



WISCONSIN LEGISLATIVE COUNCIL

MEETING MINUTES

STUDY COMMITTEE ON BAIL AND CONDITIONS OF PRETRIAL RELEASE

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

August 16, 2018
10:00 a.m. – 3:40 p.m.

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, Co-Chair; Reps. Cindi Duchow, Evan Goyke, and Ron Tusler; and Public Members Jennifer Dorow, Adam Gerol, Gary King, Jane Klekamp, Joseph McCleer, Kelli Thompson, Paul Susienka, and Maxine White.

COMMITTEE MEMBER EXCUSED: Public Member Scott Horne.

COUNCIL STAFF PRESENT: Terry C. Anderson, Director; Katie Bender-Olson and David Moore, Senior Staff Attorneys; and Tracey Young, Senior Administrative Assistant.

APPEARANCES: Terry C. Anderson, Director, Legislative Council Staff; Amber Widgery, Senior Policy Specialist, National Conference of State Legislatures; Dr. Constance Kostelac, Director, Bureau of Justice Information and Analysis, Wisconsin Department of Justice; Tiana Glenna, Criminal Justice Manager, Eau Claire County; and the Honorable Jeffrey Kremers, Retired Milwaukee County Circuit Court Judge.

Introductions and Study Committee Overview

Chair Wanggaard welcomed members and reviewed the Study Committee's scope. Committee members introduced themselves and summarized their backgrounds and interest in the topic of bail and pretrial release.

Opening Remarks

Chair Wanggaard introduced Terry C. Anderson, Director, Legislative Council staff. Mr. Anderson thanked members for their service and remarked upon the history of the Legislative Council and the procedures followed throughout the study committee process.

Presentation by Legislative Council Staff

Katie Bender-Olson and David Moore, Senior Staff Attorneys, Legislative Council staff, summarized the material in Staff Brief 2018-06, *Study Committee on Bail and Conditions of Pretrial Release*. The summary highlighted relevant terms, as well as the constitutional and statutory frameworks for bail and pretrial release in Wisconsin.

Presentations by Invited Speakers

Amber Widgery, Senior Policy Specialist, National Conference of State Legislatures

Ms. Widgery provided a presentation highlighting state legislation relating to bail and pretrial release proposed and passed across the country in recent years. She noted that every state legislature has acted to change pretrial policy in some way since 2012, and that legislative efforts have been bipartisan. Ms. Widgery explained that nationwide policy has moved to evaluating pretrial risk posed by a particular individual, rather than focusing on the crime charged.

Ms. Widgery also identified several areas of pretrial policy addressed by state legislation since 2012, including: use of risk assessment tools; presumption of release on recognizance or non-financial conditions; conditions of pretrial release; pretrial services; addressing victims during the pretrial process; citation in lieu of arrest; and deflection and diversion programs. Following the presentation, Ms. Widgery responded to questions from committee members.

Dr. Constance Kostelac, Director, Bureau of Justice Information and Analysis, Wisconsin Department of Justice and Tiana Glenna, Criminal Justice Manager, Eau Claire County

Dr. Kostelac and Ms. Glenna provided a presentation regarding Wisconsin's evidence-based decision making pretrial pilot in seven counties throughout the state. The speakers explained the reasons for using evidence based decision making, the principles of evidence-based decision-making, and the multi-phase approach employed by the pilot project. Dr. Kostelac and Ms. Glenna addressed the key decisions that occur during the pretrial period, including: whether to book an individual or cite and release the individual; whether to charge the individual; whether to divert the individual; whether to detain the individual; and whether to impose bail and conditions or release. The speakers also noted research demonstrating short and long-term consequences of pretrial detention.

Dr. Kostelac and Ms. Glenna provided an overview of the model policies that will be developed and implemented by the seven counties participating in the pilot project. These

policies include: use of an actuarial risk assessment tool; development of an effective pretrial agency or pretrial services; implementation of risk-based supervision; implementation of a court reminders process; adoption of a violation matrix to guide responses to pretrial violations; and performance measurement.

