JII Article

In a March 2013 article printed by The Wisconsin Policy Research Institute, Kate Lind talks about pretrial release, and specifically, promotes the notion of restoring the use of commercial bail bonds to the Wisconsin criminal Justice system. Lind attempts to present a balanced approach to pre-trial release but the clear agenda is bringing back bail bonding for profit evidenced by the recent motion added to the Assembly Bill 40, motion #999, biennial budget bill process.

This paper, prepared by Justice Initiatives Institute with assistance from Kit Murphy McNally, Writer & Justice Advocate, is a response to Lind's article and includes more recent research and data citations to make the case for Wisconsin to remain on its current path- establishing evidenced-based practices and outcome measures that promote public safety, are cost effective and most importantly rely on local jurisdictions doing collaborative work to reach consensus on what is best for a jurisdiction.

Justice Initiatives institute (JII) is a new non-profit agency dedicated to promoting and organizing efforts to transform Wisconsin's institution based criminal justice system into one that is evidenced based, cost effective, and results focused. The founders of JII are respected and knowledgeable criminal justice professionals. Their experience in using carefully collected need and risk data to inform decision making and shape program planning has been the foundation for Milwaukee County's steady adoption of evidence-based practices in the court system.

For more information on JII contact 414-908-0282 or mwalczak@jiinstitute.org. JII was established through the efforts of Marilyn Walczak, Bowne Sayner, Nick Sayner Executive Director of JusticePoint Inc., Ed Gordon and Ann Laatsch.

Judging By The Evidence

Fair and Effective Pretrial Justice in Wisconsin

Thirty four years ago the Wisconsin Legislature and Governor Lee Dreyfus looked to the future and soared ahead of nearly every other state in the union by outlawing commercial for-profit bail bondmen and their bounty hunter henchmen. Prior to 1979 in the old Wisconsin days, when defendants or their families purchased a bond from a bail bondsman, his fee of 10% of the total bail amount was money they'd never see again even if they appeared as ordered to court, and even if they were found not guilty.

The value of Pretrial Services to the justice system, good government and safe communities ranges far beyond the misperceived usefulness of commercial bail bonding, as this publication will demonstrate. But because commercial bonding is a highly-financed, professionally lobbied business periodically attempting to increase its profits through re-entry into Wisconsin -- recently assisted by Kate Lind in the report published by the conservative Wisconsin Policy Research Institute -- this examination of pretrial services will highlight the contrast with commercial bonding where relevant.

The Challenge of Cash Bail

The Federal Bail Reform Act of 1966 set out to diminish reliance on cash bail, by then demonstrated to have no bearing on the defendant's appearance in court or behavior while awaiting trial. For a short time release on personal bond began to take precedence. Then President Richard Nixon declared a War on Drugs and the race to incarcerate trampled reform for two more decades. Bail reform landed on the shelf as state and local governments launched decades of jail and prison overcrowding, expansive building campaigns, and the evolution of private enterprise into a prison industrial complex.

Despite a second attempt at bail reform in the 1980s, cash bail today still fuels pretrial detention and the public cost of jail operations. The impact compounds when bail decisions occur in the absence of professional pretrial services.

The Pretrial Justice Institute emerged in 1977 with funding from the US Department of Justice to research, promote and train jurisdictions in best practices of pretrial release that include validated screening for risk, monitoring with referral to services when warranted, reports to the court, and notification of court appearances to the defendant. The Institute is the nation's only nonprofit "dedicated to ensuring informed pretrial decision-making for safe communities."[1]

State law governs the use of cash bail. Local policies govern the implementation of professional pretrial services to support rational, effective pretrial release decisions and monitoring benefitting the defendant, community, courts, jails and taxpayers.

In an October 2012 analysis of Wisconsin law, Chapter 969 (Bail and Other Conditions of Release), the Wisconsin Fiscal Bureau reported, a defendant arrested for a criminal offense is eligible for release under reasonable conditions designed to assure appearance in court, protect members of the community from serious bodily harm, or intimidation of witnesses.

