Commercial Bail Reform in Wisconsin

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Abstract

The pretrial release system in the US is a complicated patchwork of laws and regulations and the state, local and national levels. The purpose of this research is to identify what states allow the best justice to be served for victims and protect members of the community, while at the same time, respecting the civil rights of the accused. This research will look at: what states have commercial bail as a form of pretrial release, what states have banned this practice, what states have heavily regulated commercial bail and what states have chosen little regulation for this industry, as well as the consequences of these regulations, or lack thereof. This research will also look at the history of commercial bail in Wisconsin and why it was banned through legislation and ultimately affirmed on appeal at the state Supreme Court level. Recommendations will also be made as what circumstances and regulations a return of commercial bail could be brought back to Wisconsin and what system of success it could be modeled after.

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Table of Contents

3. Commercial bail regulations keep the professional industry tightly regulated as well as make illegalities and corruption difficult for the actors.
4. Commercial bail can lower the number bail jumpers through a bondman and bail enforcement agent/s.

B. Significance of the Study

A. Societal implications

B. Effects on the State of Wisconsin's current pretrial release system

C. Making the community safer

D. Making commercial bail more personal for pretrial release

E. Helping defendants with mounting a formidable defense

F. Effects on the defendant personally & financially

C. Legislative implications

1. Wisconsin can become one of the last states to reinstate commercial bail.

II. **Literature Review** (Pages 14-20)

A. History of Commercial Bail

1. Taylor v. Taintor (1872)
2. History of Wisconsin's commercial bail system and the banning of commercial bail in 1980 via Kahn v. McCormack (1980)
3. Study of professional actors in bail enforcement (Burns, Kinkade & Leone 2005).

4. Kentucky, Illinois and Oregon – a study of their ban on commercial bail. Why these states have banned commercial bail.
5. Cashless bail has become a danger to communities who have recently instituted the use – 2 examples in larger population states (Parascandola & Greene, 2020)
    a. New York
    b. Illinois

B. Comparison of Wisconsin's pretrial release defendants who skip court appearance to states where commercial bail is practiced.
1. Minnesota
2. Iowa
3. Illinois
4. Michigan
5. Texas

III. **Theoretical Framework** (Pages 20-29)

A. Components needed for a successful program of commercial bail in Wisconsin.
1. Bondsman – certification and continuing education
2. Bail enforcement – certification/ training and continuing education

B. State Regulations
1. Bondsman requirements for issuing commercial surety bonds and financial responsibility.

2. Personal knowledge of defendants and assurances of their compliance with pretrial release
3. Bail enforcement agent regulation - Minimum training standards
4. Firearms training
5. Less lethal instrument training
6. Use of force training – handcuffing, escalation of use of force, self-defense laws for various states in which they operate.
7. Legal and liability aspects arrests, warrants, custody and care forced entries and de-escalation training.

C. Judicial Component

1. Judges to be made aware of corruption issues that occurred in the late 1970's in Wisconsin and how to maintain objectivity.
2. Fair bail hearings for all defendants and oversight for judges setting bail for defendants.
3. Court officer and clerk training/ education needed to advise actors of new commercial bail state regulations and procedures for bail bondsman and bail enforcement agents.

IV. **Program Evaluation** (Pages 29 -32)

A. Wisconsin's system and other state systems of commercial bail rife for corruption

B. Regulations that work to minimize the corruption in commercial bail.

1. States that have ideal regulations to curb this corruption and how they can be utilized in Wisconsin.

B. Future research

1. Cashless bail is a relatively new idea and future research will need to be performed to better understand the dangers of allowing felons and violent misdemeanor defendants pretrial release without any assurances they will return for future court proceedings.
2. The future for states that continue to ban commercial bail, like: Oregon, Illinois, Kentucky and Wisconsin.

VII. **References** (Pages 36-42)

Introduction and Statement of the Problem

There are only two countries in the world that utilize commercial bail: the United States and the Philippines. Individually, the majority of states inside the US utilize commercial bail with four exceptions: Wisconsin, Illinois, Kentucky and Oregon, which ban commercial bail within their borders. Wisconsin banned commercial bail in 1979. This statute was upheld in the Court of Appeals in Kahn v. McCormack (1980**).** Lawmakers that passed this statute felt that the commercial bail system is rife with corruption and disproportionately affected lower income defendants who could not afford the 10% bondsman fee for their pre-trial release. The reasoning behind this statute, at the time in the late 1970's, was based purely on conjecture from key politicians and government officials at the time, such as: the Milwaukee County District Attorney, Rep. Fred Kessler, the Milwaukee County Sheriff and the Milwaukee Chief of Police. These individuals failed to see what would be created in the wake of commercial bail being removed from pretrial release. 25 % of felony defendants that are released fail to appear for their court dates (Lind, 2013). Bail companies have many advantages when it comes to returning defendants to court. State and federal law uphold the bondsman's right to apprehend and return a defendant without being required to use the extradition process, and to engage in reasonable measures to ensure court appearance (Taylor v. Taintor, 1872). Bondsmen, for example, can use skip tracers and bounty hunters who are not limited to the same legal or time/resource constraints as law enforcement. In fact, the bail agreement between the bondsman and the defendant highlights the civil nature of the contract, thereby limiting governmental interference in the bondsman's right to locate and surrender the defendant to the court's custody (Johnson & Warchol, 2014).

