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**CO-SPONSORSHIP MEMORANDUM**

**TO:                 All Legislators**

**FROM:           Representative Duchow**

**Senator Wanggaard**

**DATE:            November 23rd 2021**

**RE:                 Co-sponsorship of LRB-4925/2 *To amend section 6 of article I, section 8 (2) of article I and section 8 (3) of article I of the constitution; relating to: eligibility and conditions for release prior to conviction of persons accused of certain crimes and considerations for imposing bail (first consideration)***

**DEADLINE: December 6th 2021**

This legislation first came to me two sessions ago when an issue was brought to my attention regarding a sexual predator living in my neighborhood who molested his grandchildren. Though the individual admitted he committed the crime, and was later convicted, he was allowed bail at $75,000 while he awaited his hearing. With a school bus stop in close proximity to his home, this appalled many of my neighbors. I personally spoke to the ADA of Waukesha County, asking him how a person, who could be a danger to the community, could be allowed out on bail. This is a legislative issue which judges and court commissioners struggle with daily.

There have been plenty of examples where a person commits a crime while out on bail that, with more flexibility under the state Constitution, may not have been out on bail to begin with. In a recent instance, a man with a long history of violent crimes was let out on an unreasonably low bail. He then continued his violent behavior which ultimately lead to the deaths of multiple individuals when he drove through a parade in Waukesha, Wisconsin. In another instance, an individual was arrested and charged with his 6th OWI, while out on a personal recognizance bond pending trial for charges of a 5th OWI, $1,000 bail for two pending drug possession cases, and a $500 bail for a drug paraphernalia possession case. In such an instance, if judges had the flexibility to consider the dangerousness of this individual, his bail could have been set higher so it would have been more difficult to post bail. Instead, he killed a Good Samaritan who was helping another driver change a tire and injured two others.

Commissioners and judges say over and over they are not to consider the dangerousness or violence of a defendant when deciding how much cash bail to set. This is a product of constitutional changes from the early 1980’s. We believe an update is needed to provide additional flexibility when determining bail amounts by including the consideration of the safety of the community, seriousness of offense, and previous record to reflect the needs of the present.

The Wisconsin Constitution prohibits judges from considering the dangerousness of an individual when deciding the initial question on whether to impose case bail. Specifically, under Article I Section 8 (2), the state Constitution reads: “*Monetary conditions of release may be imposed at or after the initial appearance only upon a finding that there is a reasonable basis to believe that the conditions are necessary to assure appearance in court”.*

Our state Constitution also specifies that: *“All persons, before conviction, shall be eligible for release under reasonable conditions designed to assure their appearance in court, protect members of the community from serious bodily harm, or prevent the intimidation of witnesses.”* The term “serious bodily harm” refers to “bodily injury which causes or contributes to the death of a human being or which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.”  As applied, this has resulted in excluding crimes such as molestation of a child or repeat offenders for drunk driving.

This amendment would allow judges to consider multiple factors, instead of just ensuring appearance in court, when determining the amount of bail. More specifically, the amendment reads, *“In fixing the amount of bail, the court may take into consideration the seriousness of the offense charged, the previous criminal record of the accused, the probability that the accused will appear in court, and the need to protect members of the community from serious harm or prevent the intimidation of witnesses.”*  It is important to note that, under the U.S. Constitution, a person does not have a right to bail.  Our state Constitution, under this amendment, will still guarantee a right to bail, but allow more flexibility in determining the bail amount in order to protect members of the community.

I would appreciate your support on this legislation. To co-sponsor, please respond to this e-mail or contact the office of Representative Duchow at 266-3007 or Senator Wanggaard at 266-1832 by **December 4th, 2021.**

***Analysis by the Legislative Reference Bureau***

Under the Wisconsin Constitution, all of the following apply:

1. A person accused of a crime is eligible for release before conviction under reasonable conditions designed to assure the appearance of the accused in court, protect members of the community from serious bodily harm, or prevent the intimidation of witnesses.

2. The legislature is authorized to provide by law that a court may deny release to a person accused of certain serious felonies for specified periods of time only if the court finds based on clear and convincing evidence that the accused committed the felony and that available conditions of release will not adequately protect members of the community from serious bodily harm or prevent the intimidation of witnesses.

3. Monetary bail may be imposed only upon a finding that there is a reasonable basis to believe that it is necessary to assure the appearance of the accused in court.

This constitutional amendment, proposed to the 2021 legislature on first consideration, does all of the following:

1. Provides that the accused is eligible for release before conviction under reasonable conditions designed to protect members of the community from serious harm, not just serious bodily harm, in addition to the other conditions specified above.

2. Authorizes the legislature to provide by law that a court may deny release to a person accused of certain serious felonies if the court finds that available conditions of release will not adequately protect members of the community from serious harm, not just serious bodily harm, in addition to the other findings specified above.

3. Eliminates the requirement that monetary bail may be imposed only upon a finding that there is a reasonable basis to believe that it is necessary to assure the appearance of the accused in court. Instead, the constitutional amendment authorizes the court, in fixing the amount of bail, to consider the seriousness of the offense charged, the previous criminal record of the accused, the probability that the accused will appear in court, and the need to protect members of the community from serious harm or prevent the intimidation of witnesses.

A constitutional amendment requires adoption by two successive legislatures, and ratification by the people, before it can become effective