Proper considerations in determining whether to release the defendant without bail, fixing a reasonable amount of bail or imposing other reasonable conditions of release are:

- the ability of the arrested person to give bail
- the nature, number and gravity of the offenses, and the potential penalty the defendant faces;
- whether the alleged acts were violent in nature;
- the defendant's prior record of criminal convictions and delinquency adjudications, if any;
- the character, health, residence and reputation of the defendant;
- the character and strength of the evidence which has been presented to the judge;
- whether the defendant is currently on probation, extended supervision or parole;
- whether the defendant is already on bail or subject to other release conditions in other pending cases;
- whether the defendant has in the past forfeited bail or violated a condition of release or was a fugitive from justice at the time of arrest, and
- the policy against unnecessary detention of the defendant's pending trial." [2]

The analysis notes, “If cash bail is imposed, it must be only in the amount found necessary to assure the 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.

Under current Wisconsin law, if the judge orders cash bail, the full amount must be posted. There is no provision for posting a percentage, often 10% in states where commercial bail bonding occurs, with the bondsman placing a lien on the defendant’s property and finances for the remainder. For the remainder of the bail, the bondsman put liens on cars, homes and life savings that he, or the insurance company underwriting the bond, collected if the defendant failed to appear as ordered for court and could not be located in a time frame set by the court.

However, payment back to the local jurisdiction has a somewhat sketchy record. For example, Capitol Bail Bonding owed more than $100,000 million to New Jersey and more in five other states. A representative of the Professional Bail Agents of the US claims bail bondsmen could not stay in business if they did not get their charges back to court, so they rack up at least a 98% success rate – a rate unverified by actual data.[2] The Wisconsin Policy Research Report cites a 25% failure to appear rate across the nation, as evidence of the need for commercial bail bondsmen. However, commercial bondsmen work in all but four states, so apparently their failure rate is closer to 25% than 2%.[3]

The search for absconders can also bring in the more unsavory side of commercial bonding – the heavily unregulated, lawless bounty hunter. While such individuals may appeal to reality TV fans, vandalism, assault and even murder lie in the wake of some.

Research drawn from Wisconsin’s Consolidated Court Automation Program (CCAP) conducted by Holly Szablewski, Milwaukee County Judicial Review Coordinator-

Milwaukee courts handled 6,722 felony cases between December 1, 2011 and December 31, 2012.

During that time 872 bench warrants were issued for failure to appear, with 86 remaining outstanding – about a 90% clearance rate.

Those outstanding cases amount to only about 1% of all felony cases filed during that 13 month period.

Pretrial Services, not commercial bail bondsmen, keep the failure to appear rate low in Milwaukee, about 16% in the first quarter of 2013, with low risk misdemeanor cases contributing disproportionately to that rate.

Pretrial Services began making changes to help ensure appearance of low risk, often low cash bail, defendants.

If the defendant fails to appear in Wisconsin, after a set period the cash bail forfeits, first paying court ordered compensation to the victim(s), then covering court costs and lastly depositing any remaining funds into the county general fund, supporting tax funded operations.

Section 969.12 of the Wisconsin Statutes requires that every person providing bail on behalf of the defendant be a resident of the state, a ‘natural person,’ and not be compensated for posting bail. That is the 1979 addition to the statutes prohibiting commercial for-profit bail bonding in Wisconsin.

If a defendant out on cash bail fails to appear, a phone call from the Pretrial Services monitor is frequently all that’s needed to get the individual back into court. Data from Milwaukee’s 2011 Pretrial Services report documents only 3.7% of 3,387 individuals supervised by the program failed to appear in court.[4] In those limited instances where Pretrial cannot convince the

defendant to return to court and the judge issues an arrest warrant, the county sheriff typically executes the warrant, according to the office of the Director of State Courts in Wisconsin. Experience in states with commercial bail bondsmen reveals bondsmen also often rely on Pretrial Services and Sheriffs to return wayward defendants to court, or they may resort to a bounty hunter unconstrained by rules of law.