Perhaps the most significant advantage of commercial bail bond companies in ensuring court appearance is the use of cosigners. Bondsmen generally require a cosigner, and in some cases, multiple cosigners on a bond. Cosigners tend to be individuals with close ties to the defendant, such as a relative or friend. In addition to the information, they can provide pertaining to the defendant (Joiner, 1999), it is theorized that they impart an additional level of social control, compelling the defendant to return to court. Despite the central role that cosigners play in commercial bail bonds, there is a noticeable absence of research pertaining to these individuals. Only one empirical study to date has attempted to account for the influence of cosigners in a defendant's likelihood of FTA (Johnson, Kierkus, & Yalda, 2014).

Bail bondsman and bail enforcement agents are greatly unappreciated throughout the US as quasi law enforcement officers. Data collected from surveys of bail enforcement agents will show that a majority desire greater professionalism and behavior in their field are necessary to receive greater respect from their fellow criminal justice practitioners (Burns, Kinkade & Leone, 2005). Based on criticism from criminal justice professionals, the common argument against commercial bail is that bail companies are only concerned about their profit and have no interest in public safety. The truth of the matter is that commercial bail companies align their interest with the courts because they are liable when a defendant does not show up for court on a bond issued by them; therefore, they have a financial and public safety incentive to return the defendant to custody. Lind (2013) stated that bail bondsman could not stay in business if their defendants failed to show up for court at more than 2% of the time. The fact that commercial industries can only take a 2% loss shows that the current Wisconsin pretrial release system is not sustainable with a 25% failure to appear rate.

Proponents of commercial bail cite the economic benefits of bail bonds, including revenues generated from insurance premium taxes and bond forfeitures, as well as the cost-savings resulting from fewer FTAs and new offenses. Krahl (2009) estimated that the state of Florida saved as much as $230 million in 2008 by utilizing commercial bail bonds. Based on data from Dallas County, Texas, Morris (2013) reported a more moderate cost-savings estimate: in comparison to other available release types, commercial bail bonds saved the county nearly $59,000 among felony defendants and approximately $45,000 among misdemeanor defendants for every 1,000 released defendants.

Lawmakers are less likely to give quasi-law enforcement power to citizens who are not sworn law enforcement; however, there are numerous states which have a rigorous licensing and selection processes from which Wisconsin could take note. For instance, Texas requires bail enforcement agents to be licensed as private detectives or private security officers before they may act as bail enforcement agents and take fugitives into custody on behalf of a surety. These agents must also complete required training for various officer levels, including private detective or private security work, including armed status as a detective or private security officer (Texas DPS, 2020). Wisconsin also requires similar firearms training for private detectives and private security that is taught in law enforcement academies across the state. Students must pass a 36-hour course taught by a recognized law enforcement firearms instructor, otherwise known through the Department of Safety and Professional Services, as a Firearms Certifier (Wisconsin DSPS, 2021). These professions involve a thorough FBI criminal background check, passing a comprehensive exam/s on the laws and state regulations surrounding the limitations of private detectives, private security and bail enforcement personnel have in the apprehension of fugitives.

As private citizens, bail bond agents can also assist defendants in offering legal advice, recommending attorneys, reminding them of their court dates, assigned court rooms, and advising them to the proceeding to which they are a part of (Toborg, 1983). Court officials and law enforcement cannot offer legal advice, never recommend good defense attorneys, and only mail the defendants' information regarding their case and future court appearances. Bail bond employees offer a personal touch for defendants on their trip through the criminal justice system.

The case of Taylor v. Taintor (1872) is the biggest proverbial boogeyman when it comes to installing commercial bail in Wisconsin. This ruling gives a bondsman or his agent sweeping power to recover a defendant who has missed a court appearance or if the bondsman believes the defendant will flee or has fled. It also allows bail agents the power to circumvent the extradition process if the defendant has fled out of state. This ruling offers the bondsman and his agents far more power than any power granted to local, state, or federal sworn law enforcement officers. However, when signing contracts with the bondsman, these defendants sign away certain constitutional rights to the bondsman and their agents as a condition of the freedom from pre-trial confinement. With this being a federal ruling, states can and have made strict rules governing the entry onto private property and into private dwellings. For instance, Texas requires a warrant for a bondsman or bail enforcement agent to access a private dwelling other than the defendant's primary residence. With safeguards in place, commercial bail can be a useful tool to keep fugitives off the streets and offer private sector jobs that have community safety and justice as primary goals.

Literature Review

The history of commercial bail goes back to seventh century in England (DeHaas, 1940). The American system, in colonial times, was similar in its infancy, whereas individuals and eventually entities, offered their own third-part liability for the accused in the event the defendant failed to show up for their appearance (Maruna, Dabney, & Topalli, 2012). The difference between the English system and colonial America was financial commitment to the court, rather than a moral or land-based obligation (Maruna 2012).

