

1981 Senate Bill 738

Date published: April 14, 1982

CHAPTER 183 , Laws of 1981

AN ACT to repeal 969.06; to amend 800.04 (2) (b), 911.01 (4) (c), chapter 969 (title), 969.01 (title), (1), (2) (b) to (e) and (4), 969.02 (title), 969.03 (title) and (1) (intro.) and (e), 969.05 (1), 969.07, 969.08 (title), (1), (2), (5) (a) 1 and 2 and (b), (6), (7), (8) and (9), 969.10 and 969.11; and to create 969.001, 969.02 (3) (d), 969.035, 969.065 and 969.08 (9m) of the statutes, relating to bail and pretrial release and detention.

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

SECTION 1. 800.04 (2) (b) of the statutes is amended to read:

800.04 (2) (b) If the municipal judge determines that the defendant should not be released under par. (a) and the defendant is charged with a traffic or boating violation, the municipal judge shall release the defendant on a deposit ~~as bail~~ in the amount established by the uniform deposit schedule under s. 345.26 (2) (a) or under s. 23.66. For other violations, the municipal judge shall establish a deposit ~~as bail~~ in an amount not to exceed the maximum penalty for the offense, including any penalty assessment which would be applicable under s. 165.87. On failure of the defendant to make a deposit as bail under this paragraph, he or she shall may be committed to jail pending trial while the default continues only if the judge finds that there is a reasonable basis to believe the person will not appear in court.

SECTION 2. 911.01 (4) (c) of the statutes is amended to read:

911.01 (4) (c) *Miscellaneous proceedings.* Proceedings for extradition or rendition; sentencing, or granting or revoking probation, issuance of arrest warrants, criminal summonses and search warrants; proceedings with respect to pretrial release ~~on bail pursuant to ch. 969 except where habeas corpus is utilized with respect to release on bail or as otherwise provided in ch. 969.~~

SECTION 3. Chapter 969 (title) of the statutes is amended to read:

CHAPTER 969 BAIL AND OTHER CONDITIONS OF RELEASE

SECTION 4. 969.001 of the statutes is created to read:

969.001 Definitions. In this chapter:

(1) "Bail" means monetary conditions of release.

(2) "Serious bodily harm" means bodily injury which causes or contributes to the death of a human being or which creates a high probability of death or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

SECTION 5. 969.01 (title), (1), (2) (b) to (e) and (4) of the statutes are amended to read:

969.01 (title) Eligibility for release. (1) **BEFORE CONVICTION.** Before conviction, except as provided in ss. 969.035 and 971.14 (1), a defendant arrested for a criminal offense shall be admitted to bail, except as provided in s. 971.14 (1) is eligible for release under reasonable conditions designed to assure his or her appearance in court, protect members of the community from serious bodily harm or prevent the intimidation of witnesses. Bail may be imposed at or after the initial appearance only upon a finding by the court that there is a reasonable basis to believe that bail is necessary to assure appearance in court. In determining whether any conditions of release are appropriate, the judge shall first consider the likelihood of the defendant appearing for trial if released on his or her own recognizance.

(2) (b) In misdemeanors, bail release shall be allowed upon appeal.

(c) In felonies, bail release may be allowed upon appeal in the discretion of the trial court.

(d) The supreme court or a justice thereof or the court of appeals or a judge thereof may allow bail release after conviction.

(e) Any court or judge or any justice authorized to grant bail release after conviction for a felony may, in addition to the powers granted in s. 969.08, revoke the order admitting releasing a defendant to bail.

(4) (title) **CONSIDERATIONS IN SETTING CONDITIONS OF RELEASE.** The amount of bail shall be determined in reference to the purpose of bail. If bail is imposed, it shall be only in the amount found necessary to assure the appearance of the defendant when required to appear to answer a criminal prosecution. Conditions of release, other than monetary conditions, may be imposed for the purpose of protecting members of the community from serious bodily harm or preventing intimidation of witnesses. Proper considerations in determining whether to release the defendant without bail, fixing a reasonable amount of bail which will assure the defendant's appearance for trial or imposing other reasonable conditions of release are: the ability of the arrested person to give bail, the nature, number and gravity of the offenses and the potential penalty the defendant faces, whether the alleged acts were violent in nature, the defendant's prior criminal record, if any, the character, health, residence and reputation of the defendant, the character and strength of the evidence which has been presented to the judge, whether the defendant is currently on probation or parole, whether the defendant is already on bail or subject to other release conditions in other pending cases, whether the defendant has been bound over for trial after a preliminary examination, whether the defendant has in the past forfeited bail or violated a condition of release or was a fugitive from justice at the time of arrest, and the policy against unnecessary detention of the defendant's pending trial.

