



CHUCK WICHGERS

STATE REPRESENTATIVE • 83rd ASSEMBLY DISTRICT

Assembly Committee on Judiciary

January 12, 2022

Assembly Bill 838, 839, and 840

State Representative Chuck Wichgers, 83rd Assembly District

Chairman Tusler and Committee Members,

Thank you for hearing my testimony today on Assembly Bills 838, 839, and 840. This package of bills deal with bail reform.

We are here today to offer reforms so that we, as a society, as a state, will never have to endure another tragedy as horrific as the one that occurred in Waukesha on November 21, 2021. A repeat criminal, out on low bail, killed Tamara Carlson Durand, Ginny Sorenson, Lee Owen, Bill Hospel, Jane Kulich, and Jackson Sparks. The man injured and maimed 62 other individuals physically and emotionally as well.

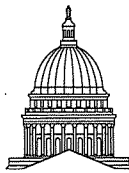
The governor refuses to address this tragedy. He refuses to hold Milwaukee County District Attorney John Chisholm accountable. So here we are with a series of legislative reforms to our current bail system.

AB 838 fixes judges' lax bond policies by requiring a minimum bond of at least \$10,000 for defendants who have previously committed a felony or violent misdemeanor.

AB 839 adds transparency to the pre-trial release process by creating a bond transparency report. Specifically, the Department of Justice must publish a report documenting every crime charged, the conditions of release, who the presiding judge was, and the name of the prosecuting attorney assigned to the case.

AB 840 disallows a court from setting an unsecured bond or releasing without bail someone previously convicted of bail jumping. The defendant can only be released if they execute a secured bond or deposit cash in an amount of at least \$5,000.

Thank you for your consideration of my testimony.



JULIAN BRADLEY
WISCONSIN STATE SENATOR

Assembly Committee on Judiciary
Wednesday, January 12, 2022

Assembly Bills 838, 839 & 840

Chairman Tusler and committee members, thank you for taking the time to hear testimony on Assembly Bills 838, 839, and 840.

Wisconsin has a bail problem. This fact was highlighted after Darrell Brooks Jr. massacred women and children at the Waukesha Christmas Parade. Brooks, after having been convicted of multiple felonies, violent crimes, and bail jumping, was released on a \$1,000 bail at the hands of the Milwaukee County criminal justice system.

My package of bills begins to fix the problem of judges and district attorneys giving out lax bail, just as they did for Darrell Brooks.

Assembly Bill 838 requires a minimum bond of at least \$10,000 for defendants who have previously committed a felony or violent misdemeanor.

Assembly Bill 840 requires a minimum bond of at least \$5,000 for defendants who have previously been convicted of bail jumping.

Operating within the confines of the State Constitution, these minimums are a reasonable amount of bail. When a repeat offender has a history of criminal misconduct or bail jumping, they have shown they have little incentive to stay on the straight and narrow and return to court when released on bail, just like Darrell Brooks.

Brooks' bail was originally set to \$10,000 despite his history of violent crimes and bail jumping. His bail was lowered to a level even Milwaukee County District Attorney John Chisolm called inappropriately low. But Brooks' situation is just one example of low bail – there are many others throughout Wisconsin.

We have a moral obligation to ensure this failure never happens again. Assembly Bills 838 and 840 are a step towards rebuilding public trust in Wisconsin's criminal justice system.

Lastly, Assembly Bill 839 ensures accountability in the process by creating a bond transparency report. This bill requires the Director of State Courts to submit a report to the Department of Justice detailing every crime charged, the conditions of release, who the presiding judge was, and the name of the prosecuting attorney assigned to the case.

Some have said this information is technically already accessible. However, the average Wisconsinite doesn't have the resources or ability to sort through every condition of bail set by a judge. Communities deserve the full picture when evaluating how their judges and DAs are performing.

According to Lanny Glingberg, a UW-Madison School of Law professor, "In terms of the data, there's CCAP, and it's a fairly crude instrument — at least the public-facing side of the website — for doing research. It's not built for that." That's exactly why we need a searchable website — to better understand the issue.

In time, Wisconsin's constitution should be amended to prevent violent criminals from walking free days after committing a crime. I applaud Representative Duchow and Senator Wanggaard's efforts to correct the systemic failure in our bail system. Until then, these three bills are the minimum our constituents expect from us.

Thank you, and I'm happy to answer any questions.