These individuals or entities (sureties) created the landmark Supreme Court decision of Taylor v. Taintor (1872), which is the basis for the American system of commercial bail. This effectively paved the way for businesses to offer surety bonds, at a fee, to individuals (or principals) who wished to obtain pretrial release of incarcerated individuals at a fraction of the cost of the total bail amount. This fee is typically 10% of the total cost of bail. In the Taylor v. Taintor (1872) decision, the Supreme Court ruled that the sureties had sweeping rights to recover the principle and return them to the court's jurisdiction. These rights are forfeited by the defendant's by signing the contract with the bondsman to secure their release. The rights that are similarly forfeited by individuals that are on probation, parole, supervision, etc. The principals no longer have the right to be free from unreasonable searches and seizures of their person, if the surety feels the defendant will not show up for any court appearances. Sureties even have the right to break and enter the home of the principal to seize them for the purposes of arrest if the principal is in violation of the surety contract. A fundamental point made by the court in this decision was the option a surety has to either surrender the principal to the court in-person or by agent. This sentence

paved the way for professional bail agents (bail enforcement agents/ bounty hunters, etc.). In current times, the laws of bail, the use of sureties and bail agents vary widely from state to state.

The state of Wisconsin enjoyed the fruits of commercial bail until 1979, when the legislature passed a law banning the practice of commercial bail. Kahn v. McCormack (1980) upheld this law, effectively gutting any use of commercial bail bond practices as well as fugitive recovery agents in the State of Wisconsin. The use of fugitive recovery is still practiced in part by private detectives in the State of Wisconsin; however, these individuals have no arrest authority that can be used in Wisconsin. Citizen's arrest powers are all that are all private detectives are permitted to use. Common law practice in Wisconsin dictates that citizens have the power to arrest if they have probable cause that a felony has been committed. Since Wisconsin has no citizen arrest statute, agents of a surety are mainly limited to locating fugitives and reporting to law enforcement the whereabouts of the fugitive for arrest.

Starting in the 1960's during the civil rights movement, Wisconsin politicians and the citizenry started having concerns about corruption and inequities within the bail system. Many states, including Wisconsin, increased the use of nonfinancial pretrial release conditions and reduced their reliance on commercial bail (Lind, 2013). Some of these corruption issues were thought to be corrupt bondsman and judges who would violate eighth amendment rights and set excessive bail to defendants affording bondsman a higher surety fee. This higher surety fee would in-turn be returned to the judge in a kick-back scheme. With the legislative action and subsequent State Supreme Court ruling, Wisconsin is now only the fourth state in the country which bans commercial bail. Oregon, Illinois and Kentucky are the only other states that ban this practice. Furthermore, the Philippines and the United States are the only countries in the world that practice commercial bail.

A study of professional bail agents revealed that "bond agents are not yet professionalized, but a substantial number of them desire greater professionalism in their field and believe that more professional behavior is necessary to receive greater respect from their fellow criminal justice practitioners" (Burns, Kinkade & Leone, 2005). This study also showed that only 25 percent reported having a 4-year college degree and nearly half of the respondents reported having specialized training with weaponry. With such a low response in education and only half of the respondents showing weaponry training for a career that requires knowledge of weapons and tactics; this demonstrates a vast need for training and education in this industry. While some states have seen the writing on the wall in regard to regulating certain professions, like sureties and bail agents, some have not and are a ticking time bomb.

There are currently 46 states where commercial bail is allowed by law. Of those 46 states, there are 7 states which have no training or licensing requirements! Of the states surrounding Wisconsin which allow commercial bail, Minnesota does not require any training, certification or licensure. Iowa and Michigan require licensure but no training. As a further look is performed into state licensure and requirements, it does not bode well for the commercial bail industry to allow such lacks standards for licensure and training across much of the country. While the Burns (2005) study explained, one-third of those surveyed in the bail enforcement industry had experience in law enforcement the other two-thirds did not have experience. Many of the states that have licensure do not require continuing education, which is also a problem. Training and continuing education are cornerstones in most industries. If individuals are not kept up to date on the most current techniques, statutes, stare decisis and supreme court rulings, agencies could experience liability lawsuits because of failure to train or supervise their employees, much as the way law enforcement agencies can be sued for similar actions or inactions.

Cashless bail in the United States has become a very hot topic as of recently. Political activists and politicians are pushing these laws in many states across the country. New York, Illinois and California. New York's law went into effect on January 1, 2020. This billed was hyped to eliminate 90% of arrests for misdemeanors and non-violent felonies. With some of the most recent statistics following this law, New York City saw a 58.7% overall increase in crime since 2021. Specifically, robbery increased by 56% in the last year, grand larceny by 79.2% and grand larceny auto by 104.7%. (NYPD, 2022). There has also been a similar uptick in crime in Illinois following the cashless bail law. Since non-violent criminals are being released without any bond after arrest; Illinois has seen a 65% increase in theft, 40% increase in motor vehicle theft, 31% increase in burglary and 21% increase in robbery since the cashless bail law was signed into law by Governor Pritzker (CPD, 2022). With an increasing trend of states and politicians pushing cashless bail, there should also be a concern in regard to rising crime rates in non-violent felonies and misdemeanor crimes.

In the State of Wisconsin, the Clerk of Circuit Court in the respective county is required to collect any cash bail for pretrial release. Defendants are also released on a signature bond, simply promising to appear for court appearances under the threat of arrest. Property can also be posted and a lien against the property by the court can be used in Wisconsin for pretrial release. Wisconsin is unique in the distribution of bail money held by the courts. If the defendant is found not guilty or the charges are dropped the defendant or surety who paid the bail to the court is reimbursed in a matter of weeks; however, if the defendant is found guilty, the court distributes the bail funds toward court costs and any restitution ordered by the court. If property is used for bail, the defendant has the option of surrendering the property to the court to be used for restitution or court costs through a sheriff's sale or providing case to be distributed for court costs and restitution.

