

## CHAPTER 969

## BAIL AND OTHER CONDITIONS OF RELEASE

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**Cross–reference:** See definitions in s. 967.02.

**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 substantial risk 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; 1987 a. 399.

**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 may be allowed upon appeal in the discretion of the trial court.

(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 misdemeanor or 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 the person’s presence by subpoena, the judge may require such person to give bail for the person’s appearance as a witness. If the witness is not in court, a warrant for the person’s arrest may be issued and upon return thereof the court may require the person to give bail as provided in s. 969.03 for the person’s appearance as a witness. If the person fails to give bail, the person may be committed to the custody of the sheriff for a period not to exceed 15 days within which time the person’s 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 record of criminal convictions and delinquency adjudications, 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, extended supervision 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; 1993 a. 486; 1995 a. 77; 1997 a. 232, 283.

The trial court exceeded its authority in granting bail to a revoked probationer pending review of a probation revocation. *State ex rel. Shock v. DHSS*, 77 Wis. 2d 362, 253 N.W.2d 55 (1977).

Habeas corpus is available to persons released on personal recognizance bonds. *State ex rel. Wohlfahrt v. Bodette*, 95 Wis. 2d 130, 289 N.W.2d 366 (Ct. App. 1980).

The court may impose a monetary condition of release under sub. (2) (b). *State v. Barnes*, 127 Wis. 2d 34, 377 N.W.2d 624 (Ct. App. 1985).

A warrant under sub. (3) must be supported by probable cause to believe that the testimony of the person is material and that it may become impractical to secure the person’s presence by subpoena. *State v. Brady*, 130 Wis. 2d 443, 388 N.W.2d 151 (1986).

Indigency under this section relates to current economic status and does not involve consideration of whether the defendant is shirking unless the shirking relates to another statutory factor. Cash bail is not prohibited against an indigent convicted misdemeanant who takes an appeal. However, where there is no risk that the indigent misdemeanant will not appear, cash bail is inappropriate. *State v. Taylor*, 205 Wis. 2d 664, 556 N.W.2d 779 (Ct. App. 1996), 96–0857.

The conditions that a court is authorized to impose under ss. 969.01 and 969.03 govern the release of a defendant from custody and do not apply if the defendant cannot post bond and is not released. A court may impose pretrial, no-contact provisions on incarcerated defendants under s. 940.47 if the terms of that statute are met. *State v. Orlik*, 226 Wis. 2d 527, 595 N.W.2d 468 (Ct. App. 1999), 98–2826.

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

The public defender may represent indigent material witnesses subject to s. 969.01 (3) bail provisions so long as there is no conflict of interest with another client, but may not represent indigents in civil forfeiture actions unless that action is reasonably related to one for which an indigent is entitled to counsel. 72 Atty. Gen. 61.

Pretrial release; Wisconsin bail reform. 1971 WLR 594.

The presumption of release in bail decisions. *Adelman and Schulenburg*. Wis. Law. July 1989.

**969.02 Release of defendants charged with misdemeanors.** (1) A judge may release a defendant charged with a misdemeanor without bail or may permit the defendant 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 require the execution of an appearance bond with sufficient solvent sureties, or the deposit of cash in lieu of sureties. If the judge requires a deposit of cash in lieu of sureties, the person making the

cash deposit shall be given written notice of the requirements of sub. (6).

(2m) The clerk of circuit court may accept a credit card or debit card, as defined in s. 59.40 (5) (a) and 1. and 2., instead of cash under sub. (2).

(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. 303.08 (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 of conviction 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 first to the payment of any restitution ordered under s. 973.20 and then, if ordered restitution is satisfied in full, 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).

(7m) The restrictions on the application of cash deposits under subs. (6) and (7) do not apply if bail is forfeited under s. 969.13.

(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; 1989 a. 31; 1991 a. 63, 315; 1993 a. 486; 1999 a. 85; 2005 a. 59, 447.

Chapter 969 provides no penalty for the violation of this section. Section 946.49 provides a penalty for failing to comply with the terms of a bond, but there is no penalty where no bond is required. *State v. Dawson*, 195 Wis. 2d 161, 536 N.W.2d 119 (Ct. App. 1995), 94–2570.

