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.

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Rep.Wichgers@legis.wi.gov

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.

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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.

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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.

Wisconsin State Public Defender

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Protecting Justice for all Since 1977

Kelli S. Thompson
State Public Defender

Jon Padgham
Deputy State Public Defender

Assembly Committee on Judiciary
Wednesday, January 12, 2022
Assembly Bills 829, 838, 840-842

Good morning Chair Tusler and members,

Thank you for the opportunity to provide information on the bills scheduled for a hearing today. The State Public Defender (SPD) provides representation for approximately 120,000 clients per year in criminal cases starting with the initial appearance to set bail through the entirety of the circuit and appellate court processes. Bills such as those on the agenda today affect the constitutional rights of clients and court procedures.

Assembly Bill 829 (Mandatory minimum on 3rd offense retail theft)

AB 829 creates a 180 day mandatory minimum sentence for third or more offense retail theft.

There is little evidence to suggest mandatory minimum sentences serve as an effective deterrent against criminal activity. A presumptive minimum sentence offers a minimum guideline but allows for a sentence beneath that minimum if the reasons for doing so are placed on the record at sentencing.

In addition, by not allowing the court to place an individual on probation, empirical studies have shown that we are likely to increase their future risk for criminal activity. That evidence shows placing a person who is considered low to medium risk to reoffend with a higher risk population in jail or prison, increases that individual's risk to reoffend in the future.

Finally, it is important to highlight that as drafted, this bill would apply a minimum sentence for third offense retail theft regardless of the value of merchandise taken in the qualifying offense. To use a hypothetical, a 17-year-old caught taking a loaf of bread on three separate occasions would be charged as an adult and could not be sentenced to less than 180 days.

Removing discretion at sentencing for retail theft at any value will result in an increase in the number of individuals sentenced to jail or prison. The laudable goal of community safety has not benefited from a desired deterrent effect or increased confinement through mandatory minimum sentences. To the contrary, such measures will increase the number of people with limits on their future housing, employment, and educational prospects because of the collateral consequences of conviction.

Assembly Bills 838 (minimum bail based on previous conviction)

AB 838 sets a minimum bail amount of $10,000 for an individual who has a prior felony or violent misdemeanor conviction.

It is a fundamental principle that individuals accused of committing a crime are presumed innocent until proven guilty. As the U.S. Supreme Court has noted, "[i]n our society social liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." (*United States v. Salerno*, 481 U.S. 739, 755, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987)). In determining whether to impose pretrial conditions of release under current law, a court first considers whether an individual is likely to appear at future court hearings. A monetary condition of release, bail, may be imposed only if the court finds that there is a reasonable basis to believe it is necessary to ensure the individual's appearance in court. The court may also impose any reasonable non-monetary condition of release to ensure a defendant's appearance in court, protect members of the community from serious bodily harm, or prevent the intimidation of witnesses. Courts also have the ability to deny pretrial release from custody to persons accused of certain violent crimes.

The Wisconsin Constitution allows the use of cash bail based on the sole factor of ensuring that an individual will appear for future court hearings. The amount of cash bail is a "reasonable condition" of pretrial release as determined in each individual case by a judge or court commissioner. As presented, AB 838 is both contrary to evidence based policy and constitutional due process protections.

As noted, the constitution empowers judges or court commissioners the exclusive authority to determine the amount of cash bail that may be set. It does not empower the enactment of laws that set a minimum cash bail amount. Attempting to legislate a minimum cash bail strains the separation of powers between the legislative and judicial branches of government. In addition, for many indigent defendants, $10,000 is an unreasonable amount of bail which raises a second line of constitutional challenges to AB 838.

Aside from constitutional questions, AB 838 does not comport with evidence-based policy. In fact, it exacerbates the fallacy of cash bail as a proxy for future court appearance or community safety (though community safety is not a constitutionally permitted reason to set cash bail amounts.) Cash bail often results in poor people charged with non-violent crimes staying in custody pre-trial while people with access to resources who are charged with violent crimes are able to post cash bail and be released.

Assembly Bill 840 (minimum bail based on previous bail jumping conviction)

AB 840 sets a minimum bail amount of $5,000 for an individual who was previously convicted of bail jumping. Concerns about AB 840 are substantially similar to AB 838 with the important distinction of the frequency that bail jumping is charged and convicted.

Bail jumping can be charged anytime someone violates any condition of pre-trial release. If the underlying charge is a misdemeanor, then bail jumping is a misdemeanor. Similar for a felony. It is not uncommon for a person to be charged and convicted of multiple counts of bail jumping even if they are not convicted of the original charge.

Given that bail jumping is usually one of the top three charges issued in Wisconsin, AB 840 becomes an almost universal minimum bail amount for anyone who may have been convicted of bail jumping years earlier for violating a condition of release and is again involved in the criminal justice system.

Assembly Bill 841 (Felon in possession of a firearm charging process)

AB 841 changes the process for amending or dismissing charges involving felon in possession of a firearm and limits access to deferred prosecution programs.

