



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

December 11, 2018
10:00 a.m. – 3:25 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, Vice-Chair; Rep. Evan Goyke, Rep. Cindi Duchow; and Public Members Jennifer Dorow, Adam Gerol, Scott Horne, Gary King, Jane Klekamp, Joseph McCleer, Paul Susienka, Kelli Thompson, and Maxine White.

COMMITTEE MEMBER EXCUSED: Rep. Ron Tusler

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

Approval of the Minutes of the November 13, 2018 Meeting

Ms. Thompson moved, seconded by Mr. Susienka, to approve the minutes of the November 13, 2018 meeting. The motion was approved by unanimous consent.

Discussion of Bill Drafts

David Moore, Senior Staff Attorney, Legislative Council, provided the committee with an overview of the five drafts prepared for the committee and began the discussion with the two drafts related to pretrial detention.

LRB-0850/1, relating to release of a person accused of a crime prior to conviction (first consideration)

Mr. Moore explained that LRB-0850/1 would amend the Wisconsin Constitution to remove much of the prescriptive language regarding pretrial detention, and allow the Legislature to create the pretrial detention procedure in statute. Under the draft, any law enacted by the Legislature authorizing courts to deny release prior to conviction must: (1) limit 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. Committee members discussed whether constitutional changes must be paired with proposed changes to the pretrial detention statute. The pretrial detention statute creates a procedure that members concluded would remain unusable without changes.

Next, committee members discussed the level of specificity that should remain in the Constitution. Certain members advocated for paring back Wis. Const. art. I, s. 8 (3) to a simple statement empowering the Legislature to authorize detention prior to trial. Some members advocated for eliminating any reference to pretrial detention while other members advocated for maintaining a minimum level of protections for defendants within the constitutional provision.

Members discussed whether the study committee should put forward any pretrial detention legislation at all, or whether the committee should instead recommend that the State Criminal Justice Coordinating Council be tasked with working on bail and pretrial release reform. Other members disagreed with this suggestion and said that taking no action would be unacceptable.

Committee members debated whether any proposed constitutional amendment should include language confirming the presumption of innocence for accused individuals, stating that release prior to trial is presumed, and asserting that pretrial detention is the limited exception to the rule. Some members also expressed concern that existing constitutional language stating that the Legislature may authorize, "but may not require," pretrial detention prevents the Legislature from making offenders accused of certain crimes presumptively subject to pretrial detention.

Members also commented that if the state moves toward pretrial release and detention decision-making based entirely on risk assessments or evidence-based practices, it must also give counties resources to implement the necessary pretrial infrastructure. The committee noted that states that have successfully transformed their pretrial systems have provided supports at the state level.

The committee requested a revised joint resolution to amend the Wisconsin Constitution for the January meeting. The members asked that the draft revise art. I, s. 8 (2) to provide that all persons are "presumed" eligible for release under reasonable conditions. They also asked that art. I, s. 8 (3) be revised to delete the language stating the Legislature "may not require" circuit courts to deny release prior to conviction. Next, the members asked that the wording of the first criterion appearing in SECTION 2 of LRB-0850/1 be changed slightly.

LRB-0852/P2, relating to pretrial detention

Mr. Moore next explained that LRB-0852/P2 amends the pretrial detention statute, s. 969.035, Stats., to incorporate both changes requested by the committee that would require a constitutional amendment, as well as changes that would not. He described individual changes being made to the statute and asked for committee feedback. Mr. Moore explained that the modifications to current law made by LRB-0852/P2 include: the circumstances under which pretrial detention may be used; the procedure for initiating pretrial detention; the rules that apply at a pretrial detention hearing; the required showings the state must make at a pretrial detention hearing; and the period of time for which a person can be detained before conviction.

Committee members discussed whether to move forward with only statutory changes, or whether to move forward with both a proposed constitutional amendment and statutory changes. Members largely agreed that the committee should do both at the same time.