In Wisconsin there is no accurate statewide tally of failures to return to court and bail forfeiture because local jurisdictions manage bail and forfeitures differently and data are not necessarily comparable from one district to another. There is no state repository of data for statewide comparisons.

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Out from the Shadow of the Commercial Bail Bondsman

Currently, all but four states – Wisconsin, Illinois, Oregon, and Kentucky – are open for the big commercial bail bonding business that turn pretrial release into a multi-billion dollar enterprise, much as the private prison industry profits from the incarceration of men and women.

Policy makers may look to commercial bail bondsmen as a free source of security – relying on the bondsman to post what is usually about 10% of the cash bail with a promise to return the defendant to court, presumably keep an eye on the defendant during release, and providing insurance for the full amount of cash bail in case the defendant ultimately fails to appear. What really actually occurs may be quite different.

Giant insurance companies underwrite the bonds, for which the defendant and/or his family have put up collateral that may include their home, car, or entire life savings. The defendant pays the 10% bail up front to the bondsman. The bondsman pays the courts little or nothing, but provides evidence the entire bond is underwritten by private insurance. **The larger the bond, the greater the premium paid the bondsman and profit to the insurer, so defendants unable to post unprofitable lower bails while away days, weeks, and sometimes months in jail at the taxpayer's expense until their day in court arrives.** [5]

When an individual out on bond fails to appear in court and the bail is forfeited, the money goes to the bonding company, not to the victim, not to the courts, not to the local jurisdiction. Additionally, when defendants are found not guilty, the money they paid the bondsman is not returned, nor are court costs covered.

While bonding enterprises portray themselves as an additional pillar of justice in the system, albeit a pricey one for individuals directly affected, they fall under severe criticism from champions of justice including the American Bar Association, International Association of Chiefs of Police, American Civil Liberties Union, National District Attorneys Association, and National Association of Counties. [6] In Wisconsin, professional justice associations, from judicial to law enforcement, almost universally oppose any return of commercial bail bonding in Wisconsin, attesting there is no demonstrable need, there are insidious costs to commercial bonding, and evidence shows Pretrial Services deliver more, benefitting community safety, victims, the courts and local governments.[7]

According to the Justice Policy Institute, "In numerous instances the for-profit bail bond industry has fought pretrial reform through the use of industry lobbyists, significant donations to industry friendly policy makers, backroom influences and legislation with the help of their conservative corporate-financed partner: the American Legislative Exchange Council (ALEC). [8]

Thought to have been started by underworld bosses in the late 19th century, the dark side of commercial bonding came to light in a 1927 study by Arthur L. Beeley's *The Bail System in Chicago*. The study documents too many poor people abandoned in jail because they could not pay the bondsman; the overly influential position allotted the bondsman in the judicial process; graphic evidence of the corrupting influence of paid bondsmen, and the millions of dollars withheld from victims and court systems because of the bondsman's failure to pay forfeitures. Despite two major waves of reform, those same charges reverberate today, 86 years later.

Attempts at Bail Reform – 2 Down, the 3rd Arising

The administration of bail underwent critical examination for the first time in the 1960s under the critical eye of the Vera Foundation's Manhattan Bail Project. Recommendations emerging from that analysis urged use of the least restrictive, non-financial conditions of release. Additionally, the Project underscored use of release on recognizance based on the defendant's ties to the community, shown to be a strong indicator of compliance with court appearance. [9]

Following in Vera's wake two decades later in the 1980s, the second generation of bail reform honed in on assessing risk to public safety as a constitutionally permissible use of cash bail.

These standards, so common today, were radical at the times, resulting in overhaul of state and federal statutes and even some state constitutions. [10]

Now, three decades after the last wave of reform, the evidence weighs in heavily, establishing Pretrial Services as the higher standard that according to the *Denver Law Review*, "aims primarily to reduce the deleterious effects of money at bail and to focus more on transparent and rational processes, such as assessment and supervision to address a particular defendant's pretrial risk." [11]

\Association of Chiefs of Police issued a report, *Law Enforcement's Leadership Role in the Pretrial Release and Detention Process,* in which the association cites the increasing demand for evidence based best practices in the field of pretrial release. The report attests sound practices do exist and must be implemented. [12]

Milwaukee Police Chief Edward Flynn told the Journal Sentinel that bondsmen are:

"basically legal loan sharks. And they prey on the poorest communities that already have had enough troubles. It's not something professional law enforcement recommends, it's not something the judiciary recommends and it's not [something] anybody who has a role in the criminal justice [system] recommends. I don't understand the motivation." Flynn said state courts produce a better appearance rate for defendants than the system bail bondsmen were proposing.

