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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

January 29, 2019  
10:05 a.m. - 12:32 p.m.

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#### Call to Order and Roll Call

Vice-Chair Risser called the meeting to order. The roll was called, and a quorum was not present.

COMMITTEE MEMBERS PRESENT: Sen. Van Wanggaard, Chair; Sen. Fred Risser, Vice-Chair; Rep. Evan Goyke, and Public Members Paul Susienka and Kelli Thompson.

COMMITTEE MEMBERS  
PARTICIPATING VIA PHONE: Rep. Cindi Duchow; and Public Members Jennifer Dorow, Adam Gerol, Scott Horne, Gary King, Jane Klekamp, Joseph McCleer and Maxine White.

COMMITTEE MEMBER EXCUSED: Rep. Ron Tusler.

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

<p><b>ATTENTION:</b> This was the final meeting of the Study Committee on Bail and Conditions of Pretrial Release. Committee members are requested to send any corrections regarding these Minutes to the Legislative Council staff. After the incorporation of any corrections, these Minutes will be considered approved by the committee.</p>
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## **Discussion of Committee Assignment and Bill Drafts**

Vice-Chair Risser called the meeting to order. Katie Bender-Olson, senior staff attorney, Legislative Council, explained that because the majority of the committee was present by phone due to the weather and the Joint Legislative Council rules do not allow voting by phone, the committee would discuss, but not take any votes, on bill drafts at the meeting. She explained that a mail ballot would be distributed following the meeting with any drafts the committee requests.

### **LRB-0850/2, relating to release of a person accused of a crime prior to conviction (first consideration)**

David Moore, senior staff attorney, Legislative Council, summarized the changes in LRB-0850/2 from a prior draft the committee considered at its December meeting. He then provided a brief summary of the draft joint resolution. He explained that the draft would amend the Wisconsin Constitution to remove much of the prescriptive language regarding pretrial detention, and allow the Legislature to create a pretrial detention procedure in statute. Under the draft, any law enacted by the Legislature authorizing courts to deny release prior to conviction must: (1) specify the circumstances under which an accused may be denied release prior to conviction; (2) limit the period of time an accused may be denied release prior to conviction; and (3) require that the court conduct a pretrial detention hearing. The draft would also modify language in the Constitution stating that all defendants are eligible for release under reasonable conditions to specify that all defendants are presumed eligible for release under reasonable conditions.

Committee members discussed the draft. No further revisions were requested.

### **LRB-0852/1, relating to pretrial detention**

Mr. Moore next explained that LRB-0852 would amend the pretrial detention statute, s. 969.035, Stats., and take effect only if an amendment to Wis. Const. art. I, s. 8 (3) is ratified. He explained that certain aspects of the bill draft were modeled on provisions in the federal, New Jersey, and District of Columbia pretrial detention statutes.

Mr. Moore highlighted key changes LRB-0852/1 would make to the pretrial detention process, including: (1) expanding the net of defendants eligible for pretrial detention; (2) allowing a court to initiate a pretrial detention hearing on its own motion with respect to certain defendants; (3) modifying the burdens of proof that apply during the pretrial detention hearing; and (4) changing the limits on the amount of time a defendant could be detained prior to a pretrial detention hearing.

Committee members discussed the draft and also engaged in a broader discussion about how a workable pretrial detention process should fit in with other components of a pretrial system, such as a robust pretrial service program. No further revisions were requested.

### **LRB-1225/P1, relating to modification of bail in a criminal action, submitted by Representative Evan Goyke**

Representative Goyke asked committee members to support LRB-1225/P1, which he requested be drafted for the committee's consideration. He explained that this draft would

require a court to review the bail of a defendant for whom bail is imposed and who after 24 hours from the time of initial appearance before the judge or a bail review continues to be detained in custody as a result of the defendant's inability to meet the bail. This bill draft would take effect only if an amendment to the Wisconsin Constitution permitting the Legislature to revise the pretrial detention statute is ratified. Representative Goyke explained that his purpose in drafting LRB-1225/P1 was to create a mechanism to ensure that bail not have the effect of detaining a defendant solely because of the defendant's inability to pay.

Committee members were generally supportive of this concept, but asked that the bill draft be modified to require a bail review 72 hours after the defendant's initial appearance and weekly thereafter. The committee also requested the bill draft be modified to remove the requirement that the court's reasons for continuing bail be set forth on the record and that the bill draft be modified to specify that these review hearings could be conducted by court commissioners.

**LRB-1261/1, relating to county study of policies and practices related to prosecutions for bail jumping**

Ms. Bender-Olson told the committee that LRB-1261/1 was drafted in response to discussion that occurred at the committee's December meeting and was based on an idea Judge Horne had proposed. Ms. Bender-Olson explained that the bill draft would require each county to create a criminal justice coordinating council (CJCC) that includes representatives of the county's criminal justice system and members of the public. Under the bill draft, each CJCC would be required to review county practices regarding the crime of bail jumping and to develop policies and guidelines related to charging the crime.

Judge Horne told the committee that after seeing the idea in writing, he does not support the proposal because he is not convinced that the additional layer of bureaucracy the proposal would create is merited. Judge White also expressed concerns about the proposal. The committee agreed to not move forward with this draft.

**LRB-0923/1, relating to the factors to consider when setting conditions for pretrial release**

Ms. Bender-Olson explained that LRB-0923/1 replaces the list of factors for a court to consider in imposing bail or other conditions of pretrial release, under current law, with the factors used in the Public Safety Assessment developed by the Laura and John Arnold Foundation. The bill draft also specifies that a court could consider the results of a pretrial risk assessment and any other consideration brought forth at the bail hearing.

Committee members raised a number concerns about using the factors from the Arnold Foundation's risk assessment. Among other concerns, committee members noted that the research these factors are based on may change and that simply listing the factors as permissible considerations does not accurately capture how these factors are weighted and incorporated into the risk assessment tool.

The committee requested that the bill draft be modified to retain the current law factors and add to these factors the results of a validated pretrial risk assessment.

**Other Business**

There was no other business brought before the committee.

**Adjournment**

The committee adjourned at 12:32 p.m.

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