



**1999 DRAFTING REQUEST**

**Bill**

Received: **12/9/98**

Received By: **olsenje**

Wanted: **As time permits**

Identical to LRB:

For: **Bonnie Ladwig (608) 266-9171**

By/Representing: **Judy**

This file may be shown to any legislator: **NO**

Drafter: **olsenje**

May Contact:

Alt. Drafters:

Subject: **Criminal Law - crimes agnst kids  
Criminal Law - procedure**

Extra Copies:

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**Topic:**

Conditions of release of persons arrested for certain crimes against children

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**Instructions:**

See Attached

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**Drafting History:**

| <u>Vers.</u> | <u>Drafted</u>     | <u>Reviewed</u>    | <u>Typed</u>      | <u>Proofed</u> | <u>Submitted</u>        | <u>Jacketed</u>  | <u>Required</u> |
|--------------|--------------------|--------------------|-------------------|----------------|-------------------------|--|-----------------|
| /?           | olsenje<br>01/2/99 | ygeller<br>01/4/99 |                   | _____          |                         |  | S&L             |
| /1           |                    |                    | hhagen<br>01/4/99 | _____          | lrb_docadmin<br>01/4/99 | <del>proddb</del><br><del>01/12/99</del><br>lrb_docadmin<br>01/12/99 |                 |

FE Sent For:

02-08-99

<END>

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|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| 1?           | olsenje        | 1 1/4 jlg       | 1 1/4        | 1 1/4          |                  |                 |                 |

FE Sent For:

<END>

1200

ASA 2 to AB 452 as new bill

1999

Date (time) needed \_\_\_\_\_

LRB - 12/10 / 1

BILL

D-Note

JEO : jlg : \_\_\_\_\_

Use the appropriate components and routines developed for bills.

AN ACT . . . [generate catalog] *to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .* of the statutes; relating to: .....

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[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

*Analysis by the Legislative Reference Bureau*

For the 3 titles used in an analysis, in the component bar:

For the main heading [old =M], execute: ..... create → anal: → title: → head

For the subheading [old =S], execute: ..... create → anal: → title: → sub

For the sub-subheading [old =P], execute: ..... create → anal: → title: → sub-sub

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

SECTION #.

**ASSEMBLY SUBSTITUTE AMENDMENT 2,  
TO 1997 ASSEMBLY BILL 452**

January 20, 1998 Offered by Representatives LADWIG and GOETSCH

1 **AN ACT to amend 969.05 (2) and 969.07; and to create 968.077 and 969.05 (3)**  
2 of the statutes, relating to: release of persons arrested for certain crimes  
3 against children.

ANALYSIS  
INSERT

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

4 SECTION 1. 968.077<sup>x</sup> of the statutes is created to read:

5 **968.077 Release of persons arrested for certain crimes against**  
6 **children.** A person arrested and taken into custody for <sup>a</sup> ~~any~~ violation of s. 948.02,  
7 948.025, 948.03, 948.20 or 948.21 that is a felony may not be released until a court  
8 has established conditions of release for the person under s. ~~969.02 or~~ 969.03.

9 SECTION 2. 969.05 (2)<sup>x</sup> of the statutes is amended to read:

10 969.05 (2) The Except as provided in sub. (3), the amount and method of posting  
11 bail may be indorsed endorsed upon felony warrants.

PROOF W/STATS.

1           SECTION 3. 969.05 (3) of the statutes is created to read:

2           969.05 (3) A warrant issued for a person for any violation of s. 948.02, 948.025,  
3           948.03, 948.20 or 948.21 that is a felony may not be endorsed with the amount or  
4           method of posting bail.

