

COMMENT

GET SOBER OR GO TO JAIL: RETHINKING SOBRIETY RESTRICTIONS FOR PRETRIAL RELEASE

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Wisconsin judges impose bond conditions on defendants who are released from custody pending trial, and have the power to impose any reasonable condition of release. Because judges have broad discretion when setting bail, bond conditions vary drastically between jurisdictions, judges, defendants, and the types of charges. The problem with this expansive discretion is illustrated by the use of absolute sobriety restrictions. A defendant released from custody with an absolute sobriety restriction may not consume any alcohol or illegal substance during the pendency of their case. For any defendant over the age of twenty-one, this restriction criminalizes a behavior that would otherwise be legal: consuming alcohol. For defendants struggling with addiction, absolute sobriety restrictions can be detrimental to the outcome of their case.

The penalty for violating a bond condition is an additional criminal charge, known as “bail jumping.” Bail jumping is one of the most charged crimes in Wisconsin, but also the most likely to be dismissed. Bail jumping charges can significantly harm a defendant’s case, particularly at sentencing. Therefore, the rising number of bail jumping charges throughout the state is cause for concern. This Comment argues that the use of absolute sobriety restrictions is antithetical to the purpose of the bail jumping statute: to prevent defendants from violating their bond conditions and committing additional crimes while out of custody. This Comment highlights how expansive judicial discretion leads to over-conditioning, a practice that harms many defendants. Finally, this Comment proposes practical solutions to address this problem, all of which can be implemented without changing the existing bail statutes.

Introduction	1582
I. An Overview of Wisconsin Bail Law	1586
A. What Is Bail Jumping and How do Judges Set Bond Conditions?	1586

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B.	Wisconsin Supreme Court Rejects Argument That Statute Protecting People with Addiction Applies to Bail Jumping.....	1589
C.	2023 Constitutional Amendments Expand Judicial Bail-Setting Discretion.....	1592
II.	Absolute Sobriety Restrictions: Futile, Harmful, and Unrelenting.....	1595
A.	Absolute Sobriety Restrictions Do Not Meet the Goals of Bond Conditions.....	1595
1.	The Goal of Assuring Defendants' Appearance in Court.....	1595
2.	The Goal of Protecting the Community from Serious Harm.....	1597
3.	The Goal of Preventing Witness Intimidation.....	1601
B.	Limits on Judicial Discretion Should Prevent Over-Conditioning but Lack a Proper Enforcement Mechanism.....	1602
C.	Circuit Courts' Far-Reaching Discretion to Set Bond Conditions Burdens Low-Risk Defendants and Increases Sentence Exposure.....	1605
III.	Reforming Bail Practices Without Changing the Law: A Practical Solution.....	1607
	Conclusion.....	1611

INTRODUCTION

In 2023, felony bail jumping was the most charged felony and misdemeanor bail jumping was the third-most charged misdemeanor in the state of Wisconsin.¹ In a single year, 10,386 felony bail jumping² and 5,881 misdemeanor bail jumping³ cases were opened across the state. Wisconsin's bail jumping statute, Wisconsin Statutes section 946.49, criminalizes a defendant's intentional failure to comply with the terms of their bond conditions.⁴ The statute was intended to deter defendants from

1. *Felony Disposition Summary*, WIS. CT. SYS. (Mar. 20, 2024, at 00:20 CT), <https://www.wicourts.gov/publications/statistics/circuit/docs/felonystate23.pdf> [https://perma.cc/EE68-PTNG]; *Misdemeanor Disposition Summary*, WIS. CT. SYS. (Mar. 20, 2024, at 00:20 CT), <https://www.wicourts.gov/publications/statistics/circuit/docs/misdemeanorstate23.pdf> [https://perma.cc/S2NC-YKAC].

2. *Felony Disposition Summary*, *supra* note 1.

3. *Misdemeanor Disposition Summary*, *supra* note 1.

