

# Cash Bail in Dane County: Practices and Frequently Asked Questions

Presented to the Dane County Criminal Justice Council  
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Presented by: Hon. Judge Nicholas McNamara,  
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# Presentation Overview

- ▷ History of Dane County pretrial initiatives
  - Dane County as a national model in pretrial
- ▷ Wisconsin State Statutes
- ▷ The Presumption of Pretrial Release

# Pretrial Research in Dane County

- ▷ 2014: CJC-Pretrial Services Subcommittee releases a report on pretrial to the CJC (<http://bit.ly/3m4DMOs>)
- ▷ 2017-Present: Partnership with Access to Justice Lab (A2J) at Harvard Law School for the Public Safety Assessment (PSA)
- ▷ 2017-Present: Technical Assistance from Luminosity for the Public Safety Assessment (PSA)
- ▷ Present: Partnership with MDRC to study “dosage” of pretrial services and supervision

# What factors do court officials consider when making bail determinations?

- ▷ 969.01(1)
  - *.....the judge shall first consider the likelihood of the defendant appearing for trial if released on his or her own recognizance.*
  
- ▷ 969.01(4) Considerations in setting conditions of release
  - *If bail is imposed, it shall be only in the amount found necessary to assure appearance of the defendant. Conditions of release other than monetary conditions may be imposed for the purpose of protecting members of the community from serious bodily harm or preventing intimidation of witnesses*

# What factors do court officials consider when making bail determinations?

- ▷ 969.02 Release of defendants charged with misdemeanors.

The Judge may:

(d) Impose any other condition deemed reasonably necessary to assure appearance as required *or any nonmonetary condition deemed reasonably necessary to protect members of the community from serious bodily harm or prevent intimidation of witnesses*

- ▷ 969.03 Release of defendants charged with felonies.

The Judge may:

(e) Impose any other condition deemed reasonably necessary to assure appearance as required *or any nonmonetary condition deemed reasonably necessary to protect members of the community from serious bodily harm or prevent intimidation of witnesses*

# Under what conditions can defendants be held pretrial without bail?

- ▷ **Wis. Stat. § 969.035: Pretrial detention; denial of release from custody.**
  - <https://docs.legis.wisconsin.gov/statutes/statutes/969/035>

# The Presumption of Pretrial Release

- ▷ *The right to physical liberty is one of the foundational principles of the United States Constitution. The U.S. Supreme Court is unequivocal in stating that “In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” Our system of pretrial justice should uphold this fundamental principle.*

—*Advancing Pretrial Policy and Research (APPR)*

# The Presumption of Pretrial Release

- ▷ *“[I]t is clear that bail constitutes a fundament of liberty underpinning our criminal proceedings. Historically, it has been regarded as elemental to the American system of jurisprudence. [. . .] Our criminal system has made a basic choice: crimes are to be deterred by the threat of subsequent punishment, not by prior confinement. States should not be permitted to undermine this judgment by substituting pretrial detention in the guise of excessive bail for the existing criminal system which favors freedom prior to conviction.”*

—*Sistrunk v. Lyons*, 656 F.2d 64, 70 (emphasis added).

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# Questions?