Wisconsin is piloting a new pretrial release program based on Evidence-Based Decision Making (EBDM) subcommittee of the Wisconsin Criminal Justice Coordinating Counsel (CJCC) with seven counties: Chippewa, Eau Claire, La Cross, Marathon, Rock, Outagamie & Waukesha, participating in the new study. The Pretrial Pilot Program is focused on transitioning to a risk-informed system that promotes public safety while reducing reliance on cash bond and pretrial detention. This risk informed system uses a Public Safety Assessment of nine factors which determine the risk of a new criminal arrest, including a new violent crime arrest and a failure to appear. These factors include: the person's age at arrest, current offense, pending charges at the time of arrest, prior misdemeanors or felony convictions, prior violent convictions, prior pretrial failure to appear and prior sentences to incarceration. Two risk scores are used: the first predicts the failure to appear for ongoing court dates, while the other predicts the risk of being arrested for a new crime. (Wisconsin Court System, 2021). While this pilot program is relatively new, many new programs are simply basing pretrial release on the crime an individual is arrested for and not looking at the nine factors in which the Wisconsin program is based. This is a mistake, especially when looking at previous violent convictions when an individual's new arrest is non-violent. The importance of evidence-based decision making is paramount in weighing the safety of the public to the setting of an appropriate bond amount for pretrial release of defendants. For instance, if this pilot program would have been used in the Darrell Brooks case in Milwaukee County, Mr. Brooks may not have been released on such a low bond and subsequently took the lives of several people in the Waukesha Christmas parade in 2021.

Minnesota is also currently piloting an evidence-based tool for judges to make pretrial release decisions. Minnesota started their program approximately 3 years prior to Wisconsin. All

Minnesota Counties are required to use some form of pretrial evaluation form, whether it is the standard state risk assessment or another judicial approved risk assessment tool.

Michigan currently has an older form of pretrial release with the use of several pretrial release conditions: personal recognizance, real property, cash, or a surety. The surety can be a private person or a commercial entity such as a bail bondsman. Unfortunately, Michigan's pretrial release does not use any risk assessment matrix like Minnesota or Wisconsin. However, Michigan recently created a Jail Advisory Council in April 2021. This advisory board is designed to "facilitate, assist with, monitor, and evaluate the successful implementation of jail reform legislation throughout the state of Michigan" (Michigan Courts, 2021). Judges or magistrates may take into consideration the defendant's current criminal arrest, prior convictions, and previous failure to appear warrants or arrests prior to issuing a type of pretrial release condition.

Illinois is one of the handful of states that has recently abolished cash bail. They also happen to be one of four states, along with Wisconsin, Kentucky & Oregon, who bans the practice of commercial bail. This new law, the Pretrial Fairness Act (PFA), takes effect on January 1, 2023. Until then, the state of Illinois has created a task force to prepare of this legislation. Currently, each county or circuit court establishes a pretrial services agency to provide the court with background data regarding persons charged with felonies and effective supervision of compliance with the terms and conditions imposed on release (Illinois General Assembly, 1963). In effect, this fifty plus year old statute is similar to the Minnesota's risk management assessment, but there is no set statutory requirement for any pretrial release matrix such as Wisconsin's pilot program. Without any matrix for judges or magistrates to refer to, circuit courts are more susceptible to have a greater fluctuation of pretrial release conditions, possibly allowing greater risks to public safety or the inability of defendants to secure pretrial release.

Iowa form of pretrial release is similar to Michigan and has an exception for the denial of pretrial release in capital offenses. Generally, pretrial releases are in several forms: personal recognizance or unsecured appearance bond, commercial surety, cash deposit, property bond, supervision and additional requirements. (Iowa Legislature, 2022). Once again, Iowa has no standard risk assessment matrix for identifying defendants with a likelihood of pretrial failure to appear or who have a higher likelihood of new criminal arrests. As such, judges and magistrates have the sole authority to make bail decisions without any sort of risk assessment. As similar to Illinois, Iowa courts are also susceptible to community endangerment and disadvantaging defendants basing pretrial release decisions on no set risk assessment parameters.

In Texas there is also a unique standard for pretrial release as courts take a deeper look into the risk assessment of a defendant by screening and collecting data on all persons arrested and charged with a criminal offense. These data points collected are as follows: determining indigency qualification for a court appointed attorney, compiling information on the person's mental and physical state of health, interviewing the accused to inquire about previous convictions, employment status, and family information. This information is compiled into a research-based risk assessment instrument to determine appropriate release and supervision decisions as well as terms of release by the judges or magistrates (Texas Criminal Justice Coalition, 2022). The states with the research-based risk assessments appear to have the most success in maintain public safety from defendants being arrested on new criminal charges while currently out on pretrial release as well as providing equal justice under the law based on risk assessment matrixes.

Theoretical Framework

Components needed for a successful program of commercial bail in Wisconsin.