Increasing numbers of policy makers recognize proven, evidence based practices in Pretrial Services provide cash savings, along with heightened public safety. In this new era, all parties profit except the profiteers.

As agencies steeped in the evidence, e.g. NIC, JMI, PJI, reach out to educate justice leaders across the country, the quest to reform bail practices and expand highly trained, fully funded Pretrial Service programs as part of a comprehensive justice program in local jurisdictions gains daily momentum. In some jurisdictions, a few judges and prosecutors may remain uninformed and resistant, but the organized blowback to reform appears to be solely in the hands of commercial bail bondsmen, large insurance companies and their powerful lobbying partner ALEC. [13]

The Public 'Gets It'

As the misbegotten War on Drugs and War on Crime spawned a frenzy of expanded and severely hardened criminal codes across America, prisons and jails exploded. The private prison industrial complex emerged, commercial bail bonding thrived feeding billions into partner insurance companies, and a toxic cloud of unjust disparity settled over central cities, African Americans, Latinos and poor women.

Ironically, poll after poll reveals a clear majority of American citizens favor restorative alternatives to incarcerations including supervision and treatment for lower risk individuals, and especially for those with a mental illness and/or addiction. After arrest, it is Pretrial Services that ensures supervision and connection to treatment and systems of support so that defendants may safely return to their communities.

Founded in 1986 in Washington, DC, The Sentencing Project ranks nationally as a highly trusted source of groundbreaking research and strategic advocacy for justice policy reform. In the late 1980's, the Project collaborated with Minnesota's Edna McConnell Clark Foundation to do extensive polling of public opinions on rational justice policies. They discovered people clearly favored alternatives to incarceration and community treatment options when they were informed of risk assessment measures and the nature of community supervision.[14]That sentiment carried through from pretrial to post sentencing. Over the intervening years, research and understanding of criminogenic markers and human behavior have advanced, so has public opinion, which continues to back smart, safe, cost-effective alternatives to incarceration.

Peter D. Hart Research Associates, leading analysts of public opinion in the United States, assessed public opinion on crime and criminal justice in 2002 and found most responders eschewed the shopworn *tough on crime* rhetoric in favor of holistic solutions that embraced crime prevention, alternatives to incarceration and rehabilitation. The overall percentage supporting supervised community alternatives to incarceration totaled 75, breaking down to support from Democrats 79%, Independents 79% and Republicans 66%. [15]

A Zogby International poll in 2009 revealed 77% of respondents believed alternatives to incarceration were not a threat to public safety, and 50% believed such alternatives would decrease the cost to state and local government, and thus to taxpayers.[16]

And in 2012, on behalf of the Pew Center on the States, the Mellman Group and Public Opinion Strategies, widely recognized as the nation's leading Republican polling firm, conducted a nationwide survey that found 84% of Midwestern voters support shifting dollars now spent on locking up low-risk, nonviolent individuals to more effective, less expensive alternatives. Among Democrats, support was 91%, Independents 85% and Republicans 77%.[17]

Pretrial Services Blaze Wisconsin Trails

Today the evidence is in: Pretrial Services provide the screening, assessment, referral, monitoring, assurance of court appearance, and data collection that protects the community, the rights of the accused, and the process of the courts. The meticulous work of these degreed and highly trained service providers occurs within the system of justice as public servants or nonprofit professionals. The more successful their carefully monitored release and treatment referrals are, the lower the jail population and ultimately the lower the cost to taxpayers to operate the county jail facilities. The outcome yields safer, more prosperous neighborhoods and communities, benefitting everyone.