STATE BAR OF WISCONSIN

Leaders in the Law. Advocates for Justice.®

To: Members, Assembly Committee on Judiciary
From: President Cheryl Daniels, State Bar of Wisconsin
Date: January 12, 2022
Subject: Bail Reform Legislation

Thank you for the opportunity to provide this written testimony. While taking no position today, the State Bar of Wisconsin, through its Board of Governors, expresses concern with the direction many of the proposals being considered are taking. It is our intent to continue to monitor and evaluate these and any other proposals related to the use of cash bail.

The State Bar of Wisconsin has over 25,000 attorney members that represent all areas and practices of law. Our organization is unique in that we represent all facets of the criminal justice system from district attorneys, public defenders, criminal defense attorneys and judges. The process of bail and the criminal justice system as a whole is incredibly complex.

Many State Bar members have served and participated in numerous study committees created by the court, the Department of Justice, and the 2018 Legislative Joint Council Study Committee on Bail and Conditions of Pretrial Release. According to a 2018 report by the National Conference of State Legislatures, 44 states enacted 182 pretrial laws in 2017. Wisconsin is not alone in working to reform the bail process and a number of counties that participated in a pilot using evidence-based tools found fiscal and court efficiencies.

After evaluating many studies and reviewing possible solutions, our Board of Governors has concluded that continuing to use cash bail alone as the basis for public safety is contrary to the State Bar's philosophy. Rather, courts should use validated risk-assessment tools or "evidence-based decision making" to determine the appropriate mechanism to both guarantee a return for court proceedings and protect the public from further harm.

Those involved in the bail process are making determinations based on many factors and evidence-based tools assist in that process. The State Bar of Wisconsin recognizes the need for a clear pre-trial process that protects public safety and ensures that dangerous individuals are detained or monitored until they face trial, but it believes that the best approach to bail reform is one that moves away from the routine use of cash bail for defendants who are deemed to be low-risk.

Our hope is that the legislature looks for a long-term solution for bail reform. The 2018 Study Committee supported a number of reforms that would have dramatically improved the pretrial process and additional consideration of that committee's good work should be reviewed.

State Bar of Wisconsin Staff Contact:

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The State Bar of Wisconsin is the mandatory professional association, created by the Wisconsin Supreme Court, for attorneys who hold a Wisconsin law license. With more than 25,000 members, the State Bar aids the courts in improving the administration of justice, provides continuing legal education for its members to help them maintain their expertise, and assists Wisconsin lawyers in carrying out community service initiatives to educate the public about the legal system and the value of lawyers. For more information, visit www.wisbar.org.



STATE BAR OF WISCONSIN

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Supreme Court of Wisconsin

DIRECTOR OF STATE COURTS

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Annette Kingsland Ziegler
Chief Justice

16 East State Capitol
Telephone 608-266-6828
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Hon. Randy R. Koschnick
Director of State Courts

January 12, 2022

Representative Ron Tusler, Chair
Assembly Committee on Judiciary
Room 300N, State Capitol
Madison, WI 53702

RE: Assembly Bill 839

Dear Representative Tusler and Committee Members:

Thank you for the opportunity to testify and provide written comments for information on Assembly Bill 839, which requires the Department of Justice (DOJ) to create an annual report, to be published on an interactive internet site and provided to the Legislature, containing certain information for each crime charged in any Wisconsin circuit court. The bill requires the Director of State Courts to provide to DOJ the information required to create this report, including bond information for each charge filed in every case. As a preliminary matter, bond is ordered on a case basis—it is not ordered per charge. For example, while a case may have multiple charges, only one bond will be ordered for the entire case. As a result, the information can only reflect the bond ordered per case and not per charge.

Additionally, this bill requires the Director of State Courts to provide DOJ with the name of the judge assigned to the case and the corresponding bond information ordered by that judge. It is important to note that many counties utilize court commissioners, instead of judges, to determine bond. In these cases, data related to bond will not be captured since those decisions were not made by a judge.

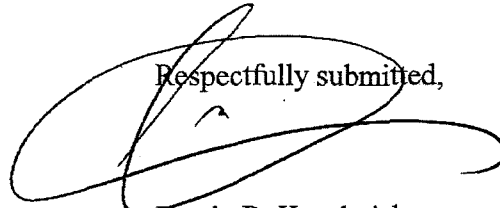
While the Director of State Courts Office does not itself collect information on each case in the court system, the Consolidated Court Automation Programs (CCAP) administrative office is responsible for supporting the information technology needs of the entire court system. Part of these duties includes developing and maintaining the court system's case management system. This software integrates case file and court calendar information to help the courts function smoothly. Case information is entered into CCAP case management by each county clerk of circuit court.

