



2023 ASSEMBLY BILL 54

February 20, 2023 - Introduced by Representatives DUCHOW, BEHNKE, BROOKS, DITTRICH, DONOVAN, EDMING, KITCHENS, MAGNAFICI, MICHALSKI, MURPHY, NOVAK, O'CONNOR, RETTINGER, RODRIGUEZ, ROZAR, SPIROS, STEFFEN, WICHGERS and WITTKE, cosponsored by Senators WANGGAARD, BRADLEY, STROEBEL, COWLES, MARKLEIN and TOMCZYK. Referred to Committee on Judiciary.

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.

Analysis by the Legislative Reference Bureau

Under the Wisconsin Constitution, a person accused of a crime is eligible for release before conviction under reasonable conditions designed to do any of the following: 1) assure that he or she will appear in court; 2) protect members of the community from serious bodily harm; or 3) prevent the intimidation of witnesses. The conditions of release may include monetary bail only if the court finds that there is a reasonable basis to believe that bail is necessary to assure that the defendant will appear in court. The Wisconsin Statutes relating to preconviction release contain the same language as the constitution.

A proposed amendment to the Wisconsin Constitution, to be given second consideration by the 2023 legislature for submittal to the voters in April 2023, changes these provisions. This bill changes the statutes relating to preconviction release to conform to the changes in the proposed constitutional amendment. The

ASSEMBLY BILL 54

bill will take effect when the amendment is ratified by the voters and will be void if the amendment is not ratified by the voters.

Conditions of preconviction release

The proposed constitutional amendment provides that a defendant is eligible for release before conviction under reasonable conditions designed to protect members of the community from “serious harm as defined by the legislature by law,” not just “serious bodily harm.” The bill defines “serious harm,” as required by the amendment, and harmonizes the statutes with the amended constitutional provision to allow the court to set reasonable conditions designed to protect members of the community from serious harm. Under the bill, “serious harm” is defined as any of the following: 1) 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; 2) damage to property over \$2,500 in value; or 3) economic loss over \$2,500 in value.

When bail may be imposed

The proposed constitutional amendment also expands the reasons why a court may impose monetary bail on a defendant as a condition of release. Under current law, monetary bail may be imposed only if the court finds that there is a reasonable basis to believe bail is necessary to assure that the defendant will appear in court. The proposed constitutional amendment adds that, if the defendant is accused of a violent crime as defined by the legislature by law, monetary bail may be imposed if the court finds that there is a reasonable basis to believe that bail is necessary based on the totality of the circumstances. The proposed amendment provides that, when considering the totality of the circumstances, the court may take into account whether the defendant has a previous conviction for a violent crime as defined by the legislature by law; the probability that the defendant will fail to appear; the need to protect members of the community from serious harm as defined by the legislature by law; the need to prevent the intimidation of witnesses; and the potential affirmative defenses of the defendant. The bill defines “violent crime” for this purpose, and it changes the statutes to incorporate the additional reasons that the court may impose monetary bail as a condition of release. The definition of “violent crime” includes crimes such as homicide, aggravated and special circumstances battery, mayhem, sexual assault, false imprisonment, human trafficking, taking of hostages, kidnapping, stalking, disarming a police officer, arson, felony burglary, and carjacking; crimes to which a domestic abuse or dangerous weapon penalty enhancer may be applied; the violation of a domestic abuse, child abuse, or harassment injunction; or the solicitation, conspiracy, or attempt to commit a Class A felony.

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

ASSEMBLY BILL 54**SECTION 1**

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 subdivision 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

ASSEMBLY BILL 54**SECTION 1**

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 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.

ASSEMBLY BILL 54**SECTION 4**

(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

ASSEMBLY BILL 54**SECTION 6**

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

ASSEMBLY BILL 54**SECTION 7**

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.

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),

ASSEMBLY BILL 54**SECTION 10**

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.

(END)