

CHAPTER 969

BAIL AND OTHER CONDITIONS OF RELEASE

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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.

History: 1981 c. 183.

969.01 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 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) AFTER CONVICTION. (a) Release pursuant to s. 969.02 or 969.03 may be allowed in the discretion of the trial court after conviction and prior to sentencing or the granting of probation.

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

(c) In felonies, 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 release after conviction.

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

(3) BAIL FOR WITNESS. If it appears by affidavit that the testimony of a person is material in any felony criminal proceeding and that it may become impracticable to secure his presence by subpoena, the judge may require such person to give bail for his appearance as a witness. If the witness is not in court, a warrant for his arrest may be issued and upon return thereof the court may require him to give bail as provided in s. 969.03 for his appearance as a witness. If he fails to give bail, he may be committed to the custody of the sheriff for a period not to exceed 15 days within which time his deposition shall be taken as provided in s. 967.04.

(4) CONSIDERATIONS IN SETTING CONDITIONS OF RELEASE. If bail is imposed, it shall be only in the amount found necessary to assure the appearance of the defendant. 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 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.

History: 1977 c. 187; 1979 c. 112; 1981 c. 183.

Trial court exceeded authority in granting bail to revoked probationer pending review of probation revocation. State ex rel. Shock v. H&SS Department, 77 W (2d) 362, 253 NW (2d) 55.

See note to 782.01, citing State ex rel. Wohlfahrt v. Bodette, 95 W (2d) 130, 289 NW (2d) 366 (Ct. App. 1980).

See note to 974.06, citing State v. Shumate, 107 W (2d) 460, 319 NW (2d) 834 (1982).

When court is informed that misdemeanant either has written public defender's office asking for representation or has ordered transcript, court must release misdemeanant under (2) (b). State v. Firkus, 119 W (2d) 154, 350 NW (2d) 82 (1984).

Court may impose monetary condition of release under (2) (b). State v. Barnes, 127 W (2d) 34, 377 NW (2d) 624 (Ct. App. 1985).

Warrant under (3) must be supported by probable cause to believe that testimony of person is material and that it may become impractical to secure person's presence by subpoena. State v. Brady, 130 W (2d) 443, 388 NW (2d) 151 (1986).

Under (1), judges and court commissioners have power, prior to the filing of a complaint, to release on bail persons arrested for commission of a felony. 65 Atty. Gen. 102.

See note to 977.05, citing 72 Atty. Gen. 61.

Pretrial release; Wisconsin bail reform. 1971 WLR 594.

969.02 Release of defendants charged with misdemeanors. (1) A judge may release a defendant charged with a misdemeanor without bail or may permit him to execute an unsecured appearance bond in an amount specified by the judge.

(2) In lieu of release pursuant to sub. (1), the judge may:

(b) Require the execution of an appearance bond with sufficient solvent sureties, or the deposit of cash in lieu thereof.

(2m) In addition to or in lieu of the alternatives under subs. (1) and (2), the judge may:

(a) Place the person in the custody of a designated person or organization agreeing to supervise him or her.

(b) Place restrictions on the travel, association or place of abode of the defendant during the period of release.

(3) In addition to or in lieu of the alternatives under subs. (1) and (2), the judge may:

(a) Place the person in the custody of a designated person or organization agreeing to supervise him or her.

(b) Place restrictions on the travel, association or place of abode of the defendant during the period of release.

(c) Prohibit the defendant from possessing any dangerous weapon.

(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.

(4) As a condition of release in all cases, a person released under this section shall not commit any crime.

(4m) Any person who is charged with a misdemeanor and released under this section shall comply with s. 940.49. The person shall be given written notice of this requirement.

(5) Once bail has been given and a charge is pending or is thereafter filed or transferred to another court, the latter court shall continue the original bail in that court subject to s. 969.08.

(6) When a judgment for a fine or costs or both is entered in a prosecution in which a deposit had been made in accordance with sub. (2), the balance of such deposit, after deduction of the bond costs, shall be applied to the payment of the judgment.

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

(8) In all misdemeanors, bail shall not exceed the maximum fine provided for the offense.

History: 1971 c. 298 ss 10, 13; 1979 c. 111, 112; 1981 c. 118, 183.