The success of pretrial services across the country is well documented by the Justice Policy Institute based in Washington, DC, as well as other research and justice organizations. Yet commercial bail bonding entrepreneurs continually rap on legislative doors, seeking entry into the four states where they are barred and plot to overthrow pretrial services in other states where effective Pretrial Services interfere with the profit margins of the bonding enterprise and the massive insurance agencies that underwrite them.[18]

The evidence upholding Pretrial Services evolves from years of research undertaken by respected agencies including the Justice Policy Institute (JPI) based in Washington, DC and the impartial National Institute of Corrections (NIC), a research and training arm of the United States Department of Justice. Both share their expertise throughout the nation, actively supporting jurisdictions in extensive review and analysis of how they do justice and how they can do it better through a process of Evidence Based Decision Making (EBDM). This work encompasses other nationally respected agencies including the Urban Institute, Justice Management Institute, and the Center for Effective Public Policy.

Out of seven national jurisdictions selected to partner with NIC on a major systemic change venture, Milwaukee County is the only jurisdiction to transform a major metropolitan system

into an evidence based model of justice. Eau Claire is one of the seven smaller jurisdictions sharing in this prestigious mission. The EBDM initiative has entailed three stages with jurisdictions competing to participate in each phase. Now in phase three, only three jurisdictions remain: Milwaukee, Eau Claire and Mesa County, Colorado, which also sets Wisconsin apart as the only state where two transformations are occurring to serve as role models for the nation.

The evidence does not substantiate cash bail having any effect on the defendants return to court or community safety. But since most jurisdictions remain hesitant to totally eliminate cash bail, what it does promise in the absence of the bail bondsman is a deposit with the court (for the full bail amount in Wisconsin) which will provide restitution to the victim(s) and cover court costs if the defendant fails to appear for court. If the defendant does appear the cash bail is returned minus court costs – an invaluable practice in a county like Milwaukee with some of the poorest families in the nation.[191]

When Wisconsin slammed the door on commercial bail bonding in 1979, the garish BAIL BOND signs surrounding the courthouse in Milwaukee came down. But the really significant action happened inside the courthouse as the county's first Pretrial Services program took shape in the new combined Intake and Screening Unit of the jail. All parts of the justice system began to seriously consider and reconsider practices that had caused jail and prison populations to soar, and especially troubling, identify Wisconsin as number one in the nation in the disparate rate of incarceration of African Americans.

"While I understand **bail bonds companies** may want to set up shop near the District Court, the proliferation of these businesses is changing the complexion of Chesapeake and Virginia avenues, and not for the better," Councilman David Marks, Towson, MD said in a statement announcing the potential bill. "It was bad enough when one business decided to plaster their windows in neon, but now another has erected a gaudy sign across from a senior citizen home and within a stone's throw of Historic East Towson." By Jon Meoli, **jmeoli@tribune.com; http://www.baltimoresun.com/news/maryland/baltimore-county/towson/ph-tt-bail-bonds-signs-0123-20130118,0,5249097.story#ixzz2VTXO6v7T**

Under the foresighted leadership of Milwaukee Sheriff Inspector Kevin Carr (now US Marshal for the Eastern District of Wisconsin), the Milwaukee County Community Justice Council came together in 2009 with an executive committee of local civic and justice leaders spearheading a council of 27 related government, justice and community agencies concerned about the administration of justice in Milwaukee. An active participant, the pretrial service program became key when the Council successfully vied to be one of 7 jurisdictions across the nation receiving technical assistance from NIC to achieve a stronger justice system created through Evidence Based Decision Making (EBDM). Goals establish by the Council's policy team embraced front end diversions from incarceration – evidence based Pretrial Services.

In January 2013, Nick Sayner and Ed Gordon, the leadership of Justice 2000, re-established Pretrial Services as JusticePoint, a freestanding nonprofit Pretrial Service agency fulfilling the responsibilities of the Pretrial Division overseen by the Chief Judge of the Milwaukee Circuit Courts.