There are several components needed to make a successful commercial bail program in Wisconsin: First, proper legislative authority passed by the governor overturning sec. 969.12(1) and (2), Stats., as amended by sec. 1121m, Ch. 34 (1979). This would essentially overturn the banning of commercial bail in Wisconsin which was ruled on by the Wisconsin Supreme Court Decision of Kahn v. McCormack (1980). While the Supreme Court Decision essentially upheld the new law, this created unintended consequences from idealists who wished to get rid of corruption in the commercial bail industry between judges and bondsman. During the late 1970's Wisconsin's bondsman and some judges were said to have become corrupt and were in need of an overhaul. Politicians claimed that judges were imposing high bond amounts on defendants and getting kickbacks from bondsman who were paid a 10% bond fee by defendants to secure their release. While Wisconsin did not have any form of evidence-based or research-based risk assessment matrix at the time, this could have possibly been the case in regard to judges and magistrates issuing excessively high bail amounts for some defendants based on personal feelings of imminent community risk. But without corroborating data against new research-based and evidence-based risk assessments and bond correlations, we will never know for sure.

With the implementation of a new commercial bail law, allowing for commercial sureties, Wisconsin needs to learn from the past and avoid any potential pitfalls of corruption and kickback schemes between bondsman, judges, and magistrates. By using a risk assessment to issue fair pretrial release bonds and conditions, Wisconsin can alleviate any claims of unfair release practices based on race, religious, gender and socioeconomic standing.

Basing Wisconsin's new system on the best portions of regulated states around the country will assure our success for defendants, the public and members of the criminal justice system. this

legislation needs to be based on several aspects of licensing and regulation for bondsman, risk matrixes for judges and magistrates as well as licensing and regulation for agents of bondsman effecting arrests on defendants for violations of bond terms. First, there needs to be a licensing and certification process of commercial bail bondsman or bail bond companies. Two states, Minnesota and Texas, have certification process for commercial bond companies. Minnesota requires bond companies to be licensed as insurance agent by the Minnesota Department of Commerce. This process requires 20 hours of pre-license education on insurance practices for each line of insurance in the state of Minnesota effectively requiring 40 hours of education prior to licensure (Minnesota Legislature 2022). In the state of Minnesota, once sureties are licensed and approved by the State Court Administrator's Office (SCAO) bond agencies are authorized to issue bonds in any district court throughout the state (Minnesota Licensing, 2022).

To make Wisconsin's licensing and regulatory affairs more transparent and decentralized, using the Texas model of county bail boards would add an additional level of security for equality and to dissuade corruption. Texas requires county bail bond boards to be created in counties with populations of 110,000 or more (Texas Occupations Code Ch. 1704, 1999). These boards are comprised of several types of members: executive local government branch officials, judicial local government branch officials and local private citizens that work within the criminal justice system. The executive local government officials are comprised of chiefs of police, sheriffs and other law enforcement members in leadership positions. The judicial local government officials are generally members of the state bar who are district attorneys, assistant district attorneys as well as judges or magistrates. The private citizens involve bail bond agency owners and private defense attorneys. Like our constitutional republic, these bail bond board generally have these three different types of members since there are three points of view in regard to bail bonds and pretrial release. The

executive branch members (law enforcement) make arrests, secures or houses defendants during pretrial conferment and sometimes apprehends defendants if they are in violation of their bond conditions for release. The judicial branch members, comprising of judges & DAs or ADAs, will make arguments for bail or no bail as well as pretrial conditions of release, while judge determine the validity of arguments and the conditions of pretrial release for defendants. The private citizen members are the advocates for the defendants, who supply the means for pretrial release, such as Bondsman, and the bar members for the defendants, like defense attorneys, who argue for minimal financial and conditions for pretrial release.

To be successful in Wisconsin, a commercial bail industry would need various adjustments to the local bail bond board to ensure that industry standards and compliance are followed throughout the state. Since Texas has a population which nearly six times the size of Wisconsin, county population standards for bail bond board would need to be adjusted to counties with populations over 35,000 residents. This would involve 40 counties of the 72 in Wisconsin, ensuring that the largest populated counties and majority of bail bond agency would be held to industry standards.

The minimum standard in Texas to obtain a bail bond agency license is 8 hours of classroom training on bail bondsman procedures and protocol (Texas Occupational Code 1704, 1999). However, in Wisconsin Insurance agents are required to obtain 20 hours of training, with 8 hours consisting of principles of insurance general Wisconsin insurance law and ethics before obtaining their licensure (Wisconsin Administrative Insurance Code Ch 26.04, 2021).

In Texas, only commission security officer, licensed private investigators and peace officers may work as bail enforcement agents. The requirements to become a commissioned s level II security officer in Texas are: be 18 years old, no felony criminal convictions or misdemeanor convictions involving domestic violence or dishonesty, a completion certificate of commission

officer level II training course, or a level III firearms training course consisting of 45 hours, if armed, as well as 6 hours of continuing firearms proficiency certificate and 8 hours of general continuing education (TAC 35.141 & 35.161, 2014). Private investigators have similar requirements, which involve being: 18 years old, no criminal convictions or current indictments, 3 years of documented investigative experience or a 4-year college degree with 6 months of documented investigative experience, pass a written exam and be licensed under a private investigative agency (TAC 35.21, 2014). An agency license requires a minimum $1,000,000 liability insurance policy and a qualified agency manager with a minimum of 5 years investigative experience. Private Investigators also require continuing education at a rate of 12 hours per year, to which two hours must cover ethics. These continuing education requirements must be completed prior to license renewal (TAC35.161, 2014). Law enforcement officer have their own academy training and in-service training through their agency, which exempts them from Texas private security related statutes in regard to bail bonds and fugitive recovery (TAC 35.141(b), 2014).