4. WIS. STAT. § 946.49 (2023–24). Throughout this Comment, I use “bail” and “bond” interchangeably. The term “bail” refers to the amount of money imposed by the court that is required for a defendant to be released from custody during the pendency of their case. See *Pre-Trial Release: Bond and Bail 101 in Wisconsin*, NICHOLSON GOETZ & OTIS, S.C. (Aug. 20, 2015), <https://nlgawyers.com/blog/2015/08/pre-trial-release-bond-and-bail-101-in-wisconsin/> [https://perma.cc/2RS9-6AHQ]. The term “bond”

violating their bond conditions and committing crimes during the pendency of their case.⁵ The bail jumping statute “put teeth into a court’s ability to set conditions of bail” by acting as an enforcement mechanism.⁶

Bond conditions are set at judges’ discretion and designed to “assure their appearance in court, protect members of the community from serious harm as defined by the legislature by law, or prevent the intimidation of witnesses.”⁷ The statute that governs defendants’ eligibility for release allows judges to impose only *reasonable* conditions that are designed to meet these goals.⁸ A bond condition is imposed on a defendant who is released from custody before trial and acts to restrict or impose a certain behavior during the pendency of a defendant’s case.⁹ Some common conditions of bond include absolute sobriety; no contact with certain individuals considered victims, witnesses, or co-defendants; restrictions on out-of-state travel; random drug testing; and GPS monitoring.¹⁰ A violation of a bond condition results in a bail jumping charge, which carries exposure to additional penalties on top of those for the underlying crime, including jail time.¹¹

Due to the nature of some bond conditions, it is possible for a defendant to face a criminal penalty for a behavior or action that would otherwise be legal, such as consuming alcohol.¹² This possibility is the reality for many defendants who struggle with addiction, particularly alcoholics. The Wisconsin Supreme Court has held that a person charged with bail jumping solely based on their consumption of alcohol is not protected from penalty under a Wisconsin statute that protects people with addiction from being criminally charged for consumption of drugs or alcohol.¹³ The court instead held that the statute does not impact the

refers to the agreement signed by the defendant upon their release from custody, which usually includes conditions of release. *See id.* For the sake of consistency, I will always refer to conditions of release as “bond conditions.”

5. *State v. Anderson*, 580 N.W.2d 329, 335 (Wis. 1998).

6. *Id.* at 336.

7. WIS. CONST. art. I, § 8.

8. WIS. STAT. § 969.01 (2023–24).

9. For example, a condition that “restricts” a certain behavior could be a no contact order, an absolute sobriety restriction, or a restriction on driving. A condition that “imposes” a certain behavior could be a requirement of regular drug testing or an order to wear a Secure Continuous Remote Alcohol Monitor (SCRAM) bracelet. A SCRAM bracelet is a device that tracks the wearer’s blood alcohol concentration (BAC) by measuring their perspiration. *What is a SCRAM Bracelet?*, VANDEN HEUVEL & DINEEN, S.C., <https://www.duidefensewi.com/scram-bracelet/> [<https://perma.cc/K3CB-V9FM>] (last visited Oct. 27, 2025).

10. David E. Saperstein, *Will I Be in Jail During My Case? – Bail and Pretrial Release*, HURLEY BURISH, S.C., <https://hurleyburish.com/nuts-and-bolts-series-criminal-court-in-wisconsin/> [<https://perma.cc/JE9X-BUF5>] (last visited Oct. 27, 2025).

11. WIS. STAT. § 946.49 (2023–24); WIS. STAT. § 939.50 (2023–24); § 939.51.

12. *State ex rel. Jacobus v. State*, 559 N.W.2d 900, 905 (Wis. 1997).

13. *Id.* (referring to WIS. STAT. § 51.45 (1991–92)).

bail jumping statute and was enacted only to address crimes like public drunkenness.¹⁴

Wisconsin currently has strict bail laws, which allow judges to set higher cash bail and impose burdensome bond conditions on defendants.¹⁵ Despite some support for bail reform, Wisconsin bail law has only gotten stricter with time. In 2023, two amendments to the Wisconsin Constitution gave judges even more discretion in setting amounts of cash bail and bond conditions.¹⁶ These changes were partially a response to the Waukesha Christmas parade tragedy in 2021, in which Darrell Brooks killed six people while out of custody on a \$1,000 cash bail for a separate charge.¹⁷ However, they are also part of a larger Republican-led push for stricter bail laws.¹⁸