In conjunction with the EBDM initiative, JusticePoint continues to develop and fine tune pretrial practices that include Universal Screening of virtually all individuals booked into the county jail

employing a Pretrial Risk Assessment Instrument validated for pretrial release based on the Milwaukee pretrial population; a nationally top-rated risk and needs screen, the LSI-R, to determine appropriate treatment needs and services for Deferred Prosecution Agreements, Drug Treatment Court and Day Reporting Center alternatives to jail; and establishment of a Central Liaison Unit to refer and monitor individuals referred to a network of evidence based community providers.[19]

Data drives the process. Data demonstrating positive results underlies the development of all new processes and gauges ongoing results for modifications and change. Justice leaders, policy makers and concerned citizens have access to reports detailing what works and how well. This is transparent evidence based justice.

JusticePoint is a government funded nonprofit agency, employing highly trained, degreed staff that reside in the Milwaukee area. Under County contract, the agency is answerable to the Chief Judge, Community Justice Council and the County Board.

Bounty Hunters Compound Dubious Record

There is considerable evidence, data and historical fact to support Pretrial Services. Not so much, commercial bail bonding and even less so, bounty hunters – an antiquated and somewhat lawless remnant of old frontier days. A March 2013 Wisconsin Policy Research Institute report entitled, *Should Wisconsin Allow Commercial Bail in Pretrial Release,* resurrects old arguments in an attempt to make the case for restoring an unneeded and costly practice in Wisconsin.[20] The 12 page essay raises the same arguments that failed muster when the State of Wisconsin rejected commercial bail bonding in 1979.

While author Kate Lind (who remains uncredentialed in the report) cites commercial bail bonding as an evidence based approach to pretrial release, she repeatedly calls up puzzling evidence, including a 1967 Report on "Bail in the United States: 1964" by D. J. Freed -- a study almost 50 years old. Several citations refer to conclusions drawn by Thomas H. Cohen, sometimes in collaboration with Brian A. Reaves that use Bureau of Justice Statistics collected between 1990-2004. Misuse of that data caused the Bureau to issue a March 2010 Data Advisory that warned the data:

- Are insufficient to explain causal associations between the patterns reported.
- Evaluative statements about the effectiveness of a particular program in preventing pretrial misconduct may be misleading.
- The potential for misconduct is only one of many factors that jurisdictions consider in developing and implementing pretrial release policies.[21]

Despite these warnings, Lind cites Cohen when claiming:

- "25 percent of all released felony defendants fail to appear for their court dates, ant the costs to society are unsettling."
- Data suggests that felony defendants who fail to appear carry an increased likelihood of committing additional crimes, an indirect but very real cost to society.

- A sampling of Bureau of Justice Statistics for state courts shows that 16 percent of felony defendants were rearrested for a new crime while on pretrial release for their initial charges.
- While felony defendants are not necessarily guilty, it bears mentioning that an individual with a single prior offense will go on to commit another offense 39 percent of the time."[22]

Because Lind uses these statements, that according to BJS, the data cannot clearly substantiate, the validity of all her subsequent arguments in support of commercial bail bonding fall open to question.

Lind takes issue with reports citing many cases of corruption and collusion that involved justice officials and commercial bondsmen, dismissing them as old history, and quotes a Philadelphia report, "Unlike the bail bondsman of yesteryear, todays surety is usually a professional person more akin to a corporate insurance agent than a gun wielding cowboy." [23]

The likeness to a corporate insurance agent is no accident since huge insurance agencies, none identified doing business in Wisconsin, underwrite the bonds. Interestingly, insurance companies and their agents have had their share of historical unscrupulous activities, as have bail bondsmen and bounty hunters.