There are several key components to implementing and maintaining a successful and accountable commercial bail bonding industry in Wisconsin: Industry standards and requirements and responsibility, personal defendant knowledge by bondsman and their agents and individual accountability by minimum training and continuing education standards. The need for insurance related training for bondsman to mirror the insurance license is important since this would be a new program and state regulators need to be assured that proper procedure and statutes are being followed. The new agencies would need to obtain training on what amount of capital or surety is needed to write bonds under the new program as well as ethical obligations to the community and defendant on pretrial release. These training programs could be provided through individual and agency license and subsequent renewal fees paid by licensed agencies and individuals to the state.

These programs could consist of 20 hours of training, which is what is required under statute under the Wisconsin Administrative Insurance Code Chapter 26 (WAIC, 1999). A department head of the bail industry could also be an appointed cabinet position by the governor. Under a commercial bail program, the governor could initially recruit and appoint an experienced professional from Texas or a similar state to assist in the transition to the new commercial bail program in Wisconsin.

A new framework to the new system and an overhaul from the current system in Wisconsin is the

A new framework to the new system and an overhaul from the current system in Wisconsin is the personal nature of the mutual assured compliance with the pretrial release requirements bestowed by the court between the defendant and the bondsman. With the current system, the clerk of courts or their representatives in individual counties, handle the payment of any cash bail for pretrial release and law enforcement handle any violations of pretrial release, should a defendant be found in violation of their bond conditions. In a commercial system with numerous bondsman and lower ratio of pretrial release defendants to bondsman rather than defendants to clerks, the commercial bail system allows bondsman to have a more personal knowledge of the defendant and keep an eye on them to make sure that they are abiding by their bond conditions. Under the current system, bond conditions are only known to be broken, should the defendant run afoul of the law or be apprehended following their missing of a court date and subsequent bench warrant issued. With a new commercial bail system, bondsman can remind defendants of their court dates, check up on their compliance with conditions of release and even recommend attorneys and investigators for their cases. The clerk of courts, clerk representatives and law enforcement are not allowed to give legal advice (Wisconsin Statute 757.30, 2023). The current system does not have the financial resources of the manpower to complete such a task. With that being said, the

commercial system allows for the criminal justice system to only determine if there is cause to revoke pretrial release and add additional charges of bail jumping, if violations of pretrial release conditions were found. In the commercial system, the bondsman has the discretion to determine: if a warning should be given for extenuating circumstances or simple ignorance, if pretrial release should be revoked and the defendant remanded to custody at the county jail until the disposition of their case, terminate the bond with the defendant and return them to custody at the county jail and allow the defendant to obtain a bond through another bondsman, or allow law enforcement to take custody of the defendant for violation of the pretrial release conditions and allow the criminal justice system to determine the course of action with the defendant.

The current system in Wisconsin allows private security persons and private detectives to have zero experience. Private detectives are only required to pass an open-book online exam, along with having no criminal record, be 18 years old and pass a background check (Wis. Statutes Ch. 440.08 & 440.26, 2023). Security officers are only required to be 18 years old, have no criminal record and pass a background check (Wis. Ch. 440.26 (5m) (a), 2023). These are very low standard and need to be adjusted like Texas standards in order to provide professionals the skills and knowledge required to perform bail bond related business and jobs with the utmost professionalism, integrity and fairness. Under the Wisconsin System, private security and private detectives could be licensed to perform bail enforcement operations with additional training. This training could simply be an endorsement, like commercial vehicle endorsements or motorcycle endorsements on a driver's license. A minimum or 120 hours of classroom training dealing with tactical functions, such as: arrest, handcuffing, use of force continuum, laws of self-defense, de-escalation training, less than lethal weapons and use of force training, Taylor v. Taintor 83 U.S. 366 (1872), the importance of civil rights in regard to search and seizure of persons and property as well as liability issues or

arrests, use of force during arrests, use of forced entries, custody and care for the defendant until sheriff's deputies take custody of the defendant at the county jail. An additional 36 hours of firearms initial qualification and 6 hours of annual qualification training could remain in place (Wis. Admin Code Ch. 34.01, 2021), should an individual with a bail enforcement endorsement be required by their agency to be armed.

In the late 1970's, the entire premise behind the bill to end commercial bail was due to the corruption between bondsman and their defendants, bondsman and judges and the general lack of regulations or individual accountability in the industry. We can see this in present day Minnesota, which has no licensing or regulation of bail enforcement agents, it only licenses bail bond agencies. The Minnesota Judicial Branch only requires bond agency applicants to: provide a written application, provide a power of attorney from all appointing sureties, complete a BCA (Minnesota Bureau of Criminal Apprehension) background check, provide a copy of their driver's license and state issued identification and a passport photo of themselves (MJBPP Bail Bond Procedures, 2006). There are no continuing education requirements, no minimal initial education requirements, no initial training in tactics, constitutional law, arrests and use of force, firearms training qualifications or professional responsibility at all. The lack of regulations, training requirements and personal accountability breeds an industry that is rife for corruption and problems.

