

CHAPTER 969

BAIL

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969.01 Right to bail. (1) BEFORE CONVICTION: Before conviction, a defendant arrested for a criminal offense shall be admitted to bail, except as provided in s. 971.14 (1).

(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, bail shall be allowed upon appeal.

(c) In felonies, bail 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 bail after conviction.

(e) Any court or judge or any justice authorized to grant bail after conviction for a felony may, in addition to the powers granted in s. 969.08, revoke the order admitting a defendant to bail.

(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 his presence by subpoena, the judge may require such person to give bail for his appearance as a witness. If the witness is not in court, a warrant for his arrest may be issued and upon return thereof the court may require him to give bail as provided in s. 969.03 for his appearance as a witness. If he fails to give bail, he may be committed to the custody of the sheriff for a period not to exceed 15 days within which time his deposition shall be taken as provided in s. 967.04.

(4) CONSIDERATIONS IN FIXING AMOUNT OF BAIL. The amount of bail shall be determined in reference to the purpose of bail to assure the appearance of the defendant when required to appear to answer a criminal prosecution. Proper considerations in fixing a reasonable amount of bail which will assure the defendant's appearance for trial 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 criminal record, 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 or parole, whether the defendant is already on bail 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 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

Trial court exceeded authority in granting bail to revoked probationer pending review of probation revocation. *State ex rel. Shock v. H & SS Department*, 77 W (2d) 362, 253 NW (2d) 55.

See note to 969.09, citing *State v. Braun*, 92 W (2d) 734, 285 NW (2d) 886 (Ct. App. 1979).

See note to 782.01, citing *State ex rel. Wohlfahrt v. Bodette*, 95 W (2d) 130, 289 NW (2d) 366 (Ct. App. 1980).

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

Pretrial release; Wisconsin bail reform. 1971 WLR 594.

969.02 Bail in misdemeanors. (1) A judge may release a defendant charged with a misdemeanor without bail or may permit him 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:

(b) Require the execution of an appearance bond with sufficient solvent sureties, or the deposit of cash in lieu thereof.

(2m) 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.

(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.

(4) As a condition of release in all cases, a person released under this section shall not commit any crime.

(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 for a fine or costs or both 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 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).

(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.

NOTE: Chapter 112, laws of 1979, which amended this section, contains legislative findings in section 1.

969.03 Bail in felonies. (1) A defendant charged with a felony may be released by the judge upon the execution of an unsecured appearance bond or the judge may in addition thereto or in lieu thereof impose one or more of the following conditions which will assure his appearance for trial:

(a) Place the person in the custody of a designated person or organization agreeing to supervise him.

(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 a judgment for a fine or costs or both is entered, any deposit of cash shall be applied to the payment of the judgment.

(e) Impose any other condition deemed reasonably necessary to assure appearance as required or deemed reasonably necessary to protect public or individual safety, including a

condition requiring that the defendant return to custody after specified hours. The charges authorized by s. 56.08 (4) and (5) shall not apply under this section.

(2) As a condition of release in all cases, a person released under this section shall not commit any crime.

(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.

History: 1971 c. 298; 1979 c. 112.

NOTE: Chapter 112, laws of 1979, which amended this section, contains legislative findings in section 1.

Judicial Council Note, 1971: [As to sub. (1) (d)] The change in the first sentence makes it clear that the statute does not permit a judge to require cash and not permit a surety bond. The addition of the 2nd sentence makes the felony procedure consistent with the misdemeanor procedure. See s. 969.02 (4). [Bill 867-A]

See note to art. I, sec. 8, citing Schilb v. Kuebel, 403 US 357.

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

969.05 Endorsement of bail upon warrants. (1) In misdemeanor actions, the judge who issues a warrant may indorse upon the warrant the amount of bail. If no indorsement is made, s. 969.06 shall apply.

(2) The amount and method of posting bail may be indorsed upon felony warrants.

969.06 Bail schedules. The judicial conference shall develop a schedule of cash bail for all misdemeanors which the supreme court shall adopt by rule. The schedule shall contain a list of offenses and the amount of cash bail applicable thereto as the judicial conference determines to be appropriate. If the schedule does not list all misdemeanors, it shall contain a general clause providing for a designated amount of bail for all misdemeanors not specifically listed in the schedule. The schedule of bail may be revised from time to time under this section.