969.03 Release of defendants charged with felonies. (1) 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 to requiring the execution of an appearance bond or in lieu thereof impose one or more of the following conditions which will assure appearance for trial:

(a) Place the person in the custody of a designated person or organization agreeing to supervise him.

(b) Place restrictions on the travel, association or place of abode of the defendant during the period of release.

(c) Prohibit the defendant from possessing any dangerous weapon.

(d) Require the execution of an appearance bond with sufficient solvent sureties, or the deposit of cash in lieu of sureties. If a judgment for a fine or costs or both is entered, any deposit of cash shall be applied to the payment of the judgment.

(e) 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 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.

(2) As a condition of release in all cases, a person released under this section shall not commit any crime.

(2m) Any person who is charged with a felony and released under this section shall comply with s. 940.49. The person shall be given written notice of this requirement.

(3) Once bail has been given and a charge is pending or is thereafter filed or transferred to another court, the latter court shall continue the original bail in that court subject to s. 969.08. A single bond form shall be utilized for all stages of the proceedings through conviction and sentencing or the granting of probation.

History: 1971 c. 298; 1979 c. 112; 1981 c. 118, 183.

See note to Art. I, sec. 8, citing *Schilb v. Kuebel*, 403 US 357.

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.

History: 1981 c. 183.

969.04 Surety may satisfy default. Any surety may, after default, pay to the clerk of the court the amount for which he was bound, or such lesser sum as the court, after notice and hearing, may direct, and thereupon be discharged.

969.05 Endorsement of bail upon warrants. (1) In misdemeanor actions, the judge who issues a warrant may endorse upon the warrant the amount of bail.

(2) The amount and method of posting bail may be indorsed upon felony warrants.

History: 1981 c. 183.

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.

History: 1981 c. 183.

969.07 Taking of bail by law enforcement officer. When bail has been set for a particular defendant, any law enforcement officer may take bail in accordance with s. 969.02 and release the defendant to appear in accordance with the conditions of the appearance bond. Bail shall not be required of a defendant who has been cited for commission of a misdemeanor in accordance with s. 968.085. The law enforcement officer shall give a receipt to the defendant for the bail so taken and within a reasonable time deposit 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. This section does not require the release of a defendant from custody when an officer is of the opinion that the 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 under this section, s. 970.01 shall apply.

History: 1981 c. 183; 1983 a. 433

Law enforcement officers may be authorized by court rule to accept surety bonds for, or, under specified circumstances, 10% cash deposits of, the amount listed in a misdemeanor bail schedule when an accused cannot be promptly taken before a judge for bail determination. However, such rules may not afford officers discretion as to the amount or form of bail an individual accused must post. 63 Atty. Gen. 241.

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

(3) Reasonable notice of petition under sub. (1) by the defendant shall be given to the state.

(4) Reasonable notice of petition under sub. (1) by the state shall be given to the defendant, except as provided in sub. (5).

(5) (a) A court shall proceed under par. (b) if the district attorney alleges to the court and provides the court with documents as follows:

1. Alleges that the defendant is released on conditions for the alleged commission of a serious crime;

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

3. Provides a copy of the complaint charging the commission of the serious crime specified in subd. 2.

(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 conditions of release pending a hearing on the alleged breach. The hearing under this paragraph and the preliminary exami-

nation 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 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 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 on conditional release, the court may revoke the release of the defendant and hold the defendant for trial without 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 on conditional release, the defendant shall be released on bail or other conditions deemed appropriate by the court.

4. If the 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 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 setting conditions of release and shall be released on bail or other conditions 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 release if any of the circumstances authorizing the revocation of 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 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 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 released on conditions. That circuit court shall make the 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 release of a defendant.

(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.

(10) In this section:

(a) "Commission of a serious crime" includes a solicitation, conspiracy or attempt, under s. 939.30, 939.31 or 939.32, to commit a serious crime.

(b) "Serious crime" means any crime specified in s. 940.01, 940.02, 940.05, 940.06, 940.08, 940.09, 940.19 (2), 940.20, 940.201, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.245, 940.25, 940.29, 940.31, 940.32, 941.20 (2), 941.26, 941.30, 943.01 (2) (c), 943.02, 943.03, 943.04, 943.06, 943.10, 943.30, 943.32, 944.12, 946.01, 946.02, 946.43 or 947.015.

History: 1971 c. 298; 1977 c. 449; 1979 c. 112; 1981 c. 183; 1985 a. 293 s. 3.

