



Dear Assembly Minority Leader Neubauer, Senate Minority Leader Agard, and Members of the Democratic Caucus:

The undersigned civil rights and liberties, criminal justice reform, faith-based, and civic engagement organizations are writing to voice our strong opposition to the bail referendum trailer legislation, Assembly Bill 54 and Senate Bill 75. **We implore you to vote against this legislation that would cause profound, compounding harm to individuals, families, and communities throughout Wisconsin.**

As elected officials, you have an obligation to protect the most marginalized communities in your district, including the Black and Brown constituents, Indigenous constituents, and poor constituents who will be most impacted by this legislation.

### **A Two-Tiered System of “Justice”**

Wisconsin’s reliance on cash bail has perpetuated a two-tiered system of justice: one for the wealthy and one for the rest of us. We cannot talk about cash-bail without acknowledging how mass incarceration in the United States and Wisconsin is, in part, fueled by policies and practices that cage human beings charged with *but not convicted of any crime*. More than [400,000](#) people in the U.S. are currently being detained pretrial – almost half a million Americans are behind bars while still being legally innocent. In 2015, pretrial detainees constituted [47%](#) of the total jail population in Wisconsin. On any given day, how many Wisconsinites are currently sitting in jail unnecessarily simply because they cannot afford the price of their freedom?

In light of [research](#) indicating that Black and Brown defendants are more likely to be incarcerated pretrial, a vote in favor of AB 54/SB 75 will exacerbate the profound racial disparities in our criminal legal system. You are well aware that Wisconsin has the highest Black [imprisonment](#) rate in the nation: one of every 36 Black Wisconsinites is in prison. Black people in 2020 were [42%](#) of the incarcerated people in Wisconsin while only making up 6% of the statewide population. A University of Wisconsin-Milwaukee [study](#) demonstrated that in the 53206 ZIP code in Milwaukee 42% of all Black men between the ages of 25 and 34 are in the state corrections system or under active community supervision in 2013.

Compared to similarly situated non-detained peers, people detained pretrial are [more likely to plead guilty](#), [more likely to be convicted](#), [more likely to be sentenced to jail](#), and [more likely to have longer sentences if incarcerated](#).

We are calling on you to avoid contributing to this already deeply racist and flawed system by voting for a bill that will undermine the safety and stability of people detained pretrial and their communities, exacerbate inequities in the state's cash bail system, and raise significant concerns under the due process clause of the Fifth Amendment and the excessive bail prohibition under the Eighth Amendment to the U.S. Constitution.

### **“Serious Harm” and the Human Cost of Pretrial Detention**

As Chief Justice Rehnquist wrote for the majority in *United States v. Salerno*, “In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” 481 U.S. 739, 755 (1987). However, the overly broad “serious harm” language proposed in this trailer bill turns this principle on its head, allowing a court to set the price of a legally innocent person's freedom based on endless social, emotional, economic, or other harms. This definition fails to account for the complex harm caused to individuals, families, and communities from incarceration itself.

The Prison Policy Initiative [reported](#) that “being detained pretrial for just 3 days can impact employment, finances, housing, and the well-being of dependent children. In fact, studies have found that just 3 days of detention can make the lowest-risk defendants less likely to appear in court and more likely to commit new crimes. There is no question that wholesale pretrial detention does far more harm than good.” Dr. Sandra Smith of the Harvard Radcliffe Institute went a step further and [reported](#) seeing these consequences in any period over one day of pretrial detention.

On top of the risk of job loss, eviction, and the impact on child custody and parental rights, people incarcerated pretrial can find themselves under a mountain of system-imposed debt between “pay-to-stay” fees [assessed by counties](#), and money extracted from incarcerated people and their families by jails and telecommunications companies, with [rates for phone calls](#) as high as \$14.77 for a 15-minute call in some counties.

We applaud efforts to set a progressive vision for ensuring basic needs are met for Wisconsin communities and address many root causes of the disparities in our carceral system through legislation like the Economic Bill of Rights. But you cannot fight for “a restorative and equitable justice system” while also voting for legislation that will disproportionately harm these same communities.

History will remember the decisions that you make at the upcoming floor sessions to protect the most marginalized Wisconsinites that you represent. We will too.

Signed,

American Civil Liberties Union of Wisconsin  
Black Leaders Organizing for Communities (BLOC)  
Congregations United to Serve Humanity (CUSH)  
Dream.Org  
Ex-Incarcerated People Organizing (EXPO)  
FREE  
Justice Organization Sharing Hope & United for Action (JOSHUA)  
Leaders Igniting Transformation  
Racine Interfaith Coalition (RIC)  
Wisconsin Association of Criminal Defense Lawyers (WACDL)  
Wisconsin Justice Initiative  
WISDOM