



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0852/P2
MLJ:emw

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to repeal* 969.035 (3) (b) and 969.035 (6) (c); *to amend* 911.01 (4) (c),
2 969.035 (2) (intro.), 969.035 (2) (a), 969.035 (2) (b), 969.035 (3) (intro.), 969.035
3 (3) (a), 969.035 (3) (c), 969.035 (4), 969.035 (5), 969.035 (6) (a), 969.035 (6) (b),
4 969.035 (8) and 969.035 (9); and *to create* 969.035 (2) (c), 969.035 (6) (cm) and
5 969.035 (12) 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 makes a variety of changes to the pretrial detention procedure, including modifying: the circumstances under which the pretrial detention can be used; the procedure for initiating the pretrial detention procedure; the rules that apply at a pretrial detention hearing; the required showings the state must make at a pretrial detention hearing; and the period of time for which a person can be detained before conviction. These changes are described below. Certain of these changes could only be made if Article I, Section 8 (3) of the Wisconsin Constitution were amended to permit the change. The descriptions below indicate which changes would require an amendment to the Wisconsin Constitution.

Eligibility for pretrial detention

Under current law, the pretrial detention procedure applies only if an individual 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. This bill provides that the pretrial detention procedure may also apply if an individual is accused of committing any other offense and there is a serious risk that either: (1) the person poses a danger to another person or the community; or (2) the person will not appear in court as required. This change would require a constitutional change.

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 a 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.

Required showings

Current law provides that, at the pretrial detention hearing, the state has the burden of going forward and proving by clear and convincing evidence both of the following: (1) that the defendant committed an offense for which pretrial detention is available; and (2) that available conditions of release will not adequately protect members of the community from serious bodily harm or prevent the intimidation of witnesses. This bill eliminates the requirement that the state prove by clear and convincing evidence that the defendant committed the predicate offense. It replaces this with a requirement that the state shall establish probable cause that the defendant committed the offense for which he or she has been charged. The bill retains the requirement that the state prove by clear and convincing evidence that the available conditions of release will not adequately protect members of the community from serious bodily harm or prevent the intimidation of witnesses.

Pretrial detention time limits

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: (1) that the defendant committed a qualifying crime or attempted to commit a violent crime after a prior violent crime conviction; and (2) that available conditions of release will not adequately protect the public from serious bodily harm or prevent the intimidation of witnesses. This bill increases the amount of time a defendant may be detained following a pretrial detention hearing to 90 days. It also provides that the court may extend this period, upon its own motion or the motion of any party, if it finds that the ends of justice are best served by extending that period. These changes would require a constitutional change.

Determining whether delay is caused by defendant

Current law provides that in calculating the time periods for which a defendant may be detained, 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.** 911.01 (4) (c) of the statutes is amended to read:
2 911.01 (4) (c) *Miscellaneous proceedings.* Proceedings for extradition or
3 rendition; sentencing, granting or revoking probation, modification of a bifurcated
4 sentence under s. 302.113 (9g), or adjustment of a bifurcated sentence under s.
5 973.195 (1r) or 973.198; issuance of subpoenas or warrants under s. 968.375, arrest
6 warrants, criminal summonses, and search warrants; hearings under s. 980.09 (2);
7 proceedings under s. 971.14 (1r) (c); ~~proceedings with respect to pretrial release~~
8 ~~under ch. 969 except where habeas corpus is utilized with respect to release on bail~~
9 ~~or as otherwise provided in ch. 969~~; or proceedings under s. 165.76 (6) to compel
10 provision of a biological specimen for deoxyribonucleic acid analysis.

 ***NOTE: Are there other proceedings under ch. 969 to which the committee still
wants the rules of evidence to apply?

11 **SECTION 2.** 969.035 (2) (intro.) of the statutes is amended to read:
12 969.035 (2) (intro.) A circuit court may deny release from custody to a person
13 under this section to any of the following persons if any of the following applies:

14 **SECTION 3.** 969.035 (2) (a) of the statutes is amended to read:

1 969.035 (2) (a) ~~A~~ The person is accused of committing an offense under s.
2 940.01, 940.225 (1), 948.02 (1) or (2), 948.025, or 948.085.

3 **SECTION 4.** 969.035 (2) (b) of the statutes is amended to read:

4 969.035 (2) (b) ~~A~~ The person is accused of committing or attempting to commit
5 a violent crime, and the person has a previous conviction for committing or
6 attempting to commit a violent crime.

7 **SECTION 5.** 969.035 (2) (c) of the statutes is created to read:

8 969.035 (2) (c) The person is accused of committing or attempting to commit
9 any other offense and any of the following applies:

10 1. The court finds there is a serious risk that the person poses a danger to
11 another person or the community.

12 2. The court finds there is a serious risk that the person will not appear in court
13 as required.

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

15 969.035 (3) (intro.) A court may proceed under this section upon oral motion
16 by the district attorney if the district attorney alleges to the court ~~and provides the~~
17 ~~court with documents~~ as follows:

18 **SECTION 7.** 969.035 (3) (a) of the statutes is amended to read:

19 969.035 (3) (a) Alleges that the defendant is eligible for denial of release under
20 sub. (2) (a) ~~or (b)~~ to (c).

