

CHAPTER 969
BAIL AND OTHER CONDITIONS OF RELEASE

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969.001 Definitions. In this chapter:

(1) "Bail" means monetary conditions of release.

(2) "Serious bodily harm" means bodily injury which causes or contributes to the death of a human being or which creates a substantial risk of death or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

969.01 Eligibility for release. (1) **BEFORE CONVICTION.** 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 prevent the intimidation of witnesses. Bail may be imposed at or after the initial appearance only upon a finding by the court that there is a reasonable basis to believe that bail is necessary to assure 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. Pre-trial release services may be utilized to determine whether bail or other conditions are necessary for release or continued release of the defendant pending trial.

(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. This paragraph does not apply to a conviction for a 3rd or subsequent violation that is counted as a suspension, revocation, or conviction under Wis. Stat. s. 343.307, or the Nation's equivalent code or under s. 940.09 (1) or 940.25 in the person's lifetime, or a combination thereof.

(b) In misdemeanors, release may be allowed upon appeal in the discretion of the trial court.

(c) In felonies, release may be allowed upon appeal in the discretion of the trial court.

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

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

(4) CONSIDERATIONS IN SETTING CONDITIONS OF RELEASE. If bail is imposed, it shall be only in the amount found necessary to assure the appearance of the defendant. Conditions of release, other than monetary conditions, may be imposed for the purpose of protecting members of the community from serious bodily harm or preventing intimidation of witnesses. Pre-trial release services may be utilized to determine whether bail or other conditions are necessary for release or continued release of the defendant pending trial. Proper considerations in determining whether to release the defendant without bail, fixing a reasonable 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 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.

969.02 Release of defendants charged with misdemeanors.

(1) A judge may release a defendant charged with a misdemeanor without bail or may permit the defendant to execute an unsecured appearance bond in an amount specified by the judge or upon conditions recommended by any pre-trial release reports, if any.

(2) In lieu of release pursuant to sub. (1), the judge may require the execution of an appearance bond with sufficient solvent sureties, or the deposit of cash in lieu of sureties. If the judge requires a deposit of cash in lieu of sureties, the person making the cash deposit shall be given written notice of the requirements of sub. (6).

(2m) The clerk of circuit court may accept a credit card or debit card, instead of cash under sub. (2).

(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.

(d) Impose any other condition deemed reasonably necessary to assure appearance as required or any nonmonetary condition deemed reasonably necessary to 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.

(e) If the person is charged with violating a restraining order or injunction issued under 4 HCC §§ 1 or 5, or under a state statute, the judge may require the person to participate in mental health treatment, a batterer's intervention program, or individual counseling. The judge shall consider a request by the tribal prosecutor or the petitioner, means the person who petitioned for the restraining order or injunction, in determining whether to issue an order under this paragraph.

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

(4m) Any person who is charged with a misdemeanor and released under this section shall comply with s. 940.49. The person shall be given written notice of this requirement.

(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 of conviction 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 first to the payment of any restitution ordered under s. 973.20 and then, if ordered restitution is satisfied in full, 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).

(7m) The restrictions on the application of cash deposits under subs. (6) and (7) do not apply if bail is forfeited under s. 969.13.

(8) In all misdemeanors, bail shall not exceed the maximum fine provided for the offense.

969.03 Release of defendants charged with felonies.

(1) A defendant charged with a felony may be released by the judge without bail or upon conditions recommended by any pre-trial release reports, if any or upon the execution of an unsecured appearance bond or the judge may in addition to requiring the execution of an appearance bond or in lieu thereof impose one or more of the following conditions which will assure appearance for trial:

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

(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 the judge requires a deposit of cash in lieu of sureties, the person making the cash deposit shall be given written notice of the requirements of sub. (4).

(e) Impose any other condition deemed reasonably necessary to assure appearance as required or any nonmonetary condition deemed reasonably necessary to 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.

(1m) The clerk of circuit court may accept a credit card or debit card, instead of cash under sub. (1) (d).

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

(2m) Any person who is charged with a felony and released under this section shall comply with s. 940.49. The person shall be given written notice of this requirement.

(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.

(4) If a judgment of conviction is entered in a prosecution in which a deposit had been made in accordance with sub. (1) (d), the balance of the deposit, after deduction of the bond costs, shall be applied first to the payment of any restitution ordered under s. 973.20 and then, if ordered restitution is satisfied in full, to the payment of the judgment.