History: 1971 c. 298; 1977 c. 449.

969.07 Taking of bail by law enforcement officer. When bail conditions have been set for a particular offense or defendant, any law enforcement officer may take bail in accordance with ss. 969.02 and 969.03 and release the defendant to appear in accordance with the conditions of the appearance bond. The law

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enforcement officer shall give a receipt to the defendant for the bail so taken and within a reasonable time deposit such 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. Nothing herein shall require the release of a defendant from custody under this section when an officer is of the opinion that the defendant is not in a fit condition to care for his own safety or would constitute, because of his physical condition, a danger to the safety of others. If a defendant is not released pursuant to this section, s. 970.01 shall apply.

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

969.08 Grant, reduction, increase or revocation of bail. (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 the conditions of bail 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 bail or the bail bond constitutes grounds for the court to increase the amount of bail or otherwise alter the conditions of bail or, if the alleged violation is the commission of a serious crime, revoke bail 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 admitted to bail for the alleged commission of a serious crime;

2. Alleges that the defendant has violated the conditions of bail 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 bail conditions 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 bail 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 admitted to bail. 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 admitted to bail, the court may revoke the bail of the defendant and hold the defendant for trial without bail. 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 admitted to bail, the defendant shall be released on bail subject to conditions of bail deemed appropriate by the court.

4. If the bail 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 bail 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 bail and shall be released on bail subject to conditions of bail 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 bail if any of the circumstances authorizing the revocation of bail 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 admitted to bail, 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 admitted to bail, the district attorney and court may proceed under sub. (6) and certify the findings to the circuit court for the county in which the person was admitted to bail. That circuit court shall make the bail revocation decision based on the certified findings.

(8) Information stated in, or offered in connection with, any order entered under this chapter setting bail need not conform to the rules of evidence, except as provided under sub. (5) (b) 2.

(9) This section does not limit any other authority of a court to revoke the bail of a defendant.

(10) In this section:

(a) "Commission of a serious crime" includes a solicitation, conspiracy or attempt, under s. 939.30, 939.31 or 939.32, to commit a serious crime.

(b) "Serious crime" means any crime specified in s. 940.01, 940.02, 940.05, 940.06, 940.08, 940.09, 940.19 (2), 940.20, 940.201, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25, 940.29, 940.31, 940.32, 941.20 (2), 941.26, 941.30, 943.01 (2) (c), 943.02, 943.03, 943.04, 943.06, 943.10, 943.30, 943.32, 944.12, 946.01, 946.02, 946.43 or 947.015.

History: 1971 c. 298; 1977 c. 449; 1979 c. 112.

NOTE: Chapter 112, laws of 1979, which created this section, contains legislative findings concerning bail in section 1.

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 he 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 he will submit himself 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 he will duly prosecute his appeal, that he 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, he will surrender to the sheriff of the county in which he was tried.

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

Forfeiture of bail bond did not depend on validity of trial court order postponing execution of sentence. *State v. Braun*, 92 W (2d) 734, 285 NW (2d) 886 (Ct. App. 1979).

Petition for writ of habeas corpus properly named department of health and social services, rather than sheriff, as respondent where petitioner was released on bail pending appeal. *Dreske v. Wis. Department of Health and Social Services*, 483 F Supp. 783 (1980).

969.10 Notice of change of address. A person who has been admitted to bail shall give written notice to the clerk of any change in his address within 48 hours after such change. This requirement shall be printed on all bonds.

969.11 Bail 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 shall, without unreasonable delay, either be brought before a judge of the county in which arrested for the purpose of setting bail or be returned to the county in which the offense was committed. The judge shall admit him to bail under 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 pursuant to sub. (1), the judge shall make a record of the proceedings and shall certify his minutes thereof and shall forward the bond and bail to

the court before whom the defendant is bound to appear.

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 he 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.

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

(5) A cash deposit made with the clerk pursuant to this chapter shall be applied 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.

History: 1971 c. 298.

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

Trial court abused discretion in refusing to modify order under (2) where partial remission of bond was appropriate. *State v. Ascencio*, 92 W (2d) 822, 285 NW (2d) 910 (Ct. App. 1979).

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