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## WISCONSIN LEGISLATIVE COUNCIL

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### MEETING MINUTES

### STUDY COMMITTEE ON BAIL AND CONDITIONS OF PRETRIAL RELEASE

Legislative Council Large Conference Room  
One East Main St., Ste. 401  
Madison, WI

November 13, 2018  
10:00 a.m. – 2:30 p.m.

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#### Call to Order and Roll Call

Chair Wanggaard called the meeting to order. The roll was called, and a quorum was present.

COMMITTEE MEMBERS PRESENT: Sen. Van Wanggaard, Chair; Sen. Fred Risser, Vice-Chair; Rep. Evan Goyke; and Public Members Adam Gerol, Scott Horne, Gary King, Jane Klekamp, Joseph McCleer, Kelli Thompson, and Maxine White.

COMMITTEE MEMBER EXCUSED: Reps. Cindi Duchow and Ron Tusler; and Public Members Jennifer Dorow and Paul Susienka.

COUNCIL STAFF PRESENT: Katie Bender-Olson and David Moore, Senior Staff Attorneys.

#### Approval of the Minutes of the October 16, 2018 Meeting

*Vice-Chair Risser moved, seconded by Public Member Thompson, to approve the minutes of the October 16, 2018 meeting. The motion was approved by unanimous consent.*

#### Discussion of Committee Assignment and Bill Drafts

Katie Bender-Olson, Senior Staff Attorney, Legislative Council, provided the committee with a brief overview of the six drafts prepared for the committee and suggested the committee begin by discussing the three drafts related to pretrial detention.

*LRB-0502/P2, relating to release prior to conviction of a person accused of a crime (first consideration) and LRB-0503/P2, relating to release prior to conviction of a person accused of a crime (first consideration)*

David Moore, Senior Staff Attorney, Legislative Council, explained that the draft joint resolutions represent opposite ends of the spectrum with respect to changes to the Wisconsin Constitution the committee could propose. He explained that LRB-0502/P2 would retain constitutional language authorizing the Legislature to create a pretrial detention process, but would remove the provisions the Wisconsin Constitution currently requires be in a pretrial detention statute. He then explained that LRB-0503/P2 would generally retain current constitutional provisions, with the exception of the requirement that any pretrial detention statute require the court to find by clear and convincing evidence that the person committed the underlying offense before he or she could be detained prior to trial. In addition, LRB-0503/P2 would allow pretrial detention to be sought in cases involving any offense where there is a significant risk the defendant may flee or pose a danger to public safety.

The committee discussed both drafts together. There was general agreement among committee members that any constitutional provision authorizing the Legislature to create a pretrial detention procedure should not be overly prescriptive. However, there was also general agreement that the broad grant of authority provided in LRB-0502/P2 could be narrowed to impose some requirements on any pretrial detention process created by the Legislature. The committee, therefore, directed staff to prepare a new draft joint resolution that would authorize the Legislature to create a pretrial detention process as long as that process: (1) is limited in application; (2) includes a pretrial detention hearing; and (3) guarantees the detention period is limited.

*LRB-0509/P3, relating to pretrial detention*

Mr. Moore explained that LRB-0509/P3 was drafted in response to the committee's request for a bill draft that would make changes to the pretrial detention statute that do not require a constitutional amendment. Mr. Moore explained that LRB-0509/P3 would modify the process to initiate the pretrial detention process; change certain rules that apply to pretrial detention hearings; and modify the circumstances under which delay is considered to have been caused by the defendant.

There was general discussion about how any recommendation the committee makes with respect to amending the Wisconsin Constitution would fit into recommendations to amend the statutes. Committee staff explained that the committee could consider drafting legislation with an effective date delayed until any passage of an enabling constitutional amendment. The committee directed staff to prepare a bill draft that would also make changes to the pretrial detention statute that would be contingent upon passage of a constitutional amendment.

*LRB-0506/P2, relating to bail jumping and providing a penalty*

Ms. Bender-Olson explained that LRB-0506/P2 is a bill draft that would modify the crime of bail jumping to replace the element of failing to comply with "the terms of his or her bond" with failing to appear before the court as required.

Ms. Klekamp and Ms. Thompson expressed support for LRB-0506/P2. Mr. Gerol voiced concern over limiting the crime of bail jumping only to failing to appear. Mr. King indicated that he generally does not prosecute failing to appear in court, but does prosecute other violations of bond conditions.

Following discussion, the committee requested staff prepare two additional bill drafts as follows:

- One draft that would retain the current elements of bail jumping, but that would penalize all bail jumping as a misdemeanor. (Under current law, bail jumping may be either a misdemeanor or a felony depending on whether the crime for which the accused has been released on bond is a misdemeanor or felony.)
- One draft that would modify the crime of bail jumping to criminalize only violations of bond conditions that either: (a) jeopardize public safety; or (b) are related to the offense with which the defendant is accused.

#### **LRB-0507/P2, relating to imposing bail in a criminal action**

Ms. Bender-Olson explained that this bill draft requires a court to explain its reason for imposing bail in a written order, and requires the court to review the bail for a defendant who continues to be detained after 24 hours as a result of the defendant's inability to meet the bail. There was general agreement among committee members that these requirements would create significant burdens on the courts and that the committee should not continue to pursue this proposal.

#### **LRB-0508/P2, relating to the use of a pretrial risk assessment when setting conditions for pretrial release**

Ms. Bender-Olson explained that this bill draft expressly authorizes courts to consider the results of a pretrial risk assessment in imposing bail or other pretrial release conditions.

There was general agreement in favor of including this language within the statutes. Ms. Klekamp inquired about whether the other permissible considerations listed in statute for imposing bail or other pretrial release conditions were based on research or evidence. She then suggested that because the nine factors used in the Arnold Foundation's public safety assessment are based on research into what factors predict whether a defendant is likely to fail to appear in court or commit a new offense, the committee might consider replacing the current permissible considerations with the Arnold Foundation's PSA factors. There was general agreement among committee members to make this change to the bill draft.

### **Plans for Future Meetings**

Chair Wanggaard noted the committee's future meeting date:

- December 11, 2018.

Chair Wanggaard also informed committee members that staff will poll members to determine their availability for a possible meeting in January.

### **Other Business**

There was no other business brought before the committee.

## **Adjournment**

The committee adjourned at 2:30 p.m.

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