(5) 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. (1) (d) shall be returned to the person who made the deposit, his or her heirs or assigns, subject to sub. (4).

(6) The restriction on the application of cash deposits under subs. (4) and (5) do not apply if bail is forfeited under s. 969.13.

969.035 Pretrial detention; denial of release from custody.

(1) In this section, "violent crime" means any crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.09, 940.10, 940.19 (5), 940.195 (5), 940.21, 940.225 (1), 940.23, 941.327, 948.02 (1) or (2), 948.025, 948.03, or 948.085.

(2) The trial court may deny release from custody under this section to any of the following persons:

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

(b) A person accused of committing or attempting to commit a violent crime and the person has a previous conviction for committing or attempting to commit a violent crime.

(3) A court may proceed under this section if the tribal prosecutor alleges to the court and provides the court with documents as follows:

(a) Alleges that the defendant is eligible for denial of release under sub. (2) (a) or (b).

(b) Provides a copy of the complaint charging the commission or attempted commission of the present offense specified in sub. (2) (a) or (b).

(c) Alleges that available conditions of release will not adequately protect members of the community from serious bodily harm or prevent the intimidation of witnesses.

(4) If the court determines that the tribal prosecutor has complied with sub. (3), the court may order that the detention of a person who is currently in custody be continued or 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 sub. (3) and informed of his or her rights under this section and s. 970.02 (1) and (6).

(5) A pretrial detention hearing is a hearing before a court for the purpose of determining if the continued detention of the defendant is justified. A pretrial detention hearing may be held in conjunction with a preliminary examination under s. 970.03 or a conditional release revocation hearing under s. 969.08 (5) (b), but separate findings shall be made by the court relating to the pretrial detention, preliminary examination and conditional release revocation. The pretrial detention hearing shall be commenced within 10 days from the date the defendant is detained or brought before the court under sub. (4). The defendant may not be denied release from custody in accordance with s. 969.03 for more than 10 days prior to the hearing required by this subsection.

(6) During the pretrial detention hearing:

(a) The Nation has the burden of going forward and proving by clear and convincing evidence that the defendant committed an offense specified under sub. (2) (a), or that the defendant committed or attempted to commit a violent crime subsequent to a prior conviction for a violent crime.

(b) The Nation has the burden of going forward and proving by clear and convincing evidence that available conditions of release will not adequately protect members of the community from serious bodily harm or prevent the intimidation of witnesses.

(c) 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 by counsel. The rules of evidence applicable in criminal trials govern the admissibility of evidence at the hearing.

(d) The court may exclude witnesses until they are called to testify, may direct that persons who are expected to be called as witnesses be kept separate until called and may prevent them from communicating with one another until they have been examined.

(e) Testimony of the defendant given shall not be admissible on the issue of guilt in any other judicial proceeding, but the testimony shall be admissible in perjury proceedings and for impeachment purposes in any subsequent proceeding.

(7) If the court does not make the findings under sub. (6) (a) and (b) and the defendant is otherwise eligible, the defendant shall be released from custody with or without conditions in accordance with s. 969.03.

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

(9) In computing the 10-day periods under sub. (5) and the 60-day period under sub. (8), 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. Delay is caused by the defendant only if the delay is expressly requested by the defendant.

(10) The defendant may petition the court to be released from custody with or without conditions in accordance with s. 969.03 at any time.

(11) A person who has been detained under this section is entitled to placement of his or her case on an expedited trial calendar and his or her trial shall be given priority.

969.04 Surety may satisfy default. Any surety may, after default, pay to the clerk of the court the amount for which the surety 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 endorse upon the warrant the amount of bail.

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

969.065 Judicial conference; bail alternatives. The judicial conference shall develop guidelines for cash bail for persons accused of misdemeanors which the supreme court shall adopt by rule. The guidelines shall relate primarily to individuals. The guidelines may be revised from time to time under this section.

969.07 Taking of bail by law enforcement officer. When bail has been set for a particular defendant, any law enforcement officer may take bail in accordance with s. 969.02 and release the defendant to appear in accordance with the conditions of the appearance bond. Bail shall not be required of a defendant who has been cited for commission of a misdemeanor in accordance with s. 968.085. The law enforcement officer shall give a receipt to the defendant for the bail so taken and within a reasonable time deposit the 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. This section does not require the release of a defendant from custody when an officer is of the opinion that the defendant is not in a fit condition to care for his

or her own safety or would constitute, because of his or her physical condition, a danger to the safety of others. If a defendant is not released under this section, s. 970.01 shall apply.