The total effect of the bill will be to limit the ability for the criminal justice system to consider the individual circumstances of these cases. Especially in combination with a bill like Assembly Bill 174 which requires a revocation recommendation based on new criminal allegations, it is not difficult to envision a scenario where an individual is charged and, though a prosecutor may seek to dismiss the charges later, a judge does not allow it and a person is revoked based on a lower standard of proof.

Assembly Bill 842 (Limiting earned release programs)

AB 842 limits the ability for an individual to qualify for the earned release program, the challenge incarceration program, or the special action release program if they have been sentenced based on a violation of a violent crime.

These limits will place additional burdens on an already overcrowded prison system.

The total effect of Assembly Bills 829, 838, 840, and 841 will be to significantly increase the population of Wisconsin`s jails and prisons while AB 842 will remove the few limited provisions that allow the Department of Corrections to provide release to appropriate individuals in limited circumstances. It is not unrealistic to expect that the bills will result in a need for a considerable number of new jail and prison beds, a cost not accounted for in the package.

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

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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.

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.

Wisconsin Justice Initiative

January 11, 2022

Assembly Judiciary Committee
Rep. Ron Tusler, Chair
Room 22 West
State Capitol
P.O. Box 8953
Madison, WI 53708

Re: Assembly Bills 838 and 840

Dear Committee Members:

Thank you for the opportunity to provide comments on Assembly Bills 838 and 840. I offer these written remarks on behalf of the Wisconsin Justice Initiative, whose mission is to improve the quality of justice in Wisconsin by educating the public about legal issues and encouraging civic engagement in and debate about the judicial system and its operation.

Bail and pretrial release are important public policy areas that deserve careful attention, especially considering the recent tragic and heartbreaking events in Waukesha County. The violence and loss of life at the Waukesha Christmas parade sent shockwaves through our state. It has now prompted an examination of our bail laws. I write today to highlight certain principles that should be kept in mind as the debate on these important questions moves forward.

First and foremost, it's important to understand that good bail decisions are made by relying on evidence. The problem that led to the tragedy in Waukesha was NOT that the evidence supported the decision to recommend a risky and dangerous person for release. The problem was that the evidence that was available – evidence that flagged the risk for violence and the risk for flight – was ignored.

The process of setting bail in Milwaukee County (and other jurisdictions) is assisted by a risk tool called the Public Safety Assessment (PSA). Each defendant who is arrested

on new charges receives a risk score, and the results are available for prosecutors and defense attorneys who make bail recommendations, and to court commissioners and judges, who make the ultimate bail decisions. Among the factors that the PSA "scores" are a person's prior record of convictions, the type of offense they are currently facing, their history of missing court, their history of violence, their age, and their record of prior incarceration.

Assembly Bill 838 would set a minimum bail for a person who has certain prior convictions; AB 840 would set a minimum bail for someone with a previous bail jumping conviction. Unfortunately, while both bills sound reasonable, they ignore the principle that good bail decisions are not "one size fits all," but instead are based on individual evidence in specific cases. Individual risk assessments would likely result in cash recommendations for many of the same defendants that would be covered by these bills, BUT NOT ALL. For example, a person might have a bail jumping conviction for drinking alcohol while out on bail for a misdemeanor case from a dozen years earlier – absolute sobriety is often a condition of release. If they are now charged with another minor offense and are not otherwise a public safety or flight risk, should they be required to post $5,000? The PSA and other risk instruments instead balance the various risk factors in a validated process that is based on examining data from hundreds of thousands of cases across the country.

The individual in the Waukesha Christmas parade case should have had high bail because of his elevated score on the PSA, a score that resulted from a number of factors, including his history of non-appearance and the fact that he was out on bail already when he was arrested on new charges. In short, the risk tool worked, but it wasn't followed. This person should have had high cash bail, but that doesn't mean that another person charged with (and presumed innocent of) a serious offense can't be safely released if other risk factors are not present.

In the last couple decades, we've increasingly come to rely on evidence, not emotion, in making decisions in the criminal justice system. This should be applauded, not criticized, because it results in rational decisions rather than ones driven by prejudice and fear. It's also important to remember that unnecessary pretrial detention has societal costs and creates a two-tiered justice system – one for the rich and one for the poor. After all, the $5,000 minimum bail in AB 840 would have a very different impact on a poor person working part-time at minimum wage than a rich person with the money easily available. It's also important to note that studies have shown strong

correlations between the length of time a low or moderate-risk person spends in pretrial detention and the likelihood that they would be re-arrested later in life. In other words, detaining low-risk individuals has societal costs – it can make us less safe.

Respectfully, I submit that well-informed bail decisions do not result from "minimum cash bail" legislation that doesn't take into account different risks represented by individual defendants. Well-informed bail decisions are made by experienced prosecutors, defense counsel and judges – *when* they rely on the evidence in each case. The key is following the evidence, meaning appropriate high cash recommendations when a person's history includes pending violent offenses, an extensive record of convictions, and a demonstrated history of missing court, as was the case with the defendant in the Waukesha Christmas parade incident. It also means release on recognizance even in some serious cases, IF the evidence shows a person is not high-risk.

