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# Wisconsin Legislative Council

## ACT MEMO

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### 2023 Wisconsin Act 3 [2023 Senate Bill 75]

### Statutory Changes to Implement Constitutional Amendment Relating to Conditions of Release

## BACKGROUND

Both the U.S. and Wisconsin Constitutions prohibit “excessive bail.” The Wisconsin Constitution also affirmatively provides a right to release under reasonable conditions prior to trial in most cases, and limits the reasons for which monetary bail can be required.

On April 4, 2023, the voters approved two changes to the Wisconsin Constitution. Prior to these changes, the Wisconsin Constitution provided that all persons, before conviction, shall be eligible for release under reasonable conditions of release designed to: (1) assure the defendant’s appearance in court; (2) protect the members of the community from serious bodily harm; or (3) prevent the intimidation of witnesses. It also provided that monetary conditions of release may only be imposed if there is a “reasonable basis to believe the conditions are necessary to assure appearance in court.”

The first change voters approved to the constitution expands the public-safety related purposes for which conditions of release may be designed. This change allows conditions to be designed to protect members of the community from “serious harm, as defined by the Legislature by law,” rather than “serious bodily harm,” as was the case under prior law.

The second change expands the reasons a court may impose cash bail if the defendant is accused of a “violent crime, as defined by the Legislature by law.” For those defendants, a court may impose monetary conditions of release “based on the totality of the circumstances, taking into account whether the accused has a previous conviction for a violent crime as defined by the Legislature by law, the need to prevent the intimidation of witnesses, and the potential affirmative defenses of the accused.”

## 2023 WISCONSIN ACT 3

2023 Wisconsin Act 3 makes statutory changes to implement changes to the Wisconsin Constitution described above. It defines the term “serious harm” and amends statutes governing pretrial release to allow a court to impose conditions of release designed to protect members of the community from serious harm. It also permits a court to impose monetary conditions of release based on the totality of the circumstances if an individual is accused of a “violent crime” and defines that term for this purpose.

### Purposes for Which Conditions of Release may be Designed

State statutes presently allow a court to impose “any nonmonetary condition deemed reasonably necessary to protect members of the community from serious bodily harm ...”. [ss. 969.02 (3) (d) and 969.03 (1) (e), Stats.] The act amends this authority to allow a court to instead impose any nonmonetary condition deemed reasonably necessary to protect members of the community from “serious harm.”

The act defines “serious harm,” for this purpose, as any of the following:

- 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.
- Damage to property over \$2,500 in value.
- Economic loss of \$2,500.

## **Reasons Monetary Conditions of Release may be Imposed**

The act also modifies statutes addressing the reasons a court may impose monetary conditions of release (termed “bail” under the statutes). Consistent with the constitutional amendment, the act provides that bail may be imposed only upon a finding that any of the following is true:

- There is a reasonable basis to believe that bail is necessary to assure the defendant’s appearance in court.
- 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.

If bail is imposed because there is a reasonable basis to believe that it is necessary to assure the defendant’s appearance in court, the amount that may be imposed is limited to the amount necessary to assure the appearance of the defendant. If bail is imposed on a defendant accused of a violent crime based on the totality of circumstances, the amount imposed may not be excessive.

The expanded reasons for which a court may impose bail apply only when an individual is accused of a “violent crime.” The bill defines “violent crime,” for these purposes, as any of the following:

- First-degree intentional homicide. [s. 940.01, Stats.]
- First-degree reckless homicide. [s. 940.02, Stats.]
- Felony murder. [s. 940.03, Stats.]
- Second-degree intentional homicide. [s. 940.05, Stats.]
- Second-degree reckless homicide. [s. 940.06, Stats.]
- Homicide by negligent control of vicious animal. [s. 940.07, Stats.]
- Homicide by negligent handling of dangerous weapon. [s. 940.08, Stats.]
- Homicide by intoxicated use of vehicle. [s. 940.09 (1), Stats.]
- Homicide by negligent operation of vehicle. [s. 940.10, Stats.]
- Mutilating or hiding a corpse. [s. 940.11, Stats.]
- Assisting suicide. [s. 940.12, Stats.]
- Battery, substantial battery, aggravated battery. [s. 940.19 (1), (2), (4), (5), or (6), Stats.]
- Battery, substantial battery, aggravated battery to an unborn child. [s. 940.195 (1), (2), (4), (5), or (6), Stats.]
- Physical abuse of an elder person (intentional or reckless). [s. 940.198 (2) or (3), Stats.]
- Battery; special circumstances. [s. 940.20, Stats.]
- Battery or threat to witnesses. [s. 940.201 (2), Stats.]

