



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0509/P3
MLJ:kjf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to repeal* 969.035 (3) (b) and 969.035 (6) (c); *to amend* 969.035 (3)
2 (intro.), 969.035 (4), 969.035 (8) and 969.035 (9); and *to create* 969.035 (6) (cm)
3 of the statutes; **relating to:** pretrial detention.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Study Committee on Bail and Conditions of Pretrial Release. Under current law, a court may deny release to a defendant prior to trial under a procedure prescribed by statute if the defendant is accused of committing one of certain specified crimes or is accused of committing a violent crime, as defined by statute, and has previously been convicted of a violent crime. The statutory pretrial detention procedure is authorized by Article I, Section 8 (3) of the Wisconsin Constitution, which also prescribes many of the requirements that a statutory pretrial detention procedure must contain. This bill modifies certain portions of the pretrial detention procedure that are not prescribed by the Wisconsin Constitution. These changes are described below.

Initiating pretrial detention procedure

Under current law, to initiate the statutory pretrial detention procedure, a district attorney is required to make certain allegations to the court and file a copy of the

complaint charging commission of a crime that qualifies the defendant for pretrial detention. This bill allows a district attorney to initiate the pretrial detention procedure by making an oral motion to the court. It also removes the requirement that a district attorney file a copy of the complaint charging commission of a qualifying crime when moving the court to detain the defendant.

Rules governing the pretrial detention hearing

Current law specifies that in a pretrial hearing “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 of counsel.” This bill removes this provision and replaces it with a provision that provides that the defendant has the right to be represented by counsel and shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses, and to present information by proffer or otherwise.

Current law also provides that the rules of evidence in criminal trials govern the admissibility of evidence at a pretrial detention hearing. This bill provides that the rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at a pretrial detention hearing.

Determining whether delay is caused by defendant

Current law allows a court to detain a defendant for 10 days prior to a pretrial detention hearing if the district attorney has met the requirements for initiating the pretrial detention process and for 60 days following a pretrial detention hearing if the state proves, by clear and convincing evidence, both of the following: (a) that the defendant committed a qualifying crime or attempted to commit a violent crime after a prior violent crime conviction; and (b) that available conditions of release will not adequately protect the public from serious bodily harm or prevent the intimidation of witnesses. In computing the 10-day and 60-day periods, 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.

Current law provides that delay is caused by the defendant only if the delay is “expressly requested” by the defendant. The bill removes the provision providing that delay is caused by the defendant only if the delay is expressly requested by the defendant.

1 **SECTION 1.** 969.035 (3) (intro.) of the statutes is amended to read:

2 969.035 (3) (intro.) A court may proceed under this section upon oral motion
3 by the district attorney if the district attorney alleges to the court ~~and provides the~~
4 ~~court with documents~~ as follows:

5 **SECTION 2.** 969.035 (3) (b) of the statutes is repealed.

6 **SECTION 3.** 969.035 (4) of the statutes is amended to read:

7 969.035 (4) If the court determines that the district attorney has complied with
8 sub. (3), the court may order that the detention of a person who is currently in custody
9 be continued or may issue a warrant commanding any law enforcement officer to

1 bring the defendant without unnecessary delay before the court. When the
2 defendant is brought before the court, he or she shall be ~~given a copy of the documents~~
3 ~~specified in sub. (3) and~~ informed of his or her rights under this section and s. 970.02
4 (1) and (6).

5 **SECTION 4.** 969.035 (6) (c) of the statutes is repealed.

6 **SECTION 5.** 969.035 (6) (cm) of the statutes is created to read:

7 969.035 (6) (cm) The defendant has the right to be represented by counsel. The
8 defendant shall be afforded an opportunity to testify, to present witnesses, to
9 cross-examine witnesses who appear at the hearing, and to present information by
10 proffer or otherwise. The rules concerning admissibility of evidence in criminal trials
11 do not apply to the presentation and consideration of information at the hearing.

NOTE: This section is modeled on similar provisions in New Jersey's and the
District of Columbia's pretrial detention statutes. This section removes the "right to
confrontation" and gives the defendant the opportunity to present witnesses and to
cross-examine witnesses rather than the right to call witnesses and cross examination.

***NOTE: Does this language convey the intent of the committee?

12 **SECTION 6.** 969.035 (8) of the statutes is amended to read:

13 969.035 (8) If the court makes the findings under sub. (6) (a) and (b), the court
14 may deny ~~bail~~ release to the defendant for an additional period not to exceed 60 days
15 following the hearing. If the time period passes and the defendant is otherwise
16 eligible, he or she shall be released from custody with or without conditions in
17 accordance with s. 969.03.

18 **SECTION 7.** 969.035 (9) of the statutes is amended to read:

19 969.035 (9) In computing the 10-day periods under sub. (5) and the 60-day
20 period under sub. (8), the court shall omit any period of time found by the court to
21 result from a delay caused by the defendant or a continuance granted which was

1 initiated by the defendant. ~~Delay is caused by the defendant only if the delay is~~
2 ~~expressly requested by the defendant.~~

3 (END)