

***Representative Gard will chair for the following bill.***

**AB 163 -Release of Persons Convicted of Misdemeanors Pending Appeal**

**Recommendation**

Support the bill in its current form.

**Bill History**

Introduced on 03/06/97 by Kreuser/Grobschmidt; passage recommended by Assembly Committee on Judiciary (6-3) on 12/23/97; referred to JFC on 12/23/97.

**Executive Action Needed**

Act on any amendments introduced today.  
Recommend passage.

**Note**

In general, the bill gives judges discretion as to whether a person convicted of a misdemeanor and who is appealing that conviction can be released pending the appeal. Current law requires that the person be released while the appeal is pending. The bill would allow a release, but not require it.

We have not heard from Milwaukee County on the bill, but the State Bar inquired whether its passage would create a burden on the county jail systems. Certainly, more misdemeanants would serve time during the appeal process, but most appeals will be denied and that time would be served anyway. In the end, it would likely make little difference to the counties in terms of jail crowding.



## Legislative Fiscal Bureau

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March 11, 1998

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 163: Release of Persons Convicted of Misdemeanors Pending Appeal

### BACKGROUND

Under current law, a person who has been convicted of a crime and sentenced to imprisonment and who is appealing his or her conviction may seek release from the sentence of imprisonment while his or her appeal is pending. If the person has been convicted of a felony, the trial court may allow the person to be released while the appeal is pending, but the trial court is not required to do so. If the court does order the person released while the appeal of the felony is pending, the court must set appropriate conditions of release, which may include bail if that is necessary to assure the appearance of the person. If the person is appealing a misdemeanor conviction (punishable by incarceration in a county jail for nine months or less), the court is required to allow the person to be released from imprisonment pending the appeal.

### SUMMARY OF BILL

Assembly Bill 163 would eliminate the requirement under current law that a person who has been convicted of a misdemeanor and who is appealing that conviction must be released while his or her appeal is pending. Under the bill, a court would be allowed to release a person who is appealing a misdemeanor conviction, but would not be required to do so. The bill specifies that if a court does order the person released while an appeal is pending, the court must set appropriate conditions of release, which may include bail if that is necessary to assure the appearance of the person. Provisions of AB 163 would apply to offenses committed on or after the effective date of the bill.

Assembly Bill 163 was recommended for passage by the Assembly Committee on Judiciary on December 23, 1997, on a 6 to 3 vote.

## **FISCAL EFFECT**

Fiscal notes to the bill were submitted by the Department of Corrections, Courts, the District Attorneys and the Public Defender.

**Department of Corrections.** Corrections indicates that there would be no cost to the Department related to AB 163. The Department indicates, though, that counties may incur increased costs if additional offenders are detained pending appeal. Since the decision to grant release pending appeal would be discretionary, Corrections could not estimate how many offenders would be held.

The Committee should note that time spent in jail by an inmate pending an appeal counts toward incarceration time. As a result, an inmate could complete a misdemeanor sentence before an appeal of that sentence is completed. Therefore, unless an appeal is successful, counties will experience the same costs of incarceration. These costs will be incurred either during an appeal (as under AB 163) or after an appeal (as under current law). However, county costs may increase from the housing of a prisoner that did not need to be detained, to the extent that any appeal is successful and an inmate has been held during the appeals process.

**Courts and District Attorneys.** Under current law, a person convicted of a misdemeanor offense who files an intent to appeal the conviction is released from his or her sentence pending the appeal. The bill would allow the court to decide whether or not the person should be released. Under the bill, a person seeking appeal of a misdemeanor conviction would have to file a motion to be released pending the appeal, instead of automatically being released as provided under current law. The Courts and District Attorneys indicate that the bill would have an insignificant impact on their costs. According to Court officials, an intent to appeal is often filed at the same time as the sentencing occurs. Therefore, the motion for release could be filed and handled at that time also. For those cases in which an intent to appeal is filed subsequent to sentencing, an additional hearing would be required for the court to decide on the motion for release. However, the Courts indicate that the additional hearing would be straightforward and would not likely require a great deal of court time.

**Public Defender.** In a fiscal note submitted by the Public Defender, the agency indicated that the bill would increase its costs by \$48,600 annually. This is based on 607 misdemeanor cases in 1996-97 in which the Public Defender filed an intent to appeal. The Public Defender indicates that, under the bill, a motion to be released would be filed in each one of these cases and would require an additional two hours of attorney time, one hour to prepare the motion and one hour for a court hearing on the motion. However, as noted above, an additional hearing may not always be required. Therefore, the additional attorney time may be less than indicated by the Public Defender. In addition, the Public Defender's estimate assumes that all of the cases

would be handled by private bar attorneys who are paid \$40 per hour. However, 53% of these cases are currently handled by staff attorneys. Therefore, the Public Defender's estimate of the cost of the bill could be reduced by \$25,700, assuming that staff attorneys continue to handle these cases. However, the Public Defender indicates that any additional time spent on these cases by staff attorneys as a result of the bill would potentially mean that fewer cases could be handled by staff attorneys overall, and more cases would be assigned to the private bar.

Prepared by: Jere Bauer and Carri Jakel

MO# page

BURKE	Y	N	A
DECKER	Y	N	A
JAUCH	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A
SCHULTZ	Y	N	A
ROSENZWEIG	Y	N	A
GARD	Y	N	A
OURADA	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
PORTER	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A

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