5           SECTION 4. 969.07 of the statutes is amended to read:

6           **969.07 Taking of bail by law enforcement officer.** ~~When Subject to s.~~  
7           ~~968.077, when~~ bail has been set for a particular defendant, any law enforcement  
8           officer may take bail in accordance with s. 969.02 and release the defendant to appear  
9           in accordance with the conditions of the appearance bond. Bail shall not be required  
10          of a defendant who has been cited for commission of a misdemeanor in accordance  
11          with s. 968.085. The law enforcement officer shall give a receipt to the defendant for  
12          the bail so taken and within a reasonable time deposit the bail with the clerk of court  
13          before whom the defendant is to appear. Bail taken by a law enforcement officer may  
14          be taken only at a sheriff's office or police station. The receipts shall be numbered  
15          serially and shall be in triplicate, one copy for the defendant, one copy to be filed with  
16          the clerk and one copy to be filed with the police or sheriff's department which takes  
17          the bail. This section does not require the release of a defendant from custody when  
18          an officer is of the opinion that the defendant is not in a fit condition to care for his  
19          or her own safety or would constitute, because of his or her physical condition, a  
20          danger to the safety of others. If a defendant is not released under this section, s.  
21          970.01 shall apply.

22

(END) ✓



1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1210/1ins  
JEO:.....

**ANALYSIS INSERT:**

Under current law, a person arrested for or charged with a crime is generally eligible for release while awaiting trial, though persons charged with certain serious crimes may in some cases be denied release. A person released before trial may be required to abide by reasonable conditions designed to assure his or her appearance in court, protect members of the community from serious bodily harm and prevent the intimidation of witnesses.

Conditions of release, including monetary conditions of release (bail), are generally imposed by a judge at the time the person makes his or her first appearance in court. However, if a judge issues an arrest warrant in a misdemeanor case, the judge may endorse upon the warrant the amount of bail. Likewise, if a judge issues an arrest warrant in a felony case, the may endorse upon the warrant the amount and method of posting bail. In addition, the judicial conference is authorized to develop guidelines for bail for persons arrested for misdemeanors. Using these guidelines, a law enforcement officer may take bail from an arrested person and release the person to appear in court on a specified date. If an arrested person is not released from custody by the arresting law enforcement agency before his or her first appearance in court, the person must be taken within a reasonable time before a judge in the county in which the offense was alleged to have been committed. judge

This bill provides that a person arrested and taken into custody for certain felony offenses against children may not be released until a court has established conditions of release for the person. Thus, if an arrest warrant has been issued for a person accused of an offense covered by the bill, the warrant may not be endorsed with the amount and method of posting bail. As under current law, a person arrested and taken into custody for an offense covered by the bill must be taken within a reasonable time before a judge in the county in which the offense was alleged to have been committed.

The felony offenses against children covered by the bill are sexual contact or sexual intercourse with a child, physical abuse of a child, abandonment of a child and neglecting a child.

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



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1210/1dn

JEO:.....

JLg

This is a redraft of assembly substitute amendment 2 to 1997 Assembly Bill 452. Please note the following when reviewing this draft:

1. This draft deletes the amendment of s. 969.07, stats., because, on further reflection, the amendment of that statute is unnecessary.

2. Like ASA~~2~~ to 1997 AB-452, this draft does *not* restrict the use of a summons under s. 968.04, stats., which would avoid the arrest of the person and simply require the person to show up in court to answer the charge at some future date.

3. The application of proposed s. 968.077 might be unconstitutional if, in a particular case, there is an unreasonable delay in setting conditions of release.

A person arrested for and charged with a crime and awaiting trial has a right to release, albeit under reasonable conditions. Article I, section 8 (2), Wisconsin Constitution; compare *Rohl v. State*, 90 Wis. 2d 18, 53 (Ct. App. 1979) (right to bail). At the same time, however, the right to bail is not absolute, and an arrested person does not have an automatic right to immediate bail, though he or she does have the right not to be denied bail arbitrarily. *Syarto v. Baker*, 500 F. Supp. 888, 890-91 (E.D. Wis. 1980), citing *Mastrian v. Hedman*, 326 F. 2d 708 (8th Cir. 1964), *cert. denied*, 360 U.S. 965, and other cases. See also *United States v. Salerno*, 481 U.S. 739, 107 S. Ct. 2095 (1987).