969.08 Grant, reduction, increase or revocation of conditions of release. (1) Upon petition by the Nation or the defendant, the court before which the action is pending may increase or reduce the amount of bail or may alter other conditions of release 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 release or the bail bond constitutes grounds for the court to increase the amount of bail or otherwise alter the conditions of release or, if the alleged violation is the commission of a serious crime, revoke release under this section.

(3) Reasonable notice of petition under sub. (1) by the defendant shall be given to the Nation.

(4) Reasonable notice of petition under sub. (1) by the Nation shall be given to the defendant, except as provided in sub. (5).

(5) (a) A court shall proceed under par. (b) if the tribal prosecutor alleges to the court and provides the court with documents as follows:

1. Alleges that the defendant is released on conditions for the alleged commission of a serious crime;

2. Alleges that the defendant has violated the conditions of release 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 Nation 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 conditions of release 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 setting conditions of

release 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 Nation has the burden of going forward and proving by clear and convincing evidence that the violation occurred while the defendant was on conditional release. 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 Nation has established by clear and convincing evidence that the defendant has committed a serious crime while on conditional release, the court may revoke the release of the defendant and hold the defendant for trial without setting conditions of release. 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 Nation has established by clear and convincing evidence that the defendant has committed a serious crime while on conditional release, the defendant shall be released on bail or other conditions deemed appropriate by the court.

4. If the release 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 conditions 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 setting conditions of release and shall be released on bail or other conditions 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 release if any of the circumstances authorizing the revocation of release 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 released on conditions, is not available, any other trial court judge of the Nation may act under this section.

(8) Information stated in, or offered in connection with, any order entered under this chapter setting bail or other conditions of release need not conform to the rules of evidence, except as provided under Wis. Stat. sub. (5) (b) 2. or s. 901.05.

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

(9m) A person who has had bail revoked under this section is entitled to placement of his or her case on an expedited trial calendar and his or her trial shall be given priority.

(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, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (5), 940.195 (5), 940.20, 940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25, 940.29, 940.295 (3) (b) 1g., 1m., 1r., 2. or 3., 940.302 (2), 940.31, 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.03, 943.04, 943.06, 943.10, 943.23 (1g), 943.30, 943.32, 943.81, 943.82, 943.83, 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 946.02, 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.051, 948.06, 948.07, 948.085, or 948.30 or, if the victim is a financial institution, as defined in s. 943.80 (2), a crime under s. 943.84 (1) or (2).

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 the defendant 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 the defendant will submit 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 the defendant will duly prosecute the defendant's appeal, that the defendant 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, the defendant will surrender to Ho-Chunk Nation law enforcement.

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

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

969.12 Sureties. (1) Every surety under this chapter, shall be a resident of the state.

(2) A surety under this chapter shall be a natural person. 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 the surety 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 Nation may challenge the sufficiency of the surety.

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 the defendant's 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 the defendant or the defendant's sureties do not satisfy the court that appearance and surrender by the defendant at the time scheduled for the defendant's appearance was impossible and without the defendant's fault, the court shall upon motion of the tribal prosecutor enter judgment for the Nation 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 Nation's 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 the defendant's sureties at their last addresses.

(5) (a) A cash deposit made with the clerk pursuant to this chapter shall be applied first to the payment of any recompense determined under par. (b) and then, if the recompense is paid in full, 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. The person making the cash deposit shall be given written notice of the requirements of this paragraph.

(b) The court shall determine a recompense amount for any victim, or if the victim is deceased, for his or her estate, of the crime for which the bond was entered into unless the court finds substantial reason not to do so and states the reason on the record. The court shall determine the recompense amount in the same manner as the court would have determined the restitution amount under s. 973.20 (2), (3), (4), (4m), (5), and (7) had the person been convicted.

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 the principal to the Ho-Chunk Nation police department.

(2) The sureties shall, at the time of surrendering the principal, deliver to the department a certified copy of the original warrant and of the order admitting the principal to bail and of the bond thereon; such delivery of these documents shall be sufficient authority for the officer to receive and retain the principal until the principal 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.