- Battery or threat to judge, prosecutor, or law enforcement officer. [s. 940.203 (2), Stats.]
- Battery or threat to health care providers and staff. [s. 940.204, Stats.]
- Battery or threat to Department of Revenue employee. [s. 940.205 (2), Stats.]
- Battery or threat to Department of Safety and Professional Services or Department of Workforce Development employee. [s. 940.207 (2), Stats.]
- Battery to certain employees of counties, cities, villages, and towns. [s. 940.208, Stats.]
- Mayhem. [s. 940.21, Stats.]
- Sexual assault (first-degree, second-degree, third-degree). [s. 940.225 (1), (2), or (3), Stats.]
- Reckless injury. [s. 940.23, Stats.]
- Strangulation and suffocation. [s. 940.235, Stats.]
- Injury by negligent handling of dangerous weapons, explosives, or fire. [s. 940.24, Stats.]
- Injury by intoxicated use of a motor vehicle. [s. 940.25, Stats.]
- Abuse of individuals at risk. [s. 940.285, Stats.]
- Abuse of residents of penal facilities. [s. 940.29, Stats.]
- False imprisonment. [s. 940.30, Stats.]
- Human trafficking. [s. 940.302 (2), Stats.]
- Taking hostages. [s. 940.305, Stats.]
- Kidnapping. [s. 940.31, Stats.]
- Stalking. [s. 940.32, Stats.]
- Intimidation of witness. [s. 940.43, Stats.]
- Intimidation of victim. [s. 940.45, Stats.]
- Endangering safety by use of dangerous weapon. [s. 941.20, Stats.]
- Disarming a peace officer. [s. 941.21, Stats.]
- Possession of short-barreled shotgun or rifle. [s. 941.28, Stats.]
- Straw purchasing of firearms. [s. 941.2905, Stats.]
- Possession of weaponized drone. [s. 941.292, Stats.]
- Recklessly endangering safety. [s. 941.30, Stats.]
- Tampering with household products. [s. 941.327, Stats.]
- Criminal gang member solicitation and contact. [s. 941.38 (2) or (3), Stats.]
- Violation of sentence prohibiting contact. [s. 941.39, Stats.]
- Damage to property of juror. [s. 943.01 (2) (c), Stats.]
- Damage or threat to property of witness. [s. 943.011, Stats.]
- Criminal damage or threat to property of judge. [s. 943.013, Stats.]
- Arson of buildings; damage of property by explosives. [s. 943.02, Stats.]
- Arson with intent to defraud. [s. 943.04, Stats.]

- Molotov cocktails. [s. 943.06, Stats.]
- Burglary. [s. 943.10, Stats.]
- Carjacking. [s. 943.23 (1g) or (1r), Stats.]
- Threats to injure or accuse of crime. [s. 943.30, Stats.]
- Robbery. [s. 943.32, Stats.]
- Robbery of a financial institution. [s. 943.87, Stats.]
- Assault by prisoner. [s. 946.43, Stats.]
- Harassment. [s. 947.013, Stats.]
- Bomb scares. [s. 947.015, Stats.]
- Sexual assault of a child (first-degree, second-degree). [s. 948.02 (1) or (2), Stats.]
- Repeated acts of sexual assault of the same child. [s. 948.025, Stats.]
- Physical abuse of a child (intentional causation of bodily harm or great bodily harm, reckless causation of bodily harm or great bodily harm, or repeated acts of physical abuse against the same child.) [s. 948.03 (2), (3), or (5), Stats.]
- Causing mental harm to a child. [s. 948.04, Stats.]
- Sexual exploitation of a child. [s. 948.05, Stats.]
- Trafficking of a child. [s. 948.051, Stats.]
- Causing a child to view or listen to sexual activity. [s. 948.055, Stats.]
- Incest with a child. [s. 948.06, Stats.]
- Child enticement. [s. 948.07, Stats.]
- Soliciting a child for prostitution. [s. 948.08, Stats.]
- Sexual assault of a child placed in substitute care. [s. 948.085, Stats.]
- Sexual assault of a child by a school staff person or a person who works or volunteers with children. [s. 948.095, Stats.]
- Abduction of another's child (by force or threat of force). [s. 948.30 (2), Stats.]
- Leaving or storing loaded firearm within reach or easy access of a child. [s. 948.55, Stats.]
- Mistreating animals. [s. 951.02, Stats.]
- Instigating fights between animals. [s. 951.08, Stats.]
- Shooting at caged or staked animals. [s. 951.09, Stats.]
- A felony violation of offenses involving machine guns and tear gas. [s. 941.26, Stats.]
- A violation of a domestic abuse, child abuse, or harassment temporary restraining order or injunction. [ss. 813.12, 813.122, and 813.125, Stats.]
- The solicitation, conspiracy, or attempt to commit a Class A felony.
- A violation to which either the domestic abuse repeater or use of a dangerous weapon penalty enhancer may be applied. [See, ss. 939.621 or 939.63 (1), Stats.]

**Effective date:** The act takes effect on the date the Wisconsin Elections Commission certifies that the amendments to the constitution are approved.<sup>1</sup>

For a full history of the act, visit the Legislature's [bill history page](#).

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<sup>1</sup> The act provides that it 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.” Whenever a constitutional amendment, which is approved by the people, does not expressly state the date of effectiveness, it becomes effective at the time the chairperson of the Wisconsin Elections Commission or the chairperson’s designee certifies that the amendment is approved. [s. [7.70\(3\)\(h\)](#), Stats.] The act was published on April 6, 2023, prior to the certification of the election results. The act will therefore take effect on the date the Wisconsin Elections Commission certifies the ballot questions were approved.