In 1980, the Wisconsin Supreme Court made claims of rampant corruption, kickback and collusion between local bondsman, judges, and prosecutors (Kahn v. McCormack, 1980). With the lack of state and local regulation of the industry, the legislature was left with little choice other than to end the corrupted system of commercial bail in Wisconsin. However, the unintended consequences that came from the law and subsequent Supreme Court ruling because clear over the next forty plus years. The immediate impact drove out corrupt bondsman, judges and prosecutors

were no longer getting kickbacks and colluding with bondsman for extra revenue. Defendants were provided pretrial release and were not supervised during their release by bondsman and communities were left less safe with understaffed law enforcement agencies having to pick up the slack for no private bail enforcement agents to locate and arrest bond violators. Defendants were also unable to secure a pretrial release at time, if they could not afford the entire cash bail amount which was now imposed, which put them at a disadvantage for aiding in their defense or providing for their families. Bond agencies offer a unique opportunity for the poor defendants to secure pretrial release, when they would normally be without the means to afford the entire bond amount. Bond agencies can also practice a more personal touch in the justice system by offering services that courts and law enforcement agencies cannot, by providing recommendations for attorneys and making sure the defendants are abiding by their release agreement. By adding local bail bond boards with parties from all sides of the justice system, there is a unique opportunity for all parties involved to provide the best possible service to the defendant, justice to the victims and safety to the community by these individual holding each other accountable for: fair bail hearings, reasonable costs for pretrial release through bail bonds, competent attorneys to represent the defendants and a heightened sense of security for the community to know that civil rights of the accused are being respected, while at the same time, the security of community is being taken into account by the bondsman monitoring the defendant's release conditions.

The future training for court officers, members of the state bar, clerks, and other representatives, could also be provided by licensing fees associated with bond agency licensure fees and individual bail enforcement agent endorsement fees. The same courses that are instructed for bail bondsman and bail enforcement agents, could be provided to these court officials; paid for with the revenue generated from licensing and endorsement fees. This curriculum could be derived

from similar training required by Texas Administrative Code and Wisconsin Administrative Insurance Code. These instructors and the professionals in these courses could be taught the pitfalls of the previous bail system in Wisconsin prior to its demise in 1979 and be shown what to look for to hold individuals accountable locally and how to maintain a professional system of standards for all the parties involved.

Program Evaluation

Wisconsin is one of only four states that ban commercial bail, which occurred via legislation in 1979 with the Bail Reform Act (Wisconsin Statute 969, 2023) and was affirmed by the Wisconsin Supreme Court Decision of Kahn v. McCormack (1980). Wisconsin had no regulations or licensing for the bail industry or bail enforcement agents by the late 1970's. There was no administrative code or guidelines on how professionals were to conduct themselves or their agencies professional, honestly, and ethically, which led to the general contempt by judges, sheriff's and police chiefs in larger cities, like Madison and Milwaukee. Interesting enough, in 1981 Wisconsin passed a constitutional amendment, which allowed judges to hold dangerous felons without cash bail or any pretrial release if they were determined to be a risk to the public. This referendum passed by 73% of citizens to approve this amendment.

Illinois has become the first state, legislatively, to ban cash and commercial bail for the most part; leaving it up to judges to determine whether pretrial release is warranted or not (725 ILCS 5/110-5, 2023). With how new this law is, it will likely be challenge at the State Supreme Court level, as Wisconsin's was, prior to it being solidified for the future. Many other states, like California and New York have instituted similar laws and many states are looking into banning

commercial and cash bail as well. However, without any longitudinal studies on how the states that have recently banned cash bail have faired in their fluctuation of crime has yet to be determined.

States that currently have the best regulations on pretrial release are Michigan and Texas, with Texas being the best at the state and local levels. Michigan has requirements for bail bondsman, similar to Wisconsin. Bondsman must pass an exam for insurance producer (DIFS, 2023). Bail enforcement agents, or fugitive recovery agents as they are called in Michigan have no licensure requirements. A bill in the Michigan legislature nearly passed which would have required fugitive recovery agent to have law enforcement training, or investigations training consisting of 40 hours of classroom and 40 hours of field training, pass a two-part examination, pass a background check and be of "good moral character" to obtain licensure as a fugitive recovery agent and work as a bail bond agent (Michigan House Bill 5536 & 5537, 2009). This bill is being introduced again, which would make Michigan one of the best states with state pretrial release services.

Texas is by far the best regulated state for pretrial release, which has state and local regulation for pretrial release. Bondsman must complete 20 hours of training on insurance and pretrial release statutes prior to licensure (Texas Occupations Code Ch. 1704, 1999). The regulations require bail enforcement agents to be commissioned security officers or private investigators licensed under the Texas. This requires unarmed agents to complete a security training course on a level II training provider or a complete a level II & level III training course if the agent will be armed. The occupations code does not state a minimum requirement for agents working in an unarmed capacity; however, a minimum of 45 additional hours of training are required to work in an armed capacity. The armed capacity training requirement also exists for private investigators who wish to work as bail enforcement agents as well (Texas Occupational Code, Ch. 1702.110, 1999).

Another interesting provision under the Texas Occupations Code of Ch. 1704 (1999) is the option for counties under a population of 110,000 to create a bail bond board to regulate the bail bondsman and bail enforcement agents at the local level. Counties with populations over 110,000 must have create a bail bond board. There are certain members that are required to serve on this board; however, the positions are obtained on a volunteer basis. The required members are the sheriff or a designee from the sheriff's office, a district judge, a county judge, the district clerk or district clerk's designee, county treasurer or designee and a practicing defense attorney from the county. This bail bond board allows the local officials to hold each other accountable on all facets of the pretrial release program, since most criminal justice actors are involved in this board.

