other instances of contempt shall be prosecuted on notice. If the contempt**  
6 **charged involves disrespect to or criticism of a judge, that judge is disqualified from**  
7 **presiding at the trial or hearing except with the defendant's consent. Upon a finding of**  
8 **guilt, the judge shall recite in the judgment of contempt and in the order of commitment**  
9 **the essential facts constituting the criminal contempt and fixing the punishment.**

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