



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-0923/P2
EAW:amn

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to amend* 969.01 (4); and *to create* 969.01 (4) (c) 1. to 8. of the statutes;
2 **relating to:** the factors to consider when setting conditions for pretrial release.

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. The bill replaces the current law factors a court may consider in imposing bail or other pretrial release conditions with the factors used in the Public Safety Assessment (PSA) developed by the Laura and John Arnold Foundation. These factors are used to predict the risk that an accused will commit a new crime if released before trial, or to predict the risk that an accused will fail to appear for a court hearing. The bill also makes non-substantive formatting revisions.

3 **SECTION 1.** 969.01 (4) of the statutes is amended to read:
4 969.01 (4) (a) If bail is imposed, it shall be only in the amount found necessary
5 to assure the appearance of the defendant.

1 **(b)** Conditions of release, other than monetary conditions, may be imposed for
2 the purpose of protecting members of the community from serious bodily harm or
3 preventing intimidation of witnesses. ~~Proper considerations in~~

4 **(c)** ~~In determining whether to release the defendant without bail, fixing a~~
5 ~~reasonable amount of bail, or imposing other reasonable conditions of release are: the~~
6 ~~ability of the arrested person to give bail, the nature, number and gravity of the~~
7 ~~offenses and the potential penalty the defendant faces, whether the alleged acts were~~
8 ~~violent in nature, the defendant's prior record of criminal convictions and~~
9 ~~delinquency adjudications, if any, the character, health, residence and reputation of~~
10 ~~the defendant, the character and strength of the evidence which has been presented~~
11 ~~to the judge, whether the defendant is currently on probation, extended supervision~~
12 ~~or parole, whether the defendant is already on bail or subject to other release~~
13 ~~conditions in other pending cases, whether the defendant has been bound over for~~
14 ~~trial after a preliminary examination, whether the defendant has in the past~~
15 ~~forfeited bail or violated a condition of release or was a fugitive from justice at the~~
16 ~~time of arrest, and the policy against unnecessary detention of the defendant's~~
17 ~~pending trial., the court may consider any of the following:~~

18 **SECTION 2.** 969.01 (4) (c) 1. to 8. of the statutes are created to read:

19 969.01 (4) (c) 1. The results of a pretrial risk assessment.

20 2. The age of the defendant at the time of the current arrest.

21 3. Whether the current arrest is for a violent offense and, if so, whether the
22 defendant is under the age of 21 years.

23 4. Whether the defendant had any other pending charges at the time of the
24 offense.

1 5. Whether the defendant has a prior criminal conviction and, if so, whether
2 the conviction was for a violent crime.

3 6. Whether the defendant has a prior failure to appear and whether that failure
4 to appear was more than 2 years ago.

5 7. Whether the defendant has been incarcerated for a prior conviction.

NOTE: Current law lists factors for a court to consider in determining whether to release a defendant without bail, the amount of bail, and whether to impose other pretrial release conditions. The considerations under current law are:

- a) The ability of the arrested person to give bail.
- b) The nature, number and gravity of the offenses and the potential penalty the defendant faces.
- c) Whether the alleged acts were violent in nature.
- d) The defendant's prior record of criminal convictions and delinquency adjudications, if any.
- e) The character, health, residence and reputation of the defendant.
- f) The character and strength of the evidence which has been presented to the judge.
- g) Whether the defendant is currently on probation, extended supervision or parole.
- h) Whether the defendant is already on bail or subject to other release conditions in other pending cases.
- i) Whether the defendant has been bound over for trial after a preliminary examination.
- j) 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.
- k) The policy against unnecessary detention of the defendant pending trial.

The bill adds "the results of a pretrial risk assessment" to the considerations a court may take into account in making decisions about bail and pretrial release conditions. The bill also replaces the list of existing considerations with seven factors used by the PSA to predict new criminal activity, new violent criminal activity, and failure to appear. The bill combines several of the factors used by the PSA into a single factor. The bill combines the factors of (a) violent offense; and (b) violent offense by an offender 20 years of age or younger. The bill also combines the factors of (a) prior conviction and (b) prior violent conviction.

LEGISLATIVE COUNCIL QUESTION TO COMMITTEE: Is the elimination of current law factors, such as character of the defendant and the gravity of the offense, and replacement with factors used by the PSA consistent with the committee's intent?

NOTE: Current law provides that "bail" is "monetary conditions of release" and may only be imposed in the amount necessary to assure the defendant's appearance. The PSA factors are used to determine the risk that an accused will commit a new crime, a new violent crime, or fail to appear in court. Thus, certain PSA factors do not relate to predicting the risk that an accused will fail to appear.

LEGISLATIVE COUNCIL QUESTION TO COMMITTEE: Does the committee wish to create separate lists of factors, one used for determining whether to impose bail and in what amount, and one for determining whether to impose other pretrial release conditions?

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(END)