The 2023 amendments made changes to the language of the Wisconsin Constitution that allowed judges to consider more factors when setting bail.¹⁹ Particularly, the amendments emphasized the importance of the protect-the-community-from-harm factor outlined in the bail statutes and the state constitution.²⁰ The ability to consider more factors gave judges the power to impose higher amounts of cash bail and stricter bond conditions on more defendants.²¹ Expansive judicial discretion in this area harms defendants because rulings on bond conditions rarely face appellate review²² and often burden defendants, sometimes by increasing their likelihood of nonappearance and criminal activity.²³

Absolute sobriety restrictions are a symptom of this broad judicial discretion. In some counties, absolute sobriety restrictions are imposed on most, if not all, defendants, regardless of their charges.²⁴ A blanket bail policy of this type is unreasonable under Wisconsin law,²⁵ but judges

14. *Id.*

15. *See infra* Section I.C.

16. *See infra* Section I.C.

17. Associated Press, *Wisconsin Voters Pass Amendment for Stricter Cash Bail*, SPECTRUM NEWS 1 (Apr. 5, 2023, at 06:55 CT), <https://spectrumnews1.com/wi/milwaukee/news/2023/04/05/wisconsin-voters-pass-amendment-for-stricter-cash-bail> [https://perma.cc/8TFT-3KWX].

18. *See* Michelle L. Price & Jesse Bedayn, *GOP Steps Up Crime Message in Midterm's Final Stretch*, A.P. (Oct. 7, 2022, at 04:39 ET), <https://apnews.com/article/2022-midterm-elections-gun-violence-new-york-race-and-ethnicity-campaigns-dfba652ac7409c64311efcd7c908ed08> [https://perma.cc/38RQ-VY6U] (explaining the sources of the Republican party's "Tough on Crime" agenda).

19. *See infra* Section I.C.

20. *See infra* Section I.C.

21. *See infra* Section I.C.

22. *See infra* Section II.B.

23. *See infra* Section II.C.

24. *See infra* note 156.

25. *See infra* Section II.B.

often get away with such unfair bail practices because bond conditions rarely reach appellate review.²⁶ Absolute sobriety restrictions are seldom imposed with good reason and are rarely necessary to assure a defendant's appearance in court, protect the community, or prevent witness intimidation.²⁷ Yet, absolute sobriety restrictions continue to be used, and they continue to contribute to the problems related to over-conditioning that many defendants face during their pretrial release.²⁸

This Comment argues that imposing absolute sobriety as a condition of a defendant's bond is antithetical to the goal of the bail jumping statute—detering defendants from violating bond conditions and committing additional crimes—because it criminalizes behavior that would otherwise be legal without accounting for defendants with addiction. Imposing absolute sobriety on a defendant does not further any of the goals of bond conditions: to assure a defendant's appearance in court, to protect the community from serious harm, and to prevent witness intimidation.²⁹ Additionally, Wisconsin Statutes section 969.01's "reasonableness" standard is useless in preventing unnecessary or overbearing bond conditions because these conditions rarely face appellate review.³⁰ Finally, judges' far-reaching discretion has direct and indirect consequences on defendants' ability to comply with their release conditions and their ultimate sentence. There are many types of unnecessary and burdensome bond conditions, but absolute sobriety conditions are ineffective and especially harmful to defendants struggling with addiction and illustrate the way expansive judicial discretion can be abused.

Part I of this Comment provides an overview of Wisconsin's bail law. This Part describes Wisconsin's bail jumping statute, the changes it has gone through, and the legal challenge it faced regarding its criminalization of alcohol consumption. It also describes the state of Wisconsin's bail law today, considering the 2023 amendments to the Wisconsin Constitution. Part II explores problems with the antithetical application of the bail jumping statute, the problematic nature of judges' far-reaching discretion in setting bond conditions, and the harmful impacts of over-conditioning on low-risk defendants, including exposing them to harsher sentences and increasing their risk of committing additional crimes while out of custody. Part III outlines possible solutions by urging defense attorneys to press judges for more transparency around their bail-setting practices, asking judges to reconsider their use of absolute sobriety restrictions in most cases, and proposing new ways of