21 **SECTION 8.** 969.035 (3) (b) of the statutes is repealed.

22 **SECTION 9.** 969.035 (3) (c) of the statutes is amended to read:

23 969.035 (3) (c) Alleges that ~~available~~ no amount of monetary bail, nonmonetary
24 ~~conditions of release will not adequately protect members of the community from~~
25 ~~serious bodily harm or prevent the intimidation of witnesses, or combination of~~

1 monetary bail and conditions would reasonably assure the safety of others and the
2 community and reasonably assure the defendant's appearance in court when
3 required.

4 **SECTION 10.** 969.035 (4) of the statutes is amended to read:

5 969.035 (4) If the court determines that the district attorney has complied with
6 sub. (3), the court may order that the detention of a person who is currently in custody
7 be continued or may issue a warrant commanding any law enforcement officer to
8 bring the defendant without unnecessary delay before the court. When the
9 defendant is brought before the court, he or she shall be ~~given a copy of the documents~~
10 ~~specified in sub. (3) and~~ informed of his or her rights under this section and s. 970.02
11 (1) and (6).

12 **SECTION 11.** 969.035 (5) of the statutes is amended to read:

13 969.035 (5) A pretrial detention hearing is a hearing before a court for the
14 purpose of determining if ~~the continued detention of the defendant is justified~~
15 whether any amount of monetary bail, nonmonetary conditions, or combination of
16 monetary bail and conditions would reasonably assure the safety of others and the
17 community and reasonably assure the defendant's appearance in court when
18 required. A pretrial detention hearing may be held in conjunction with a preliminary
19 examination under s. 970.03 or a conditional release revocation hearing under s.
20 969.08 (5) (b), but separate findings shall be made by the court relating to the pretrial
21 detention, preliminary examination, and conditional release revocation.

22 **(5m)** The pretrial detention hearing shall be commenced within 10 days from
23 the date the defendant is detained or brought before the court under sub. (4). The
24 defendant may not be denied release from custody in accordance with s. 969.03 for
25 more than 10 days prior to the hearing required by this subsection.

***NOTE: This draft does not change the requirement that a pretrial detention hearing be held within 10 days from the date the defendant is brought before the court under s. 969.035 (5), stats. Is this consistent with the committee's intent?

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

2 969.035 (6) (a) ~~The state has the burden of going forward and proving by clear~~
3 ~~and convincing evidence that the defendant committed an offense specified under~~
4 ~~sub. (2) (a), or that the defendant committed or attempted to commit a violent crime~~
5 ~~subsequent to a prior conviction for a violent crime~~ shall establish probable cause
6 that the defendant committed the offense for which he or she has been charged.

7 **SECTION 13.** 969.035 (6) (b) of the statutes is amended to read:

8 969.035 (6) (b) ~~The state has the burden of going forward and proving~~ shall
9 prove by clear and convincing evidence that available conditions of release will not
10 adequately protect members of the community from serious bodily harm ~~or~~, prevent
11 the intimidation of witnesses, or assure the defendant's appearance in court when
12 required.

13 **SECTION 14.** 969.035 (6) (c) of the statutes is repealed.

14 **SECTION 15.** 969.035 (6) (cm) of the statutes is created to read:

15 969.035 (6) (cm) The defendant has the right to be represented by counsel. The
16 defendant shall be afforded an opportunity to testify, to present witnesses, to
17 cross-examine witnesses who appear at the hearing, and to present information by
18 proffer or otherwise. The rules concerning admissibility of evidence in criminal trials
19 do not apply to the presentation and consideration of information at the hearing.

20 **SECTION 16.** 969.035 (8) of the statutes is amended to read:

21 969.035 (8) If the court ~~makes the findings~~ finds that the state has made the
22 required showings under sub. (6) (a) and (b), the court may deny bail release to the
23 defendant for an additional period not to exceed ~~60~~ 90 days following the hearing.

1 except that the court may extend the period, upon its own motion or the motion of
2 any party, if it finds that the ends of justice are best served by extending that period.
3 An extension may not be granted under this subsection unless the court sets forth
4 in the record of the case, either orally or in writing, its reasons for finding that the
5 ends of justice are best served by extending the period of confinement. If the time
6 period passes and the defendant is otherwise eligible, he or she shall be released from
7 custody with or without conditions in accordance with s. 969.03.

8 **SECTION 17.** 969.035 (9) of the statutes is amended to read:

9 969.035 (9) In computing the 10-day periods under sub. (5) (5m) and the
10 ~~60-day~~ 90-day period under sub. (8), the court shall omit any period of time found
11 by the court to result from a delay caused by the defendant or a continuance granted
12 which that was initiated by the defendant. ~~Delay is caused by the defendant only if~~
13 ~~the delay is expressly requested by the defendant.~~

14 **SECTION 18.** 969.035 (12) of the statutes is created to read:

15 969.035 (12) The pretrial detention hearing may be reopened, before or after
16 a determination by the court, at any time before trial if the court finds that
17 information exists that was not known to the district attorney or the defendant at
18 the time of the hearing and that has a material bearing on the issue of whether there
19 are conditions of release that adequately protect members of the community from
20 serious bodily harm, prevent the intimidation of witnesses, or assure the defendant's
21 appearance in court when required.

22 (END)