SECTION 6. 969.02 (title) of the statutes is amended to read:

969.02 (title) Release of defendants charged with misdemeanors.

SECTION 7. 969.02 (3) (d) of the statutes is created to read:

969.02 (3) (d) Impose any other condition deemed reasonably necessary to assure appearance as required or any nonmonetary condition deemed reasonably necessary to protect members of the community from serious bodily harm or prevent intimidation of witnesses, including a condition that the defendant return to custody after specified hours. The charges authorized by s. 56.08 (4) and (5) shall not apply under this section.

SECTION 8. 969.03 (title) and (1) (intro.) and (e) of the statutes are amended to read:

969.03 (title) Release of defendants charged with felonies. (1) (intro.) A defendant charged with a felony may be released by the judge without bail or upon the execution of an unsecured appearance bond or the judge may in addition thereto to requiring the execution of an appearance bond or in lieu thereof impose one or more of the following conditions which will assure his appearance for trial:

(e) Impose any other condition deemed reasonably necessary to assure appearance as required or any nonmonetary condition deemed reasonably necessary to protect public or individual safety members of the community from serious bodily harm or prevent intimidation of witnesses, including a condition requiring that the defendant return to custody after specified hours. The charges authorized by s. 56.08 (4) and (5) shall not apply under this section.

SECTION 9. 969.035 of the statutes is created to read:

969.035 Pretrial detention; denial of release from custody. (1) In this section, "violent crime" means any crime specified in s. 940.01, 940.02, 940.05, 940.06, 940.07, 940.08, 940.19 (2), 940.201, 940.21, 940.225 (1) or 940.23.

(2) A circuit court may deny release from custody under this section to any of the following persons:

(a) A person accused of committing an offense under s. 940.01 or 940.225 (1).

(b) A person accused of committing or attempting to commit a violent crime and the person has a previous conviction for committing or attempting to commit a violent crime.

(3) A court may proceed under this section if the district attorney alleges to the court and provides the court with documents as follows:

(a) Alleges that the defendant is eligible for denial of release under sub. (2) (a) or (b).

(b) Provides a copy of the complaint charging the commission or attempted commission of the present offense specified in sub. (2) (a) or (b).

(c) Alleges that available conditions of release will not adequately protect members of the community from serious bodily harm or prevent the intimidation of witnesses.

(4) If the court determines that the district attorney has complied with sub. (3), the court may order that the detention of a person who is currently in custody be continued or may issue a warrant commanding any law enforcement officer to bring the defendant without unnecessary delay before the court. When the defendant is brought before the court, he or she shall be given a copy of the documents specified in sub. (3) and informed of his or her rights under this section and s. 970.02 (1) and (6).

(5) A pretrial detention hearing is a hearing before a court for the purpose of determining if the continued detention of the defendant is justified. A pretrial detention hearing may be held in conjunction with a preliminary examination under s. 970.03 or a conditional release revocation hearing under s. 969.08 (5) (b), but separate findings shall be made by the court relating to the pretrial detention, preliminary examination and conditional release revocation. The pretrial detention hearing shall be commenced within 10 days from the date the defendant is detained or brought before the court under sub. (4). The defendant may not be denied release from custody in accordance with s. 969.03 for more than 10 days prior to the hearing required by this subsection.

(6) During the pretrial detention hearing:

(a) The state has the burden of going forward and proving by clear and convincing evidence that the defendant committed an offense specified under sub. (2) (a), or that the defendant committed or attempted to commit a violent crime subsequent to a prior conviction for a violent crime.

(b) The state has the burden of going forward and proving by clear and convincing evidence that available conditions of release will not adequately protect members of the community from serious bodily harm or prevent the intimidation of witnesses.

(c) The evidence shall be presented in open court with the right of confrontation, right to call witnesses, right to cross-examination and right to representation by counsel. The rules of evidence applicable in criminal trials govern the admissibility of evidence at the hearing.

(d) The court may exclude witnesses until they are called to testify, may direct that persons who are expected to be called as witnesses be kept separate until called and may prevent them from communicating with one another until they have been examined.

(e) Testimony of the defendant given shall not be admissible on the issue of guilt in any other judicial proceeding, but the testimony shall be admissible in perjury proceedings and for impeachment purposes in any subsequent proceeding.