The presenters also explained risk assessment tools, which are used in the pretrial context to assess an individual's risk of: (1) not appearing for court; and (2) being arrested on a new criminal offense. The tools are based on research regarding likelihood of pretrial success or failure based on specific static and dynamic factors, such as prior arrests, convictions, and incarceration; prior failure to appear; pending charges; age; substance use; residence; and employment. Dr. Kostelac and Ms. Glenna emphasized that risk assessment tools are intended to supplement judicial discretion, and not replace it.

Finally, the presenters noted the importance of data collection for monitoring and measuring outcomes of the county pretrial pilots. They stated that the key measures related to pretrial outcomes are failure to appear rates and rates of new criminal activity, and provided data regarding appearance rate and non-arrest rate based on risk level from Kentucky and Washington D.C. Following the presentation, Dr. Kostelac and Ms. Glenna responded to committee member questions. Members discussed challenges faced by the pretrial pilot program, including data collection and access to criminal justice databases, limited resources to provide pretrial supervision, and buy in from system stakeholders.

The Honorable Jeffrey Kremers, Retired Milwaukee County Circuit Court Judge

Judge Kremers provided a presentation regarding evidence based pretrial release and monitoring in Wisconsin and noted the limited purpose for monetary bail under state law. He discussed pretrial release and detention as measuring and managing risk, and stated that pretrial decisions should be based on risk posed by an individual and not the offense charged. Judge Kremers discussed evidence of pretrial approaches that work, such as implementing differential pretrial supervision strategies based on risk, and those that do not work to improve court appearance rates or community safety, such as monetary bail.

Judge Kremers noted the considerable variation in pretrial practices among counties and the attempt by the pretrial pilot project to test legal and evidence-based practices. He also explained what pretrial risk assessments are, how they are used, and the risk factors that are generally incorporated into an assessment. Judge Kremers highlighted one risk assessment tool, the Public Safety Assessment, and explained how the tool was developed. He noted the effectiveness of certain approaches like pretrial detention, secured money bail, and pretrial monitoring in improving court appearance rates and improving public safety.

Judge Kremers detailed outcomes for Milwaukee County related to the county's implementation of a decision making framework. He also discussed Wisconsin's pretrial detention statute and identified reasons why the process is not used, including requirements related to evidence, the 10-day timeframe for holding a hearing, and the inability of the prosecution to access police reports within that timeframe.

Finally, Judge Kremers suggested next steps for making changes related to bail and pretrial release under Wisconsin law. The suggestions included making changes to the pretrial detention statute, providing for pretrial resources either locally or at the state level, and

developing statewide data systems. Judge Kremers responded to committee member questions following the presentation, including questions about buy in from judges and district attorneys to the pretrial services assessment tool and the need for a constitutional amendment to change the existing preventative detention procedure.

Discussion of Committee Assignment, Suggestions for Future Agenda Items, and Information Requests

Chair Wanggaard invited committee members to discuss the information they received and to make suggestions for future agenda topics or speakers. Committee members discussed sources of information regarding pretrial services and the ability of counties to offer these services, as well as possible field trips to observe aspects of the pretrial process. Members also discussed concerns about access to and sharing of data between different entities in the criminal justice system. Committee members mentioned possible speakers for future meetings, including pretrial service providers, the Dane County Clerk of Court, and Judge Truman Morrison from Washington D.C.

Plans for Future Meetings

Chair Wanggaard noted the committee's future meeting dates:

- September 17, 2018.
- October 16, 2018.
- November 13, 2018.
- December 11, 2018.

Other Business

There was no other business brought before the committee.

Adjournment

The committee adjourned at 3:40 p.m.

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[The preceding is a summary of the August 16, 2018 meeting of the Study Committee on Bail and Conditions of Pretrial Release, which was recorded by WisconsinEye. The video recording is available in the WisconsinEye archives at <http://www.wiseye.org/Video-Archive>.]