Proposed s. 968.077 denies release only for a limited time (until the person sees a judge who sets conditions of release under ch. 969) and not for the entire time before trial. The person will have to be taken before a judge "within a reasonable time". This is because a person to whom proposed s. 968.077 applies has been arrested and is therefore also subject to s. 970.01 (1), stats., which provides that "[a]ny person who is arrested shall be taken within a reasonable time before a judge in the county in which the offense was alleged to have been committed." Thus, the effect of proposed s. 968.077 is somewhat comparable to s. 969.07, stats., which allows a person to be held in custody under certain limited circumstances until the initial appearance. (This statute has not been directly ruled on in a reported court decision, but the attorney general has implied that there is no trouble with it. 75 *Opinions of the Attorney General* 209, 210-11 (1986). See also *Demmith v. Wisconsin Judicial Conference*, 166 Wis. 2d 649, 660-62, 669-71 (1992).)

Section 970.01 (1), stats., "does not provide for a specific time frame in which this [initial] appearance must take place." *State v. Koch*, 175 Wis. 2d 684, 696, *cert. denied*,

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510 U.S. 880, 114 S. Ct. 221 (1993). Instead, what is a “reasonable time” depends initially on whether the person was arrested with or without a warrant, as follows:

A) If the person was arrested *without* a warrant, the United States Supreme Court has said that there must be a probable cause determination by a judge within 48 hours of the arrest, barring extraordinary circumstances. *County of Riverside v. McLaughlin*, 500 U.S. 44, 111 S. Ct. 1661 (1991). In *Koch*, the Wisconsin supreme court concluded that the *Riverside* 48-hour rule is applicable in Wisconsin. *Koch*, 175 Wis. 2d at 696. Thus, for a warrantless arrest, a reasonable time under s. 970.01 (1), stats., will generally have to be within 48 hours.

B) If the person was arrested *with* a warrant, what is a reasonable time under s. 970.01 (1), stats., will depend on the circumstances of the particular case. The *Riverside* 48-hour rule does not apply to arrests with a warrant because, in issuing the arrest warrant, a judge has already made a determination of probable cause to arrest the person. *Koch*, 175 Wis. 2d at 696 n.7; compare *Wagner v. State*, 89 Wis. 2d 70, 76 (1979).

Thus, in a case in which proposed s. 968.077 applies and in which the defendant was arrested *without* a warrant, he or she will probably be denied release for less than 48 hours because under *Riverside* and *Koch* he or she will generally have an initial appearance within that time. However, if the defendant was arrested with a warrant, the timing of the initial appearance is judged according to the circumstances of the case, which, in addition to the person’s right to reasonable release, now include the fact that the person can’t be released until a court sets conditions of release. (Of course, nothing in proposed s. 968.077 prohibits a court from setting conditions of release *before* the initial appearance is held.)

Please let me know if you have any questions or changes.

Jefren E. Olsen  
Legislative Attorney  
266-8906

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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1210/1dn  
JEO:jlg:hmh

Monday, January 4, 1999

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Please let me know if you have any questions or changes.

Jefren E. Olsen  
Legislative Attorney  
266-8906



**SUBMITTAL  
FORM**

**LEGISLATIVE REFERENCE BUREAU  
Legal Section Telephone: 266-3561  
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

**Date:** 1/4/99

**To:** Representative Ladwig

**Relating to LRB drafting number:** LRB-1210

**Topic**

Conditions of release of persons arrested for certain crimes against children

**Subject(s)**

Criminal Law - crimes agnst kids, Criminal Law - procedure

1. **JACKET** the draft for introduction Bonnie Ladwig  
in the **Senate** \_\_\_\_ or the **Assembly**  (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached \_\_\_\_\_.  
A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction \_\_\_\_\_.  
If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Jefren E. Olsen, Legislative Attorney  
Telephone: (608) 266-8906