In order to meet the data reporting requirements of this bill, CCAP will need to expand the capabilities of the Representational State Transfer (REST) service currently in place and used by DOJ and other state agencies. The REST service enables organizations to implement automated processes to monitor and download public circuit court information. Because some case management data elements are not included in the REST service, additional data fields will need to be programmed to provide DOJ with all of the required information. CCAP estimates that it will take approximately three months and two staff members to expand the REST service to meet the new legislative requirements.

In addition, for each case, form CR-203, Bail/Bond, will be provided to DOJ as the form includes information required to be reported to DOJ, but the information is not currently stored in a manner that makes it easily accessible to DOJ.

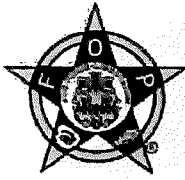
Thank you for your attention to this bill and for allowing me to submit this testimony. If you have any questions, please do not hesitate to contact me or our Chief Legal Counsel, Karley Downing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Randy R. Koschnick', is written over the typed name below. The signature is fluid and cursive, with a large loop at the end.

Randy R. Koschnick
Director of State Courts

RRK:KRD



Wisconsin State Lodge *Fraternal Order of Police*



PO Box 206 West Bend, WI 53095

Ryan Windorff
President

Shane Wrucke
Secretary

January 12, 2022

Wisconsin Fraternal Order of Police Testimony in Support of Assembly Bills 827, 829, 838, 839, 840, 841, and 842

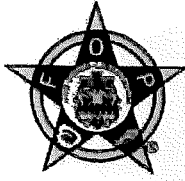
Assembly Committee on Judiciary

Thank you, Representative Tusler and fellow committee members for the opportunity to provide testimony in support of Assembly Bills 827, 829, 838, 839, 840, 841 and 842. My name is Ryan Windorff, and I am the President of the Wisconsin State Lodge of the Fraternal Order of Police.

We are seeing a crime wave across this nation, the likes we have not seen before, and we believe one of the most significant problems is the lack of accountability for those committing these crimes. When there are no consequences for breaking the law, more people will break the law and crime will continue to increase. Among this increase in crime has been a notable proliferation of organized, and increasingly brazen, thefts. Theft might not seem like a crime that would require special attention from this body, however the impacts to the public, business owners, and the economy are staggering. According to the National Retail Federation, losses from theft have increased nearly 60% since 2015 and losses are calculated at nearly \$62 billion annually. Law enforcement is responding the best we can to these increases, but we are limited by current law that detail the severity of these offenses.

AB827 would close a loophole in determining the penalty for a theft and allow for the value of property to be aggregated when multiple thefts are committed by five or more people at the same time. AB829 would provide a mandatory minimum sentence of incarceration for those convicted of a third offense of retail theft within 10 years of two previous convictions. We believe that this change would allow law enforcement and prosecutors to better address the current trends we are seeing and hold offenders accountable.

I know through experience that changes in law such as this can and do have an effect on crime. When this legislature changed the threshold for felony theft from \$2,500 to \$500 in 2011, I was working as a patrol officer in a community that had a large retail and entertainment district. Prior to this change, it was not uncommon to respond to retail thefts where individuals would brazenly fill a shopping cart with expensive products (which were miraculously valued at just under \$2,500) and simply walk out the door. There were many "frequent flyers" who did this on a weekly or even daily basis. Previously we were simply able to issue them a municipal citation (as due to the number of offenses that occurred, the local district attorneys office did not have the resources to prosecute them as misdemeanors) and send them on their way until we met again. When this law changed, word quickly spread that when these large thefts occurred, offenders would not just be cited and released but would be arrested, jailed, and charged with a felony. This resulted in a marked reduction in large scale retail thefts, simply by providing law enforcement and prosecutors the tools they needed to address it.



Wisconsin State Lodge

Fraternal Order of Police



PO Box 206 West Bend, WI 53095

Ryan Windorff
President

Shane Wrucke
Secretary

The concept of monetary conditions of release, or “cash bail”, can be traced back to the infancy of our modern criminal justice system. The need to ensure the appearance of criminal defendants for proceedings and to protect the public from additional harm is an integral part of a civilized society. In recent years, we have seen this important safety mechanism eroded by a faction of rogue prosecutors in a failed social experiment they call “bail reform” and “criminal justice reform”. A nationwide crime surge and recent tragic events, including right here in Wisconsin, have highlighted the fallacy of these policies, and brought it to the public’s attention. Our communities are seeing the real-life consequences of what happens when elected officials embrace pro-criminal, revolving door policies and make decisions that put the interests of violent offenders ahead of public safety. As law enforcement officers, we know all too well the pain and suffering that the victims of a revolving door criminal justice system endure. We are on the front lines each and every day, not just risking our safety and our lives to apprehend these repeat offenders, but to console and help pick up the pieces of the victims who are lucky enough to survive.