Iowa does not have any regulation for bail bondsman who issue surety bonds; however, they do regulate the bail enforcement agents. Bail enforcement agent must work under a licensed bail enforcement agency. Bail enforcement agents and private detectives must complete 6 hours of documented continuing education to maintain licensure; however, there is no requirement to obtain professional training to work in an armed capacity or qualify with a firearm/s when working in an armed capacity, making this another state where there could potentially be deadly consequences of the lack of training and regulations.

Minnesota is once of the few states where only bail bondsman need to registered with the courts and there is no other regulation for bondman or bond agents or fugitive recovery agents; however, the majority of bail enforcement or fugitive recovery agents tend to be private detectives or security officers, which at least requires a minimum of 12 hours pre-assignment training as well as an additional 6 hours of initial and annual training to be armed in Minnesota (Minnesota §326.32, 2023). Unfortunately, this allows the pretrial release system to be abused and little regulation, making commercial bail a blight on the state, which the community and law enforcement generally

have little respect for. This lack of regulation was attempted to be changed in 2022 by Minnesota Senate Bill 4579, which sought to supervise "bail bond agencies, surety bail producers and bail bond enforcement agents" (Minnesota Legislature, 2022). Many states are starting to wise up to the issues connected with commercial bail, either the lack of regulations, accountability or they are trying to ban commercial or cash bail entirely, like Illinois did this year with Illinois Compiled Statutes Ch. 725 (2023).

Recommendations

Wisconsin will need to implement a commercial bail system, first by legislative committee. Since the commercial bail ban was upheld by the State Supreme Court, the only way to bring it back to life, would be through the check and balance of the legislature. The theoretical framework above is the most likely route of success for reinstituting a commercial bail system in Wisconsin after a forty plus year absence. This will likely involve judicial challenges, for instance: civil injunctions hearings, lawsuits, protests, and skepticism. All of these would be likely and rightly so, considering how badly the commercial bail system was corrupted by the late 1970's.

With all that said, Wisconsin could become a model for other states to adopt, if the program was laid out and implemented successfully. The system of commercial bail would be designed to be laid out similar to how our constitution directed the origins of our current governmental system: separation of power through state and local control, individual liberty of pretrial release while maintain the security of the community, and equal power, especially at the local level through bail bond boards by professionals from the executive and judicial branches as well as private citizens who work on behalf of the accused; all of whom are accountable to each other and the accused.

By standardizing initial training, licensure, endorsement, continued training and qualifications along with local accountability boards, there is a reasonable chance of success the community to be safer through: individualized supervision of defendants on pretrial release and more quasi-law enforcement actors looking for defendants who violation the conditions of their bond, for business owners to create jobs and assist defendants with the best pretrial services such as release from jail, attorney referrals and supervision while defendants are out of jail on bond and general accountability for all professionals in the industry through centralized and decentralized regulations and accountability boards.

With most states in the country offering commercial bail, and in some states cashless bail or no commercial bail, there is a patchwork of laws and regulations which are often criticized by activists. With the proper oversight of criminal justice professionals, detailed regulations and informative training, and research of what works and doesn't work in various states which employ different systems of bail; a good researcher and legislator will conclude that there is no exact state which provide the best model for pretrial release. The patchwork of statutes, administrative codes, surveys from professional studies will show that the best pretrial release system is a new system with a patchwork of different regulations from various states that have worked the most efficiently, benefitted the community and the civil rights of defendants and provided the best economic rewards for individuals and government entities.

Conclusion

There are limitations and unintended consequences to anything created on a mass scale; especially anything related to politics. Any new legislation is always met with skepticism and

criticism from any political party and thought to be a way that one political party can pull one over on another political party. The United States is one of two countries in the world which has a commercial bail system. While this system has bred corruption at times, it has also offered the poor a chance at pretrial release to aid in their own defense. Many states are passing cashless bail laws and there is not enough data to support that these work or don't work, yet. We can determine that there has been an increase in crime throughout the country, especially property crime in larger cities (Rosenfeld, 2022). With the release of defendants in cashless bail states due to non-violent crimes they were arrested for, many defendants have been re-arrested for similar offenses causing business to close or relocate due to theft making their businesses unprofitable. These states will cashless bail legislation will be the next group of states which will be held under scrutiny to determine if these policies and laws are the proximate cause of increased crime in metropolitan areas. Furthermore, there are no assurances community members have that defendants won't put the community at risk if there are no financial consequences to violating their conditions of pretrial release. If defendants violate their bond conditions in states with cash bail, they forfeit their surety bond or bail and are likely remanded back to jail with a higher new bail or bond amount.

The future of pretrial release is going to watched carefully regarding states like: Illinois, New York, California and New Jersey. These states were some of the first to end cash bail. These states also have some of the largest metro area populations. With the growing trend in property crimes since the beginning of the pandemic, only time will tell if criminals are using this form of pretrial release to game the system and allowing them to victimize more business and property owners. With only four states banning commercial bail, Wisconsin is in the current minority when it comes to private pretrial release options. Legislators and activists believed that eliminating cash bail for non-violent crimes would allow poor defendants to enjoy pretrial release to aid in their

defense; however, with the grown trend of property crime increases across metropolitan areas of the US, researchers could attribute this growing crime trend to cashless bail implementation. With disruption of everyone's lives and normal research methods due to the pandemic, and the short longitudinal data of cashless bail and crime increase correlation, a determination cannot yet be made on cashless bail being a causal factor.

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