



WISCONSIN LEGISLATURE

P. O. Box 7882 Madison, WI 53707-7882

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Contact: Rep. Cindi Duchow 608-237-9199
Sen. Van Wanggaard 608-266-1832

REPUBLICANS LAUNCH EFFORT TO MODERNIZE BAIL LAWS

Proposed Amendment Allow Judges to Consider More Factors When Setting Cash Bail

MADISON – Representative Cindi Duchow (R-Delafield) and Senator Van Wanggaard (R-Racine) have introduced a proposed Wisconsin Constitutional Amendment to update and modernize Wisconsin’s bail system. The proposed amendment will allow judges to consider the need to protect residents from “Serious Harm” and the totality of the circumstances surrounding a defendant when setting bail.

“Wisconsin’s bail policy is a national outlier that makes us less safe,” said Duchow. “We currently rely on the integrity of defendants arrested for violent crimes, and it is no surprise when they victimize more innocent people.”

“Anyone paying attention knows that Wisconsin’s bail system is in need of reform. It just isn’t working right,” said Wanggaard. “Allowing a judge to consider more factors when setting bail not only makes sense, it makes us all safer.”

Under Wisconsin’s constitution, a judge is only allowed to consider a defendant’s likelihood to return to court, or “flight risk” when setting cash bail. In addition, a judge is prohibited from placing a bail release condition on a defendant unless there is a risk of “Serious Bodily Harm,” a legal term meaning an injury that could cause death. Under the proposed amendment, a judge would be able to place bail conditions on a defendant to prevent “serious harm” and consider the totality of the circumstances when setting cash bail, including the previous convictions of the accused, flight risk, the need to protect the public from serious harm, prevent intimidation of witnesses, and potential affirmative defenses of the accused.

“No one wants to see someone sitting in jail on a minor crime because they can’t pay a \$100 cash bail,” Wanggaard said. “But we don’t want a dangerous criminal out on the streets because they aren’t a flight risk, either. This proposal gives courts the flexibility they need to protect the public.”

“We should use common sense and what works in our fight against violent criminals,” said Duchow. “Courts should be able to set bail for violent crimes based on reasonable factors.”

The authors are introducing the amendment on the first full day of session because they hope to have the bail proposal before voters on the April 2023 ballot. A proposed constitutional amendment needs to pass the Legislature in two consecutive sessions and be approved by voters in an election to be adopted. This is the second legislative consideration of the proposed

amendment. Last session, the proposed amendment was approved on a bipartisan basis, passing the Assembly 70-21, and the Senate, 23-10.

Senator Wanggaard intends to hold a legislative hearing on the amendment on Tuesday, January 10, 2023. A copy of the proposed amendment, including the questions before voters is attached.