(7) If the court does not make the findings under sub. (6) (a) and (b) and the defendant is otherwise eligible, the defendant shall be released from custody with or without conditions in accordance with s. 969.03.

(8) If the court makes the findings under sub. (6) (a) and (b), the court may deny bail to the defendant for an additional period not to exceed 60 days following the hearing. If the time period passes and the defendant is otherwise eligible, he or she shall be released from custody with or without conditions in accordance with s. 969.03.

(9) In computing the 10-day periods under sub. (5) and the 60-day period under sub. (8), the court shall omit any period of time found by the court to result from a delay caused by the defendant or a continuance granted which was initiated by the defendant. Delay is caused by the defendant only if the delay is expressly requested by the defendant.

(10) The defendant may petition the court to be released from custody with or without conditions in accordance with s. 969.03 at any time.

(11) A person who has been detained under this section is entitled to placement of his or her case on an expedited trial calendar and his or her trial shall be given priority.

SECTION 10. 969.05 (1) of the statutes is amended to read:

969.05 (1) In misdemeanor actions, the judge who issues a warrant may indorse ~~endorse~~ upon the warrant the amount of bail. ~~If no indorsement is made, s. 969.06 shall apply.~~

SECTION 11. 969.06 of the statutes is repealed.

SECTION 12. 969.065 of the statutes is created to read:

969.065 Judicial conference; bail alternatives. The judicial conference shall develop guidelines for cash bail for persons accused of misdemeanors which the supreme court shall adopt by rule. The guidelines shall relate primarily to individuals. The guidelines may be revised from time to time under this section.

SECTION 13. 969.07 of the statutes is amended to read:

969.07 Taking of bail by law enforcement officer. When bail ~~conditions have~~ has been set for a particular offense or defendant, any law enforcement officer may take bail in accordance with ~~ss. s.~~ s. 969.02 and 969.03 and release the defendant to appear in accordance with the conditions of the appearance bond. The law enforcement officer shall give a receipt to the defendant for the bail so taken and within a reasonable time deposit such ~~the~~ the bail with the clerk of court before whom the defendant is to appear. Bail taken by a law enforcement officer may be taken only at a sheriff's office or police station. The receipts shall be numbered serially and shall be in triplicate, one copy for the defendant, one copy to be filed with the clerk and one copy to be filed with the police or sheriff's department which takes the bail. ~~Nothing herein shall~~ This section does not require the release of a defendant from custody ~~under this section~~ when an officer is of the opinion that the de-

defendant is not in a fit condition to care for his or her own safety or would constitute, because of his or her physical condition, a danger to the safety of others. If a defendant is not released pursuant to this section, s. 970.01 shall apply.

SECTION 14. 969.08 (title), (1), (2), (5) (a) 1 and 2 and (b), (6), (7), (8) and (9) of the statutes are amended to read:

969.08 (title) Grant, reduction, increase or revocation of conditions of release. (1) Upon petition by the state or the defendant, the court before which the action is pending may increase or reduce the amount of bail or may alter ~~the other conditions of bail release~~ or the bail bond or grant bail if it has been previously revoked. Except as provided in sub. (5), a defendant for whom conditions of release are imposed and who after 72 hours from the time of initial appearance before a judge continues to be detained in custody as a result of the defendant's inability to meet the conditions of release, upon application, is entitled to have the conditions reviewed by the judge of the court before whom the action against the defendant is pending. Unless the conditions of release are amended and the defendant is thereupon released, the judge shall set forth on the record the reasons for requiring the continuation of the conditions imposed. A defendant who is ordered released on a condition which requires that he or she return to custody after specified hours, upon application, is entitled to a review by the judge of the court before whom the action is pending. Unless the requirement is removed and the defendant thereupon released on another condition, the judge shall set forth on the record the reasons for continuing the requirement.

(2) Violation of the conditions of bail release or the bail bond constitutes grounds for the court to increase the amount of bail or otherwise alter the conditions of bail release or, if the alleged violation is the commission of a serious crime, revoke bail release under this section.

(5) (a) 1. Alleges that the defendant is ~~admitted to bail~~ released on conditions for the alleged commission of a serious crime;

2. Alleges that the defendant has violated the conditions of bail release by having committed a serious crime; and

(b) 1. If the court determines that the state has complied with par. (a), the court may issue a warrant commanding any law enforcement officer to bring the defendant without unnecessary delay before the court. When the defendant is brought before the court, he or she shall be given a copy of the documents specified in par. (a) and informed of his or her rights under s. 970.02 (1) and (6). The court may hold the defendant in custody and suspend the previously imposed bail conditions of release pending a hearing on the alleged breach. The hearing under this paragraph and the preliminary examination under s. 970.03, if required, shall be a combined hearing, with the court making the separate findings required under this paragraph and s. 970.03 at the conclusion of the combined hearing. The hearing shall be commenced within 7 days from the date the defendant is taken into custody. The defendant may not be held without bail setting conditions of release for more than 7 days unless a hearing is held and the findings required by this paragraph are established.

