

State of Wisconsin



2023 Senate Bill 75

Date of enactment: April 5, 2023
Date of publication*: April 6, 2023

2023 WISCONSIN ACT 3

AN ACT *to renumber* 969.001 (2); *to renumber and amend* 969.01 (1) and 969.035 (1); *to amend* 165.957 (4) (a) 1. and 2. and (c), 969.01 (4), 969.02 (3) (d) and 969.03 (1) (e); and *to create* 969.001 (2m), 969.001 (3) and 969.01 (1) (b) 2. of the statutes; **relating to**: statutory changes to implement the constitutional amendment relating to conditions of release.

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

SECTION 1. 165.957 (4) (a) 1. and 2. and (c) of the statutes are amended to read:

165.957 (4) (a) 1. The person is ordered by a judge or by the department of corrections as a condition of bond, release under s. 969.01 (1) (a), probation or deferred prosecution, release to parole, or release to extended supervision, to totally abstain from using alcohol or a controlled substance, and whose participation in the program is ordered by the judge or by the department of corrections as a condition of bond, release under s. 969.01 (1) (a), probation, release to parole, or release to extended supervision.

2. The person agrees to totally abstain from using alcohol or a controlled substance while he or she is released on bond, on release under s. 969.01 (1) (a), on probation, participating in a deferred prosecution agreement, or on parole or extended supervision and agrees to participate in the program even though his or her participation is not ordered by a judge or by the department of corrections as a condition of bond, release pursuant to s. 969.01 (1) (a), probation or deferred prosecution, or release to parole or to extended supervision. This subdi-

vision does not apply to any person who meets the criteria under s. 343.301 (1g) (a) 2. b. and who is subject to an order under s. 343.301 (1g) (am) 2.

(c) The program informs a participant that, if he or she fails to appear for a scheduled test or if his or her test results indicate that the participant used alcohol or a controlled substance, he or she may be placed under immediate arrest and referred to the department of corrections and to the appropriate prosecuting agency for violating a condition of his or her bond, release under s. 969.01 (1) (a), probation or deferred prosecution, or of his or her release to parole or extended supervision.

SECTION 2. 969.001 (2) of the statutes is renumbered 969.035 (1) (a).

SECTION 3. 969.001 (2m) of the statutes is created to read:

969.001 (2m) "Serious harm" means any of the following:

(a) Personal physical pain or injury, illness, any impairment of physical condition, or death, including mental anguish or emotional harm attendant to the personal physical pain or injury, illness, or death.

(b) Damage to property over \$2,500 in value.

(c) Economic loss over \$2,500 in value.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

SECTION 4. 969.001 (3) of the statutes is created to read:

969.001 (3) “Violent crime” means any of the following:

(a) A crime specified under s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.09 (1), 940.10, 940.11, 940.12, 940.19 (1), (2), (4), (5), or (6), 940.195 (1), (2), (4), (5), or (6), 940.198 (2) or (3), 940.20, 940.201 (2), 940.203 (2), 940.204, 940.205 (2), 940.207 (2), 940.208, 940.21, 940.225 (1), (2), or (3), 940.23, 940.235, 940.24, 940.25, 940.285, 940.29, 940.30, 940.302 (2), 940.305, 940.31, 940.32, 940.43, 940.45, 941.20, 941.21, 941.28, 941.2905, 941.292, 941.30, 941.327, 941.38 (2) or (3), 941.39, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.04, 943.06, 943.10, 943.23 (1g) or (1r), 943.30, 943.32, 943.87, 946.43, 947.013, 947.015, 948.02 (1) or (2), 948.025, 948.03 (2), (3), or (5), 948.04, 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, 948.095, 948.30 (2), 948.55, 951.02, 951.08, or 951.09.

(b) A felony violation of s. 941.26.

(c) A violation of s. 813.12, 813.122, or 813.125.

(d) The solicitation, conspiracy, or attempt, under s. 939.30, 939.31, or 939.32, to commit a Class A felony.

(e) A violation to which a penalty enhancer specified in s. 939.621 or 939.63 (1) may be applied.

SECTION 5. 969.01 (1) of the statutes is renumbered 969.01 (1) (a) and amended to read:

969.01 (1) (a) Before conviction, except as provided in ss. 969.035 and 971.14 (1r), 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 ~~and~~ prevent the intimidation of witnesses.

(b) Bail may be imposed at or after the initial appearance only upon a finding by the court that there ~~any of the following is true:~~

1. There is a reasonable basis to believe that bail is necessary to assure ~~the defendant’s~~ 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.~~

SECTION 6. 969.01 (1) (b) 2. of the statutes is created to read:

969.01 (1) (b) 2. If the defendant is accused of a violent crime, there is a reasonable basis to believe that bail is necessary based on the totality of the circumstances. The court, when considering the totality of the circumstances, may take into account whether the defendant has a previous conviction for a violent crime, the probability that the defendant will fail to appear in court, the need to protect members of the community from serious harm, the need to prevent the intimidation of witnesses, and the potential affirmative defenses of the defendant.

SECTION 7. 969.01 (4) of the statutes is amended to read:

969.01 (4) **CONSIDERATIONS IN SETTING CONDITIONS OF RELEASE.** If bail is imposed, ~~it only due to a finding under sub. (1) (b) 1., the bail amount shall be only in the amount found necessary to assure the appearance of the defendant. If bail is imposed due to a finding under sub. (1) (b) 2., the bail amount may not be excessive.~~ Conditions of release, other than monetary conditions, may be imposed for the purpose of assuring the defendant’s appearance in court, 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 and not excessive 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.

SECTION 8. 969.02 (3) (d) of the statutes is amended to read:

969.02 (3) (d) ~~Impose any other condition deemed reasonably necessary to assure appearance as required bail following a finding under s. 969.01 (1) (b) or impose any nonmonetary condition deemed reasonably necessary to secure appearance in court as required,~~ 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.

SECTION 9. 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 bail following a finding under s. 969.01 (1) (b) or any nonmonetary condition deemed reasonably necessary to secure appearance in court as required,~~ 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.

2023 Senate Bill 75

– 3 –

2023 Wisconsin Act 3

SECTION 10. 969.035 (1) of the statutes is renumbered 969.035 (1) (intro.) and amended to read:

969.035 (1) (intro.) In this section:

(b) Notwithstanding s. 969.001 (3), “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), 940.198 (2) (a) or (c), 940.21, 940.225 (1), 940.23, 941.327, 948.02 (1) or (2), 948.025, 948.03, or 948.085.

SECTION 11. Nonstatutory provisions.

(1) If, at the April 2023 election, only question 1 or question 2 of 2023 Senate Joint Resolution 2 or 2023

Assembly Joint Resolution 1 is ratified, the treatments in this act that are related to the question that was not ratified are void. If neither question is ratified at the April 2023 election, this act is void. The legislative reference bureau shall identify and delete voided treatments in enrolling this bill or when publishing the statutes.

SECTION 12. Effective date.

(1) This act takes effect on the day after publication or on the date that question 1 or question 2 of 2023 Senate Joint Resolution 2 or 2023 Assembly Joint Resolution 1 is ratified, whichever is later.