26. See *infra* Section II.B.

27. See *infra* Section II.A.; *infra* note 175 and accompanying text.

28. See *infra* Section II.C.

29. See WIS. STAT. § 969.01(4) (2023–24); *infra* Section II.A.

30. See WIS. STAT. § 969.01(4) (2023–24).

addressing addiction while still holding defendants accountable. This Comment concludes by reinforcing the idea that criminalizing *more* behaviors during the pretrial period is not the best way to meet the goals of the bail jumping statute.

I. AN OVERVIEW OF WISCONSIN BAIL LAW

This Part proceeds in three sections. Section A provides a brief overview of Wisconsin bail law.³¹ The Section details trial courts' authority to set monetary and non-monetary conditions of bond and explains how violations of bond are treated under the law. It also contrasts Wisconsin's system to Minnesota's, providing an example of how a neighboring jurisdiction handles cash bail and bond conditions. Section B describes a legal challenge to the bail law that attempted to address the problem of imposing absolute sobriety conditions on individuals with alcohol addiction. It also provides a history of the relationship between Wisconsin Statutes section 946.49, the bail jumping statute, and Wisconsin Statutes section 51.45, a statute that addresses alcoholism prevention and control. Section C explains the state of Wisconsin's bail law today, and describes how the 2023 amendments to the Wisconsin Constitution expanded judges' bail-setting discretion.

A. What Is Bail Jumping and How do Judges Set Bond Conditions?

Wisconsin's bail jumping statute was first enacted in 1969, as part of "a major overhaul of the criminal procedure code."³² It was enacted to coincide with flexible bail provisions laid out in amendments to Wisconsin Statutes chapter 969.³³ The bail jumping statute, section 946.49, criminalizes the violation of the conditions of one's bond, punishable in accordance with the severity of the underlying crime.³⁴ If a person violates their bond conditions for a pending felony, the bail jumping charge will also be a felony.³⁵ As provided by section 969.01, the statute governing defendants' eligibility for release, bond conditions can be imposed for the following reasons: assuring the defendant's

31. When this Comment refers to "Wisconsin bail law," it includes bail statutes, case law, legislative activity, and the Wisconsin Constitution.

32. *State v. Anderson*, 580 N.W.2d 329, 335 (Wis. 1998).

33. *Id.*

34. *Id.*

35. WIS. STAT. § 946.49 (2023–24). However, prosecutors have discretion when bringing bail jumping charges and sometimes reduce felony bail jumping charges to misdemeanor charges when they believe it is appropriate. Gretchen Schuldt, *Bail Jumping Charges Need Reform?*, URB. MILWAUKEE (Mar. 23, 2017, at 12:16 CT), <https://urbanmilwaukee.com/2017/03/23/court-watch-bail-jumping-charges-need-reform/> [https://perma.cc/PQ54-K4F2].

appearance in court, protecting members of the community from serious harm, or preventing intimidation of witnesses.³⁶ In setting conditions of bond, judges must consider:

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 been bound over for trial after a preliminary examination, 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.³⁷

A 1981 amendment to chapter 969 provided that bond amounts and conditions “must be *reasonable* and *designed* to assure the court appearance of a particular individual, protect members of the community . . . or prevent witness intimidation.”³⁸ Taken together, chapter 969 and section 946.49 were enacted with the legislative goal of giving courts flexibility in setting conditions of bond to protect the community, potential victims, and the judicial system.³⁹ With greater flexibility in setting bond conditions, the bail jumping statute “provides courts with an enforcement mechanism and provides a deterrent for defendants.”⁴⁰ Non-monetary bond conditions vary greatly across jurisdictions and types of cases.⁴¹ Some common bond conditions include “absolute sobriety, no

36. WIS. STAT. § 969.01(4) (2023–24). Cash bail is considered a monetary “bond condition.” *See id.* Judges consider these factors when setting both the amount of cash bail a defendant must pay to be released and the conditions under which they can be released from custody. *See id.*

37. *Id.*

38. *Anderson*, 580 N.W.2d at 336 (cleaned up); Act of Apr. 14, 1982, ch. 183, 1982 Wis. Sess. Laws 1005, 1006.