2. At a hearing on the alleged violation the state has the burden of going forward and proving by clear and convincing evidence that the violation occurred while the defendant was ~~admitted to bail on conditional release~~. The evidence shall be presented in open court with the right of confrontation, right to call witnesses, right of cross-examination and right to representation by counsel. The rules of evidence applicable in criminal trials govern the admissibility of evidence at the hearing.

3. Upon a finding by the court that the state has established by clear and convincing evidence that the defendant has committed a serious crime while ~~admitted to bail on conditional release~~, the court may revoke the bail release of the defendant and hold the defendant for trial without bail setting conditions of release. No reference may be made

during the trial of the offense to the court's finding in the hearing. No reference may be made in the trial to any testimony of the defendant at the hearing, except if the testimony is used for impeachment purposes. If the court does not find that the state has established by clear and convincing evidence that the defendant has committed a serious crime while ~~admitted to bail on conditional release~~, the defendant shall be released on bail ~~subject to~~ or other conditions of bail deemed appropriate by the court.

4. If the ~~bail~~ release of any defendant is revoked under subd. 3, the defendant may demand and shall be entitled to be brought to trial on the offense with respect to which he or she was formerly released on bail conditions within 60 days after the date on which he or she appeared before the court under subd. 1. If the defendant is not brought to trial within the 60-day period he or she shall not be held longer without bail setting conditions of release and shall be released on bail ~~subject to~~ or other conditions of bail deemed appropriate by the court. In computing the 60-day period, the court shall omit any period of delay if the court finds that the delay results from a continuance granted at the exclusive request of the defendant.

5. The defendant may petition the court for reinstatement of conditions of bail release if any of the circumstances authorizing the revocation of bail release is altered. The altered conditions include, but are not limited to, the facts that the original complaint is dismissed, the defendant is found not guilty of that offense or the defendant is found guilty of a crime which is not a serious crime.

(6) If the judge before whom the action is pending, in which a person was ~~admitted to bail released on conditions~~, is not available, any other circuit judge of the county may act under this section.

(7) If a person is charged with the commission of a serious crime in a county other than the county in which the person was ~~admitted to bail released on conditions~~, the district attorney and court may proceed under sub. (6) and certify the findings to the circuit court for the county in which the person was ~~admitted to bail released on conditions~~. That circuit court shall make the bail release revocation decision based on the certified findings.

(8) Information stated in, or offered in connection with, any order entered under this chapter setting bail or other conditions of release need not conform to the rules of evidence, except as provided under sub. (5) (b) 2.

(9) This section does not limit any other authority of a court to revoke the bail release of a defendant.

SECTION 15. 969.08 (9m) of the statutes is created to read:

969.08 (9m) A person who has had bail revoked under this section is entitled to placement of his or her case on an expedited trial calendar and his or her trial shall be given priority.

SECTION 16. 969.10 of the statutes is amended to read:

969.10 Notice of change of address. A person who has been ~~admitted to released on bail or other conditions~~ shall give written notice to the clerk of any change in his or her address within 48 hours after ~~such~~ the change. This requirement shall be printed on all bonds.

SECTION 17. 969.11 of the statutes is amended to read:

969.11 (title) Release upon arrest in another county. (1) If the defendant is arrested in a county other than the county in which the offense was committed, he or she shall, without unreasonable delay, either be brought before a judge of the county in which arrested for the purpose of setting bail or other conditions of release or be returned to the county in which the offense was committed. The judge shall ~~admit him to bail under release him or her on conditions imposed in accordance with~~ this chapter to appear before a court in the county in which the offense was committed at a specified time and place.

(2) If the defendant is released on bail or other conditions pursuant to sub. (1), the judge shall make a record of the proceedings and shall certify his or her minutes thereof and shall forward the bond and bail to the court before whom the defendant is bound to appear.

SECTION 13. Effective dates. (1) Except as provided in subsection (2), this act takes effect on the day after its publication.

(2) The treatment of sections 969.05 (1) and 969.06 of the statutes by this act takes effect on the first day of the 13th month commencing after its publication.
