



## 1995 SENATE BILL 321

September 6, 1995 – Introduced by Senators PETAK, HUELSMAN, BUETTNER, DARLING and FITZGERALD, cosponsored by Representatives PLACHE, PORTER, ALBERS, BRANDEMUEHL, KAUFERT, HUEBSCH, CULLEN, RILEY, R. YOUNG, LEHMAN, F. LASEE and OLSEN. Referred to Committee on Judiciary.

1 **AN ACT to consolidate, renumber and amend** 969.02 (2) (intro.) and (b); and  
2 **to amend** 969.02 (6), 969.02 (7), 969.03 (1) (d), 969.03 (4) and 969.03 (5) of the  
3 statutes; **relating to:** applying cash deposited for bail to judgments for fines or  
4 costs in criminal cases.

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### *Analysis by the Legislative Reference Bureau*

Under current law, a judge may set conditions of release for a person charged with a crime (a defendant) that are designed to assure the defendant's appearance in court. A judge may require the defendant to execute an unsecured appearance bond in a specified amount or, as an alternative to an unsecured appearance bond, a judge may require the defendant to execute an appearance bond in a specified amount that must either be guaranteed by solvent sureties or posted as a cash deposit. If the defendant is convicted and ordered to pay a fine or court costs or both, any cash deposited for an appearance bond must be applied to the payment of the fine and costs, with any remaining amount returned to the defendant. Because the Wisconsin supreme court has held that bail money is conclusively presumed to be the defendant's property, cash deposited must be applied to the payment of the defendant's fine and costs regardless of whether the cash was deposited by the defendant or by another person on behalf of the defendant. *State ex rel. Glidden v. Fowler*, 192 Wis. 151 (1927). This rule was reaffirmed and held not to violate constitutional prohibitions against excessive bail in *State v. Iglesias*, 185 Wis. 2d 118 (1994).

This bill provides that only cash deposited by a defendant for an appearance bond may be applied to a fine and costs that the defendant is ordered to pay after being convicted. Thus, under the bill, if a person makes a cash deposit for an appearance bond on behalf of a defendant and the defendant is convicted and ordered to pay a fine or costs or both, the court must return the cash deposit to the person and may not apply the cash deposit to any fine and costs that the defendant is ordered to pay.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 969.02 (2) (intro.) and (b) of the statutes are consolidated,  
2           renumbered 969.02 (2) and amended to read:

3           969.02 (2) In lieu of release pursuant to sub. (1), the judge may: ~~(b) Require~~  
4           require the execution of an appearance bond with sufficient solvent sureties, or the  
5           deposit of cash in lieu thereof of sureties. The defendant, or another person on the  
6           defendant's behalf, may make a cash deposit in lieu of sureties under this subsection.  
7           The court's record of and the receipt for a cash deposit made under this subsection  
8           shall state the name and address of the person who is making the deposit.

9           **SECTION 2.** 969.02 (6) of the statutes is amended to read:

10          969.02 (6) When a judgment for a fine or costs or both is entered in a prosecution  
11          in which the defendant has made a cash deposit ~~had been made~~ in accordance with  
12          sub. (2), the balance of such the cash deposit made by the defendant, after deduction  
13          of the bond costs, shall be applied to the payment of the judgment. A cash deposit  
14          made under sub. (2) by a person other than the defendant may not be applied to the  
15          payment of the judgment and shall be returned to the person who made the cash  
16          deposit.

17          **SECTION 3.** 969.02 (7) of the statutes is amended to read:

18          969.02 (7) If the complaint against the defendant has been dismissed or if the  
19          defendant has been acquitted, the entire sum of cash deposited ~~shall be returned.~~  
20          A deposit under sub. (2) shall be returned to the person who made the deposit, his  
21          or her heirs or assigns, subject to sub. (6).