It is important to remember the teaching of the United States Supreme Court from the case of *Salerno v. United States*, 481 U.S. 739 (1987), that "(i)n our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." Any law that violates this premise will undoubtedly face challenges under both the state and federal constitutions.

Crucial evidence was missed or ignored in the Waukesha case, and the result was a tragedy. This should never happen in the future. We must make sure that future bail decisions are the result of an evidence-based, validated risk assessment that provides information to justice system professionals to make smart decisions in each case. The evidence points the way, but it gets the right result only if it's not ignored.

Sincerely,

Craig R. Johnson
Board President

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

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

Response to Assembly Bill 838/Assembly Bill 840

My name is Mia Noel and I am from Milwaukee, WI. Thank you for the opportunity to speak at this hearing regarding proposed Assembly Bill 838 and 840. My community and fellow Wisconsinites will be harmed by bill 838 and bill 840. We were all devastated by what happened in Waukesha this winter. The sponsors of these bills are hoping to use this terrible tragedy to push through harmful legislation. Despite their inflammatory and misleading rhetoric, very few people out on bail commit violent crimes.

There are higher recidivism rates and new crimes that are committed by those that are subject to pretrial detention than those that are not. A 2020 study in Cook County (a county that has passed actually good bail reform), showed that 97% of defendants released pretrial were NOT charged with a new violent crime. The research does not support increasing bail amounts or subjecting more people to pretrial detention.

Using a crime committed by a Black man, even one this horrific, to further racist, classist laws that harm people is despicable and ignores what is just and what prevents violence. There is a wealth of research that says bail (and especially high bails) harm communities and creates a dual system where rich people can buy their way out of jail but poor people must sit in jail for months. How can that possibly be just?

Higher bails do NOT keep us safe, they DO keep poor people in jail for months. These are people who have NOT been convicted of a crime. These cases could end in dismissals or not guilty decisions. But while someone sits in jail they could lose their jobs, housing, children and risk illness or death. Once they are released they return to their communities in a more precarious position. This destabilizes families and communities. Additionally, this costs Wisconsin taxpayers millions of dollars each year to keep poor people in jail.

According to our current system and by our WI constitution, bail cannot be used to keep people in jail. Mandating increased bail amounts is tantamount to keeping more people in jail against our constitution and against what is best for our communities. Judges DO have the ability to remand people they deem a risk to the community. Judges currently have that ability without the need for additional laws that would harm poor Wisconsinites across the state. These poorly written bills would mean many non-violent defendants would be held on bails of $10,000, an amount out of the reach of many working class Wisconsinites.

If the bills' sponsors were interested in preventing tragedies they would be investing in making mental health resources accessible and evaluating how domestic violence is handled. Both are potential factors in violence (on a systemic level and pertinent to what happened in Waukesha) and should be addressed. Mandating increased bail is neither constitutional nor is there

evidence that it will decrease violence, there is strong evidence that it will, however, cause further harm to communities across the state.

Specifically addressing Assembly Bill 840

Any law that increases the likelihood of more people entering our jails is counter to the interests of people in my community and, given the high cost of incarcerating individuals, impacts all Wisconsinites.

Mandating how defendants are treated ignores the realities of how and why people miss their court appearances and prevents discretion in bail decisions. The majority of people miss court dates because of benign reasons like a fear of missing work, lack of childcare and lack of transportation. Problems which any working person or parent could readily understand.

In other states there has been success in incorporating text reminders, making court dates easy to access and other methods to make sure folks make their appearances.

Wisconsin DOES need bail reform but that reform needs to be based in science and informed with input from the community. Bill 838 and Bill 840 are not the solution.

Citations:

1. **The longer low-risk defendants are detained, the more likely they are to have new criminal activity pending trial. Defendants detained 2 to 3 days are 1.39 times more likely than defendants released within a day; those detained 31 or more days are 1.74 times more likely. Being detained pretrial for two days or more is related to the likelihood of post-disposition recidivism. Generally, as the length of time in pretrial detention increases, so does the likelihood of recidivism.**
   LJAF_Report_hidden-costs_FNL.pdf
2. **Loyola study confirms that bail reforms increase equal justice, do not increase crime**
   https://www.cookcountycourt.org/MEDIA/View-Press-Release/ArticleId/2796/Loyola-study-confirms-that-bail-reforms-increase-equal-justice-do-not-increase-crime
3. **Bail reform, which could save millions of unconvicted people from jail, explained. Hundreds of thousands of legally innocent people languish in jails on any given day simply because they can't afford bail.**
   https://www.vox.com/future-perfect/2018/10/17/17955306/bail-reform-criminal-justice-inequality
4. **An increasing number of studies show that failure to appear rates can be drastically reduced by simply redesigning confusing summons notices and sending text message reminders.A January 2018 University of Chicago study found that failure to appear rates dropped by almost a third (32 percent) one month after New York City implemented these.**
   https://theappeal.org/the-failure-to-appear-fallacy/

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/