The plain language of sub. (6) requires the circuit court to order the application of the balance of any bond deposit toward the satisfaction of court costs. When the statutes under which costs were assessed provided no authority to waive the costs or to satisfy them by other means, the circuit court erred when it applied pre-sentence incarceration time toward satisfaction of the defendant's court costs. *State v. Baker*, 2005 WI App 45, 280 Wis. 2d 181, 694 N.W.2d 415, 04–0590.

### 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 the person.

(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

the judge requires a deposit of cash in lieu of sureties, the person making the cash deposit shall be given written notice of the requirements of sub. (4).

(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. 303.08 (4) and (5) shall not apply under this section.

(1m) The clerk of circuit court may accept a credit card or debit card, as defined in s. 59.40 (5) (a) 1. and 2., instead of cash under sub. (1) (d).

(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.

(4) If a judgment of conviction is entered in a prosecution in which a deposit had been made in accordance with sub. (1) (d), the balance of the deposit, after deduction of the bond costs, shall be applied first to the payment of any restitution ordered under s. 973.20 and then, if ordered restitution is satisfied in full, to the payment of the judgment.

(5) 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. (1) (d) shall be returned to the person who made the deposit, his or her heirs or assigns, subject to sub. (4).

(6) The restriction on the application of cash deposits under subs. (4) and (5) do not apply if bail is forfeited under s. 969.13.

**History:** 1971 c. 298, 1979 c. 112; 1981 c. 118, 183; 1989 a. 31; 1991 a. 63; 1993 a. 486; 2005 a. 59, 447.

The trial court, not the accused, decides whether to require cash or securities for a bond under sub. (1) (d). *State v. Gassen*, 143 Wis. 2d 761, 422 N.W.2d (Ct. App. 1988).

As used in this section, "crime" includes violations committed in another jurisdiction. *State v. West*, 181 Wis. 2d 792, 512 N.W.2d 207 (Ct. App. 1993).

The application of bail posted by 3rd parties to the defendant's fines under sub. (4) was not unconstitutional. *State v. Iglesias*, 185 Wis. 2d 118, 517 N.W.2d 175 (1994).

The conditions that a court is authorized to impose under ss. 969.01 and 969.03 govern the release of a defendant from custody and do not apply if the defendant cannot post bond and is not released. A court may impose pretrial, no-contact provisions on incarcerated defendants under s. 940.47 if the terms of that statute are met. *State v. Orlik*, 226 Wis. 2d 527, 595 N.W.2d 468 (Ct. App. 1999), 98–2826.

The state need not obtain a conviction for the underlying crime in order to prove that the defendant violated the bail jumping statute by committing a crime. If there is evidence sufficient for a reasonable jury to conclude beyond a reasonable doubt that a defendant intentionally violated a bond by committing a crime, that evidence is not required to be in the form of a conviction for the underlying crime. *State v. Hauk*, 2002 WI App 226, 257 Wis. 2d 579, 652 N.W.2d 393, 01–1668.

The retention of 10% of a partial bail deposit, with no penalty for release on recognition or where full bail is given, does not violate equal protection requirements. *Schilb v. Kuebel*, 404 U.S. 357 (1971).

### 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, 940.03, 940.05, 940.06, 940.07, 940.08, 940.10, 940.19 (5), 940.195 (5), 940.21, 940.225 (1), 940.23, 941.327, 948.02 (1) or (2), 948.025, 948.03, or 948.085.

(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, 940.225 (1), 948.02 (1) or (2), 948.025, or 948.085.

(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; 1987 a. 90; 1987 a. 332 ss. 58, 64; 1987 a. 399, 403; 1993 a. 227, 441, 491; 1997 a. 295; 2005 a. 277.

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

**History:** 1993 a. 486.

**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 endorsed 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.

The constitutionality of s. 969.065 is upheld. *Demmith v. Wisconsin Judicial Conference*, 166 Wis. 2d 649, 480 N.W.2d 502 (1992).

**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 accused individual must post. 63 Atty. Gen. 241.

Officers may validly deny bail to a misdemeanant under this section. 75 Atty. Gen. 209.

**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 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 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 of 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. or s. 901.05.

