

**1979 Assembly Bill 749**

Date published: **February 29, 1980**

**CHAPTER 112, Laws of 1979**

AN ACT to repeal 969.02 (2) (a); to renumber 969.02 (3) to (6) and 969.03 (2); to amend 969.01 (4), 969.02 (7), as renumbered, 969.03 (1) (e) and 970.03 (1); to repeal and recreate 969.03 (1) (c) and 969.08; and to create 969.02 (3) and (4) and 969.03 (2) of the statutes, relating to bail.

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

**SECTION 1. Legislative findings.** The legislature finds that:

(1) A person who is released on bail has an obligation to act in conformance with the conditions of bail, and the commission of a serious crime by a person who is released on bail is inconsistent with an essential condition of release.

(2) A person who has been admitted to bail and who commits a serious crime while released on bail should be subject to having that bail revoked.

(3) There shall be a procedure for balancing the rights of the people to be protected from serious crimes with the rights of an alleged offender to remain on bail. Due process safeguards must be provided to ensure that the power to revoke bail is not abused.

**SECTION 2.** 969.01 (4) of the statutes is amended to read:

969.01 (4) **CONSIDERATIONS IN FIXING AMOUNT OF BAIL.** The amount of bail shall be determined in reference to the purpose of bail to assure the appearance of the defendant when ~~it is his duty~~ required to appear to answer a criminal prosecution. Proper considerations in fixing a reasonable amount of bail which will assure the defendant's appearance for trial are: ~~The~~ the ability of the arrested person to give bail, the nature, number and gravity of the ~~offense~~ 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, ~~his health~~, 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 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 was a fugitive from justice at the time of ~~his~~ his arrest, and the policy against unnecessary detention of the defendants [~~defendant's~~] pending trial.

**SECTION 3.** 969.02 (2) (a) of the statutes is repealed.

**SECTION 4.** 969.02 (3) to (6) of the statutes are renumbered 969.02 (5) to (8), and 969.02 (7), as renumbered, is amended to read:

969.02 (7) ~~Subject to sub. (4), when the conditions of the bond have been performed and the person for whom bail was required has been discharged from all obligations, the clerk shall return to the defendant 90% of the sum which had been deposited and shall retain as costs 10% of the amount deposited pursuant to sub. (2) (a). 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 pursuant to under sub. (2) shall be returned to the person who made the deposit, his or her heirs or assigns, subject to sub. (4) (6).~~

**SECTION 5.** 969.02 (3) and (4) of the statutes are created to read:

969.02 (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.

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

**SECTION 6.** 969.03 (1) (c) of the statutes is repealed and recreated to read:

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

**SECTION 7.** 969.03 (1) (e) of the statutes is amended to read:

969.03 (1) (e) Impose any other condition deemed reasonably necessary to assure appearance as required or deemed reasonably necessary to protect public or individual safety, 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 8. 969.03 (2) of the statutes is renumbered 969.03 (3).

SECTION 9. 969.03 (2) of the statutes is created to read:

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

SECTION 10. 969.08 of the statutes is repealed and recreated to read:

**969.08 Grant, reduction, increase or revocation of bail.** (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 conditions of bail 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 or the bail bond constitutes grounds for the court to increase the amount of bail or otherwise alter the conditions of bail or, if the alleged violation is the commission of a serious crime, revoke bail 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 admitted to bail for the alleged commission of a serious crime;

2. Alleges that the defendant has violated the conditions of bail 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 bail conditions 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 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. 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, the court may revoke the bail of the defendant and hold the defendant for trial without bail. 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, the defendant shall be released on bail subject to conditions of bail deemed appropriate by the court.

4. If the bail 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 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 and shall be released on bail subject to 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 if any of the circumstances authorizing the revocation of bail 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, 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, 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. That circuit court shall make the bail revocation decision based on the certified findings.

(8) Information stated in, or offered in connection with, any order entered under this chapter setting bail 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 of a defendant.

(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, 940.25, 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.

SECTION 11. 970.03 (1) of the statutes is amended to read:

970.03 (1) A preliminary examination is a hearing before a court for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant. A preliminary examination may be held in conjunction with a bail revocation hearing under s. 969.08 (5) (b), but separate findings shall be made by the judge relating to the preliminary examination and to the bail revocation.

SECTION 12. **Study.** The legislative council shall conduct a study of the use of pretrial release, with special attention to the use of bail evaluation units and to the retrieval of information regarding a defendant's pending legal status under the criminal justice system. The legislative council shall report its findings and recommendations to the legislature when it convenes in 1981.

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