Validated screens for pretrial release elicit information proven to assess risk. Results of the screen, combined with prior criminal history and substance abuse screen, enable Pretrial Services to make sound recommendations to the court regarding release that benefits the defendant, community and justice. With sharply diverging goals and curiously unsubstantiated markers of risk, Lind suggests " to thwart flight and to improve the likelihood of re-arrest . . . the bail agent gathers information in great detail, right down to specifics on employment, friends, *pastimes, hobbies and tattoos."*[24]

In attempting to make the case for a return to commercial bail bonding in Wisconsin, Lind resorts to comparing commercial bail bonding to release on personal signature bonds, which are not comparable. That pits cash bail against personal recognizance, a whole different issue than commercial bail bonding vs. professional Pretrial Services. The statistics cited reside in a report out of a George Mason University think tank supported by the ultra-conservative and increasingly influential Koch Brothers.[25]

Lind notes that when bail forfeits in Wisconsin (the full amount of court ordered bail) any remaining funds, after compensating the victim(s) and covering court costs, get deposited in the county general fund, helping support government services and control taxes.

"It should be kept in mind," Lind writes, "that to view bail forfeitures as a means of generating revenue for counties is 'a complete departure from bail's fundamental purpose.'"[26] In return, one would suppose, sending forfeited bail to commercial entrepreneurs and large out of state insurance companies is an even greater departure from bail's fundamental purpose to assure appearance in court.

There are other questionable citations and conclusions contained in the WPRI report of March 2013, but those cited here are simply to exemplify the shifting sand on which evidence supporting commercial bail bonding wobbles in this new era of solid evidence based decision making and validation, which is not only supported, but mentored by leading justice agencies of the United States government.

Laying claim to a strength that sound data does not support, commercial bail bonding agencies have gone even farther out of the mainstream, teaming with ALEC to attack Pretrial Services head-on in state legislatures. ALEC, the powerful lobbying force behind *Stand Your Ground* laws and the private prison industry, has gone after Pretrial Service programs under cover of the "Citizens Right to Know Act." Florida fell in step, passing such a law requiring Pretrial Services to operate with "greater transparency" by providing weekly reporting and tracking results – reports they were already providing, but then had to produce in redundant form, taking time away from screening and supervision. [27]

When ALEC moved on to Virginia, another state with strong Pretrial Services and solid reporting, an attempt to pass the Citizens Act foundered when the Department of Planning and Budget said the reporting requirements would "necessitate the equivalent of one full-time staff person for each of the 30 programs, and would require extensive rewriting of the state's information management system. All at an implementation cost of $1.5 million annually. The Director the Chesterfield/Colonial Heights Community Corrections Services noted, "It would have required programs to report on things we don't even do in this state."[28]

The Evidence Behind *Evidence Based Justice*

Evidence Based justice derives from two decades of data collection, research and meta-analysis by the United States Department of Justice, National Institute of Corrections, Washington State Policy Institute, Justice Policy Institute, Justice Management Institute, Center for Effective Public Policy, the Carey Group, Center for Courts, Urban Institute and Pew Center for States, among others.

These institutions and agencies collected and analyzed data amassed over decades to understand what policies and practices actually work to:

- Reduce need for jail and prison beds
- Save money for state and local taxpayers
- Contribute to lower crime rates
- Increase public safety

Using Evidence Based Decision Making (EBDM), the Milwaukee Community Justice Council and all key justice leaders, including Pretrial Services, worked closely with NIC, Pretrial Justice Institute, the Carey Group, Justice Management Institute the Center for Effective Public Policy and the Urban Institute to employ state of the art research analyzing decision points at all levels of policy within each local division of justice. The front end result of this massive initiative represents a wholesale upgrade of Pretrial Services that embraces Universal Screening, a Central Liaison Unit, a Preferred Provider Network, and Crisis Intervention Teams in the community as part of new early intervention initiatives.

Simultaneously, Eau Claire's Criminal Justice Coordinating Council is immersed in wholesale EBDM collaboration as it relates to their community, providing practitioners with the tools to achieve measureable reductions in pretrial misconduct and post-conviction re-offense.

The work of these two Wisconsin jurisdictions provides templates on a Justice Management Institute framework for evidence based justice that can benefit every county in Wisconsin according to local needs and customs. Nowhere does this progressive agenda include the establishment of commercial bail bonding underwritten by insurance companies with no allegiance to Wisconsin taxpayers or system of justice.

