JULIAN BRADLEY
WISCONSIN STATE SENATOR

Senate Committee on Judiciary and Public Safety
Thursday, January 20, 2022

Senate Bills 856, 857, & 858

Chairman Wanggaard and fellow committee members, thank you for taking the time to hear testimony on Senate Bills 856, 857, and 858.

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.

Senate Bill 856 requires a minimum bond of at least $10,000 for defendants who have previously committed a felony or violent misdemeanor.

Senate Bill 858 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. Senate Bills 856 and 858 are a step towards rebuilding public trust in Wisconsin's criminal justice system.

Lastly, Senate Bill 857 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 say 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. Senator Wanggaard, I applaud your 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.

Wisconsin State Lodge
Fraternal Order of Police

PO Box 206 West Bend, WI 53095

Ryan Windorff
President

Shane Wrucke
Secretary

January 20, 2022

Wisconsin Fraternal Order of Police Testimony in Support of Senate Bills 856, 857 and 858

Senate Committee on Judiciary and Public Safety

Thank you, Senator Wanggaard and fellow committee members for the opportunity to provide testimony in support of Senate Bills 856, 857 and 858. 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.

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.

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SB 856 and SB 858 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.

SB 857 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.

Thank you again for the opportunity to testify in support of this bill, and I am happy to answer any questions you may have.

STATE BAR OF WISCONSIN

Leaders in the Law. Advocates for Justice.®

To: Members, Senate Judiciary & Public Safety Committee
From: President Cheryl Daniels, State Bar of Wisconsin
Date: January 20, 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 some 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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Senate Committee on Judiciary & Public Safety
Thursday, January 20, 2022
Senate Bills 856 & 858

Good morning Chair Wanggaard and members,

Thank you for the opportunity to provide information on Senate Bills (SB) 856 and 858 related to changes to monetary bail. 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 these affect the constitutional rights of clients and court procedures.

Senate Bill 856 (minimum bail based on previous conviction)

SB 856 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, SB 856 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 SB 856.

Aside from constitutional questions, SB 856 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.

Senate Bill 858 (minimum bail based on previous bail jumping conviction)

SB 858 sets a minimum bail amount of $5,000 for an individual who was previously convicted of bail jumping. Concerns about SB 858 are substantially similar to SB 856 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, SB 856 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.

The cumulative effect of Senate Bills 856 and 858 will be to significantly increase the population of Wisconsin's jails. It is not unrealistic to expect that the bills will result in a need for a considerable number of new jail beds, a cost not accounted for in the bills.