Many officers, myself included, can tell you that they have personally arrested individuals for violent crimes who were released from custody, literally before the reports were even completed. We have listened to the pleas of victims asking us why we cannot protect them from their attackers who are back on the street. I have personally arrested defendants for crimes who were already out on bond who, when bail is set for their new case that included the new charges in addition to a bail jumping charge, were given an even lower bond than their initial one. This does not occur in every county, but criminals know no jurisdictional boundaries and citizens across the state suffer the consequences of these decisions no matter where they occur. These inconsistencies and failures of some officials require intervention from the legislature, and that is why we are here.

AB838 and AB840 would establish minimum bail amounts for individuals who have previous convictions for a felony, violent misdemeanor, or bail jumping. If someone has proven through past behavior that they have a propensity for violence or that they cannot abide by the conditions of a bond imposed by the court, it only makes sense that they should be required to have a minimum vested interest in attending court dates and integrating into society.

AB839 would require the Department of Justice to gather data about the bonds that are being set by our courts and publish a report. Currently there is not centralized repository of this data, and we don’t know the true scope of the problem. This data would provide transparency and accountability in our criminal justice system and allow the people to see in black and white how their elected judicial officials are ensuring that justice is served and their communities are protected.

AB841 would prohibit prosecutors from placing an individual charged with illegal possession of a firearm in a deferred prosecution program or dismissing or amending the charge without approval from the court if they have a previous conviction for a violent felony. With the staggering increases in violent crime, often including firearms and often involving those who are prohibited from possessing firearms, we need to ensure that the laws enacted to protect our communities by this legislature are being enforced. The solution to the gun problem is not new gun laws, it is the vigorous enforcement of the ones we already have.



Wisconsin State Lodge

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Finally, AB842 would prohibit the early discharge from probation or early release from prison of individuals serving sentences for certain violent crimes. Early release from probation or incarceration was designed for offenders who committed less serious offenses who have demonstrated their willingness and ability to successfully integrate into the community. Prohibiting violent offenders from taking advantage of these privileges will make our communities safer and send a strong message that Wisconsin has zero tolerance for those who victimize others.

Thank you again for the opportunity to testify in support of this bill, and I am happy to answer any questions you may have.

Schmidt, Melissa

From: Alexandra Wilburn <wilburnalexandra@gmail.com>
Sent: Wednesday, January 12, 2022 1:11 PM
To: Rep.Tusler; Heitman, Kathryn; Schultz, Nick; Rep.Kerkman; McMerrill, Abigail
Subject: Public Comment on Meeting 1.12

Follow Up Flag: Follow up
Flag Status: Flagged

Reps & Staff,

I'm unable to speak today during this public hearing. I must make my beliefs be known to ya'll if you read this. I prefer to speak in person because then I cannot be ignored.

I'm fervently against AB 838, AB 839 & AB 840.-AB 838 -AB 840 -AB 839. All of these bills are reactionary and vengeful. Instead of continuing practices found to not reduce crime, nor prevent crime, by sociological experts.

Violent behavior is a result of mental sickness and unresolved trauma. We need care, not vengeful acts based in fear.

Further the carceral system is a continuance of the 'peculiar institution' of enslavement. For it is written that if someone commits a crime they become a enslaved by the state and put into inhumane conditions (the UN found the U.S. guilty of genocide and other crimes relating to the Justice system)

we need a justice system not based in fear and revenge but actual accountability and public safety.

Regards,
Alexandra Wilburn

Schmidt, Melissa

From: Rep.Tusler
Sent: Thursday, January 13, 2022 9:58 AM
To: Schmidt, Melissa
Subject: FW: WACDL positions on Assembly Committee on Judiciary bills being considered today

Here is another items for Judiciary.