(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. 948.35, 1999 stats., or s. 939.30, 939.31, or 939.32, to commit a serious crime.

(b) "Serious crime" means any crime specified in s. 943.23 (1m), 1999 stats., or s. 943.23 (1r), 1999 stats., or s. 346.62 (4), 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (5), 940.195 (5), 940.20, 940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25, 940.29, 940.295 (3) (b) 1g., 1m., 1r., 2 or 3., 940.31, 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.03, 943.04, 943.06, 943.10, 943.23 (1g), 943.30, 943.32, 943.81, 943.82, 943.83, 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 946.01, 946.02, 946.43, 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, 948.085, or 948.30 or, if the victim is a financial institution, as defined in s. 943.80 (2), a crime under s. 943.84 (1) or (2).

NOTE: Par. (b) is shown as affected by two acts of the 2005 Wisconsin legislature and as merged by the revisor under s. 13.93 (2) (c).

History: 1971 c. 298; 1977 c. 449; 1979 c. 112; 1981 c. 183; 1985 a. 293 s. 3; 1987 a. 90, 332, 399, 403; 1991 a. 153, 269; 1993 a. 50, 92, 94, 227, 441, 445, 491; 1997 a. 143, 180, 295; 1999 a. 32; 2001 a. 109; 2005 a. 212, 277; s. 13.93 (2) (c).

**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 the defendant 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 the defendant will submit 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 the defendant will duly prosecute the defendant's appeal, that the defendant 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, the defendant will surrender to the sheriff of the county in which the defendant was tried.

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

**History:** 1993 a. 486; 1995 a. 225.

A petition for a writ of habeas corpus properly named the state department with custody of probationers, rather than the sheriff, as the respondent if the petitioner was released on bail pending appeal. *Dreske v. DHSS*, 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 the surety 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; 1993 a. 486.

**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 the defendant's

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 the defendant or the defendant's sureties do not satisfy the court that appearance and surrender by the defendant at the time scheduled for the defendant's appearance was impossible and without the defendant's 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 the defendant's sureties at their last addresses.

(5) (a) A cash deposit made with the clerk pursuant to this chapter shall be applied first to the payment of any recompense determined under par. (b) and then, if the recompense is paid in full, 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. The person making the cash deposit shall be given written notice of the requirements of this paragraph.

(b) The court shall determine a recompense amount for any victim, or if the victim is deceased, for his or her estate, of the crime for which the bond was entered into unless the court finds substantial reason not to do so and states the reason on the record. The court shall determine the recompense amount in the same manner as the court would have determined the restitution amount under s. 973.20 (2), (3), (4), (4m), (5), and (7) had the person been convicted.

**History:** 1971 c. 298; 1993 a. 486; 2005 a. 447.

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

The trial court abused its discretion in refusing to modify an order under sub. (2) when partial remission of a bond was appropriate. *State v. Ascencio*, 92 Wis. 2d 822, 285 N.W.2d 910 (Ct. App. 1979).

Forfeiture proceedings are civil in nature; appeals are governed by s. 808.04. *State v. Wickstrom*, 134 Wis. 2d 158, 396 N.W.2d 188 (1986).

Sub. (1) mandates bail forfeiture for any bond condition violation. *State v. Badzmierowski*, 171 Wis. 2d 260, 490 N.W.2d 784 (Ct. App. 1992).

A circuit court has discretion to enter a judgment on an order forfeiting bail absent a motion by the district attorney when the defendant appears within 30 days of the forfeiture. *State v. Achterberg*, 201 Wis. 2d 291, 548 N.W.2d 515 (1996), 94–3360.

The trial court's decision under sub. (2) requires the exercise of discretion. Refusing all requests for the return of bail money is not an exercise of discretion. The standard "that justice requires" cannot be parlayed into an all-inclusive list, but is essentially an appeal to the conscience of the court. *Melone v. State*, 2001 WI App 13, 240 Wis. 2d 451, 623 N.W.2d 179, 00–0969.

Forfeited cash bond may not be used to pay restitution to a 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 the principal to the sheriff of the county in which the action against the principal 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 the principal 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 the principal 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.

**History:** 1993 a. 486.