Members discussed the expanded circumstances under which pretrial detention could be used under the bill draft. Specifically, members discussed the new criteria allowing the pretrial detention procedure to be initiated for a person accused of any offense if: (1) the court finds a serious risk that the person poses a danger to another person or the community; or (2) the court finds there is a serious risk that the person will not appear in court. Committee members discussed whether a shorter period of pretrial detention should be permitted for misdemeanor offenses, or whether pretrial detention is permitted at all for misdemeanor offenses under U.S. Supreme Court case law. In addition, members discussed whether the pretrial detention statute should be amended to include a list of factors for a court to consider in determining whether there is a “serious risk” that a particular person poses a danger, similar to the rebuttable presumption in the D.C. Code that certain offenses pose a danger.

Committee members suggested a number of changes to the draft, such as maintaining certain language in s. 911.01 (4) (c), Stats., that is deleted under LRB-0852/P2, allowing initiation of the pretrial detention procedure upon the court’s own motion, ensuring that references to a “circuit court” include court commissioners, and permitting an initial pretrial detention determination by a commissioner to be reviewable by a court. Members also noted that expanding eligibility for pretrial detention to include misdemeanors under specified circumstances requires references to s. 969.03, *Release of defendants charged with felonies*, in the pretrial detention statute to be changed.

LRB-0864/P2, relating to bail jumping and providing a penalty and LRB-0866/P2, relating to bail jumping and providing a penalty

Katie Bender-Olson, Senior Staff Attorney, Legislative Council, explained the two bill drafts making changes to the crime of bail jumping. She noted that LRB-0866/P2 changes the elements of the crime such that bail jumping applies to intentional failure to appear as required, or to intentional failure to comply with certain terms of an individual’s bond. Under the draft, an accused must violate a term of bond that: (1) relates to the offense for which the person has been released on bond; or (2) in a way that endangers public safety. Ms. Bender-Olson also explained that LRB-0864/P2 changes the penalty for bail jumping such that a violation of the statute is always a misdemeanor, regardless of the underlying offense.

Committee members expressed concern about the changes to the elements of bail jumping made by LRB-0866/P2. Members noted that individuals would not know which violations of bond constitute a crime, and which do not. In addition, the committee discussed the issue of overcharging bail jumping as a method of increasing county case numbers. Members noted that this issue could potentially be addressed without a law change by suggesting to the Department of Administration that the agency alter its formula for calculating district attorney needs.

Committee members discussed whether to require counties to create policies to clarify which violations of bond law enforcement should arrest an individual for violating, and which would be dealt with administratively. Members noted that a bail jumping charge remains an important tool for prosecutors in some situations, and that there is not statewide support for limiting the circumstances under which the crime may be charged or for reducing the penalty. Committee members also commented that if the crime of bail jumping is no longer available for certain bond violations, these violations could only be penalized as contempt of court.

The committee determined that the staff should communicate directly with Mr. Gerol to develop two drafts for consideration at the January meeting. One draft will propose a tiered system of bail jumping violations, and the other draft will propose requiring each county criminal justice coordinating council or other entity to develop policies regarding how various violations of bond should be treated.

LRB-0923/P2, relating to the factors to consider when setting conditions for pretrial release

Ms. Bender-Olson briefly described LRB-0923/P2 at the conclusion of the meeting. She noted that the bill draft replaces the current law list of factors for a court to consider in imposing bail or other conditions of pretrial release with the factors used in the Public Safety Assessment developed by the Laura and John Arnold Foundation. The committee requested that an additional consideration be added to the list under the bill draft allowing the court to take into account specifically enumerated considerations brought forward at the bail hearing.

Plans for Future Meetings

Chair Wanggaard noted the committee's future meeting date:

- January 29, 2019.

Other Business

There was no other business brought before the committee.

Adjournment

The committee adjourned at 3:25 p.m.

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