969.09 Conditions of bond. (1) If a defendant is admitted to bail before sentencing the conditions of the bond shall include, without limitation, the requirements that he will appear in the court having jurisdiction on a day certain and thereafter as ordered until discharged on final order of the court and that he will submit himself to the orders and process of the court.

(2) If the defendant is admitted to bail upon appeal, the conditions of the bond shall be that he will duly prosecute his appeal, that he will appear at such time and place as the court directs, and that if the judgment is affirmed or reversed and remanded for a new trial or further proceedings upon notice after remittitur, he will surrender to the sheriff of the county in which he was tried.

(3) A defendant shall receive a copy of the bond which he executes pursuant to this chapter.

Petition for writ of habeas corpus properly named department of health and social services, rather than sheriff, as respondent where petitioner was released on bail pending appeal. *Dreske v. Wis. Department of Health and Social Services*, 483 F Supp. 783 (1980)

969.10 Notice of change of address. A person who has been 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 the change. This requirement shall be printed on all bonds.

History: 1981 c. 183.

969.11 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 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.

History: 1981 c. 183

969.12 Sureties. (1) Every surety under this chapter, except a surety under s. 345.61, shall be a resident of the state.

(2) A surety under this chapter shall be a natural person, except a surety under s. 345.61. No surety under this chapter may be compensated for acting as such a surety.

(3) A court may require a surety to justify by sworn affidavit that he is worth the amount specified in the bond exclusive of property exempt from execution. The surety shall provide such evidence of financial responsibility as the judge requires. The court may at any time examine the

sufficiency of the bail in such manner as it deems proper, and in all cases the state may challenge the sufficiency of the surety.

History: 1979 c. 34.

969.13 Forfeiture. (1) If the conditions of the bond are not complied with, the court having jurisdiction over the defendant in the criminal action shall enter an order declaring the bail to be forfeited.

(2) This order may be set aside upon such conditions as the court imposes if it appears that justice does not require the enforcement of the forfeiture.

(3) By entering into a bond, the defendant and sureties submit to the jurisdiction of the court for the purposes of liability on the bond and irrevocably appoint the clerk as their agent upon whom any papers affecting their bond liability may be served. Their liability may be enforced without the necessity of an independent action.

(4) Notice of the order of forfeiture under sub. (1) shall be mailed forthwith by the clerk to the defendant and his sureties at their last addresses. If the defendant does not appear and surrender to the court within 30 days from the date of the forfeiture and within such period he or his sureties do not satisfy the court that appearance and surrender by the defendant at the time scheduled for his appearance was impossible and without his fault, the court shall upon motion of the district attorney enter judgment for the state against the defendant and any surety for the amount of the bail and costs of the court proceeding. Proceeds of the judgment shall be paid to the county treasurer. The motion and such notice

of motion as the court prescribes may be served on the clerk who shall forthwith mail copies to the defendant and his sureties at their last addresses.

(5) A cash deposit made with the clerk pursuant to this chapter shall be applied to the payment of costs. If any amount of such deposit remains after the payment of costs, it shall be applied to payment of the judgment of forfeiture.

History: 1971 c. 298.

Forfeiture proceedings are part of underlying criminal case. *State v. Givens*, 88 W (2d) 457, 276 NW (2d) 790 (1979).

Trial court abused discretion in refusing to modify order under (2) where partial remission of bond was appropriate. *State v. Ascencio*, 92 W (2d) 822, 285 NW (2d) 910 (Ct. App. 1979).

Forfeited cash bond may not be used to pay restitution to victim of the crime. 68 Atty. Gen. 71.

969.14 Surrender of principal by surety. (1) When the sureties desire to be discharged from the obligations of their bond, they may arrest the principal and deliver him to the sheriff of the county in which the action against him is pending.

(2) The sureties shall, at the time of surrendering the principal, deliver to the sheriff a certified copy of the original warrant and of the order admitting him to bail and of the bond thereon; such delivery of these documents shall be sufficient authority for the sheriff to receive and retain the principal until he is otherwise bailed or discharged.

(3) Upon the delivery of the principal as provided herein, the sureties may apply to the court for an order discharging them from liability as sureties; and upon satisfactory proof being made that this section has been complied with the court shall make an order discharging them from liability.