Importance of Pretrial Release

Frequently 60 percent of the men and women filling local jails are not serving sentences, but are awaiting resolution of their court case, i.e., innocent until proven guilty. At a national norm of $60 per day, that period of incarceration –- particularly for individuals who are of little or no risk -- comes at a high cost to local taxpayers, about $9 billion in 2011.[29] In Milwaukee, that same year, Pretrial Services calculated more than 18,000 bed days saved through successful pretrial release. Had those individuals remained in jail until their first court date, the cost using the $60/day national average would go just over $1 million.[30]

Other costs are more allusive, but very real when experienced. Small businesses scramble to cover productivity when an employee is suddenly unavailable for an indefinite period. Dependent family members and children scatter to the streets or unprepared friends and relatives. Or protective services step in further increasing government costs. Personal property and even shelter become vulnerable to loss.

Even innocence comes at a high cost when the individual returns to the community with employment, housing, personal belongings all lost and loved ones traumatized by the their struggles.

The poor often pay more in many ways, but one of the more insidious compounds the cost of pretrial incarceration by stealthily eroding individual rights. Defendants held in jail until trial are more likely to be convicted, receive a sentence of incarceration and be sentenced longer than those released pretrial. Appearing before the judge or jury with an unkempt appearance in a rumpled jail jumpsuit and shackles coveys a message of danger to judge and jury alike. That image fades when the defendant walks unencumbered into court well groomed in street clothes.[31]

Additionally, jail restrictions on phones and visits impede incarcerated defendants from participating in their own defense, including contacting witnesses and gathering crucial information for trial, even consulting as needed with their attorney.

What Makes Sense for Wisconsin

Public officials in Wisconsin need to recognize that criminal justice stakeholders and experts in Wisconsin are working collaboratively to develop evidenced based practices that promote public safety and are cost effective to the State and to counties. Legislators and policy writers need to take advantage of these valuable resources before promoting criminal justice system changes. Additionally, there is a need for elected officials and criminal justice stakeholders statewide to:

1. Recommit and build on Wisconsin's longstanding stature as a national leader in effective justice policy.

2. Expand the network of criminal justice coordinating councils to all 72 Wisconsin counties, providing financial and technical support for the development of an evidence based Pretrial Services program in every jurisdiction without one.

3. Publish and share data generated by Pretrial Services in Wisconsin to promote recognition and understanding of the true social value, public safety and wise monetary investment in quality of life and justice.

4. Reject any proposal to restore commercial bail bonding to Wisconsin.

5. Reject Trojan horse legislation such as the Citizens Right to Know by fully vetting the redundancy and price tag of new laws to enable commercial bonding to slide under closed doors.

NOTES

[1] The Pretrial Justice Institute History, About Us, 1 June 2013 http://www.pretrial.org/ABOUTPJI

[2] Lind, Kate, "Should Wisconsin Allow Commercial Bail in Pretrial Release?," WPRI Report Vol. 26 No. 3 (March 2013) 8

[3] Ibid p. 21-22

[4] Justice 2000, 2011 Activity Report, p. 11

[5] Justice Policy Institute, "For Better or For Profit: How the Bail Bonding Industry Stands in the Way of Fair and Effective Pretrial Justice," September 2012, p. 10-16

[6] Schnacke,Timothy R., Booker,Claire M. B., Jones,Michael R., "The Third Generation of Bail Reform, DU Law Blog www.denverlawreview.org 14 March 2011, p. 1

[7] The Center for Media and Democracy, "Wisconsin Open for Bounty Hunters," PR Watch www.prwatch.org (17 March 2013)
[8] op. ct. Justice Policy Institute, p.32
[9] op ct. Schnacke, Booker, Jones, p.1
[10] ibid. p.2-3
[11] ibid., p.2-3
[12] International Association of Chiefs of Police, "Law Enforcement's Leadership Role in the Pretrial Release and Detention Process," February 2011
[13] op. ct. Justice Policy Institute, p. 28-39
[14] National Alliance of Sentencing and Mitigation Specialists, "History of Defense-Based Sentencing Advocacy and NASAMS," <www.nlada.org/Defender/Defender_MASAMS/about_nasams/about_history> 2011
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