From: Anthony Jurek <ajurek@stroudlaw.com>
Sent: Wednesday, January 12, 2022 10:46 AM
To: Heitman, Kathryn <Kathryn.Heitman@legis.wisconsin.gov>
Cc: Rep.Tusler <Rep.Tusler@legis.wisconsin.gov>; Rep.Kerkman <Rep.Kerkman@legis.wisconsin.gov>; Rep.Ramthun <Rep.Ramthun@legis.wisconsin.gov>; Rep.Thiesfeldt <Rep.Thiesfeldt@legis.wisconsin.gov>; Rep.Horlacher <Rep.Horlacher@legis.wisconsin.gov>; Rep.Sortwell <Rep.Sortwell@legis.wisconsin.gov>; Rep.Cabrera <Rep.Cabrera@legis.wisconsin.gov>; Rep.Hebl <Rep.Hebl@legis.wisconsin.gov>; Rep.Ortiz-Velez <Rep.Ortiz-Velez@legis.wisconsin.gov>; Sarah Schmeiser <sshmeiser@stroudlaw.com>
Subject: WACDL positions on Assembly Committee on Judiciary bills being considered today

Dear Ms. Heitman,

I am a member of the Wisconsin Association of Criminal Defense Lawyers' Legislative Affairs Committee, and write to you in your capacity as the Committee Clerk for the Assembly Committee on Judiciary to express WACDL's position on the following bills:

AB 827: Oppose, as it increases the penalty for potentially petty crimes in ways which can already be accomplished through conspiracy and party to a crime statutes.

AB 829: Oppose, as it increases the penalty for potentially petty crimes and disproportionately targets the poorest of Wisconsin's citizens, while removing discretion from judges and occasioning the need for more jails.

AB 838: Oppose, as it's unconstitutional and fiscally irresponsible. See particularly the Wisconsin Constitution, Art. 1, Sec. 8 (2), that "Monetary conditions of release may be imposed at or after the initial appearance only upon a finding that there is a reasonable basis to believe that the conditions are necessary to assure appearance in court." Additionally, there are not currently enough jails to house the sort of populations this bill would occasion.

AB 839: Oppose as written, but would encourage further study of bail practices and efficacy. As written, this bill merely encourages shaming judges for following the Constitution (see comment on AB 838 above). However, a robust study of bail practices and efficacy in Wisconsin, perhaps in conjunction with UW and Marquette Law Schools, would be beneficial.

AB 841: Oppose, as it removes discretion from prosecutors and judges.

AB 842: Oppose, as it removes discretion of judges and the DOC and is fiscally irresponsible by keeping inmates incarcerated and supervised for longer than the Department of Corrections believes is necessary.

If you have any questions or concerns, I welcome you to reach out to me or our Committee Chair, Sarah Schmeiser, at the same number below.



Anthony J. Jurek

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Public Hearing, Committee of the Judiciary
Wednesday, January 12, 2022 1:00 PM 300 Northeast

Good Afternoon Members of the Judiciary Committee.

My name is Nate Gilliam, I'm a Milwaukee native born and raised.

I am here to strongly oppose the passage of Assembly Bills 838, 839 and 840. I believe that high bails do not increase safety, rather they make sure that only the wealthy and people with access to resources go free. I also believe that these bills reinforce racist, classist and ableist disparities that are embedded in our criminal legal system. There are laws currently in statute that allow for what these bills are asking for.

As the Center for American Progress reports: "spending [even a few days](#) in jail can result in people losing their job, housing, and even custody of their children. Studies show that pretrial detention can actually increase a person's [likelihood of rearrest](#) upon release, perpetuating an endless cycle of arrest and incarceration. Moreover, the cash bail system often [leads to the detention](#) of innocent people, effectively destroying their livelihoods."¹ It is unfair and unwise to raise bail amounts, higher bails only means that the wealthy will be able to reunite with their families.

The impact of increasing mandatory bail will fall disproportionately on Black, Brown and working class communities. These communities are already over-policed and over incarcerated, and adding the additional burden of mandatory minimum bail would create additional barriers to family reunification and community health. According to a report from the prison policy initiative [Wisconsin incarcerates more people than any other nation](#) in the world and according to a [recent report from NBC News](#) Wisconsin incarcerates the most Black people in the US.

Our communities deserve safety and compassion, not more criminalization, policing, incarceration and surveillance. The safest communities are the ones with the most resources. It is a profound tragedy when any person is harmed; people who have been hurt need and deserve access to community support, trauma services, and healing. It is for these reasons that we must prioritize investing in restorative and transformative justice and community-led safety. Thank you for your time.

¹ What You Need to Know About Ending Cash Bail, Center for American Progress, March 16, 2020
<https://www.americanprogress.org/article/ending-cash-bail/>