39. *Anderson*, 580 N.W.2d at 336.

40. *Id.*

41. Courts are required to consider individual and case-specific factors in setting bond conditions. *See infra* Section II.B. Conditions should be relevant to the case and the defendant. *See infra* Part II. However, this Comment argues that many judges fail to tailor their bond conditions to specific defendants and the facts in the case record. *See infra* Part II. The result is the over-conditioning of low-risk defendants, which has detrimental impacts on defendants' success on bail. *See infra* Part II.

contact with certain individuals who are considered victims, witnesses or co-defendants[,] restrictions on travel outside of the state,” random drug or alcohol testing, and GPS monitoring.⁴² Additionally, a universal condition of bond is to not commit any other crimes during the pendency of the case.⁴³ If a defendant is found to have violated any conditions of their bond, they will be charged with bail jumping under section 946.49.⁴⁴

Wisconsin’s bail practices are not universal.⁴⁵ For example, the neighboring state of Minnesota has a two-tiered bail system.⁴⁶ The Constitution of the State of Minnesota mandates that a defendant be given the opportunity to be released on *conditional* or *unconditional* bail.⁴⁷ Consider the following example:

An individual is arrested for allegedly possessing a controlled substance. That person appears in custody for their bail hearing, where the court is concerned about their reappearance and risk to the public if they are released from confinement. Based on several factors, the court imposes a \$25,000 bail for an unconditional release. Alternatively, under Minnesota Rules of Criminal Procedure section 6.02, the court offers a \$500 bail under the conditions that the defendant must follow certain standards, possess no alcohol or controlled substances, and submit to random drug testing at her own expense.⁴⁸

42. Saperstein, *supra* note 10.

43. WIS. STAT. § 969.02 (2023–24) (providing that as a condition of release in all cases, defendants charged with misdemeanors “shall not commit any crime”); § 969.03 (providing that as a condition of release in all cases, defendants charged with felonies “shall not commit any crime”).

44. WIS. STAT. § 946.49 (2023–24).

45. While nearly every state criminalizes the failure to appear in court while out of custody on bond, “[o]nly a handful of states—Alaska, Colorado, Connecticut, Delaware, Illinois, Maine, and Wisconsin”—criminalize the violation of other bond conditions. *Pretrial Release Violations & Bail Forfeiture*, NAT’L CONF. OF STATE LEGISLATURES (June 28, 2018), <https://www.ncsl.org/civil-and-criminal-justice/pretrial-release-violations-bail-forfeiture>.

46. Myranda Sandberg, *The Presumption of Wealthiness: How the Current Bail System in Minnesota Is Problematically Classist*, 49 MITCHELL HAMLINE L. REV. 57, 58 (2023).

47. *Id.*

48. *Id.* at 69–70 (footnotes omitted). Also consider that, unlike Wisconsin, Minnesota has bail bonds companies that post bail on behalf of defendants in exchange for a cash premium that is up to 10 percent of the bail amount. *Id.* at 70; § 969.12(2). So, in the example given above, the defendant could be released on an unconditional bail for the cost of \$2,500 to the bail bonds company, but that amount would not be refundable. Ben Johnson, *Bail and Pretrial Release in Minnesota*,

In every case where bail is imposed, the defendant has a choice between a conditional and unconditional release.⁴⁹ Further, Minnesota does not have a “bail jumping” statute. While legal consequences are possible for a defendant who violates a bond condition, it is far less common to see a defendant face additional criminal charges for a violation.⁵⁰ Minnesota’s two-tiered system attempts to balance all of the interests involved with setting bail, including individual liberty interests of defendants, the protection of public safety, the need to ensure future court appearances, and concerns about equity within the judicial system.⁵¹ Thus, Minnesota’s bail practices differ significantly from Wisconsin’s.

B. Wisconsin Supreme Court Rejects Argument That Statute Protecting People with Addiction Applies to Bail Jumping

The bail jumping statute has been challenged as violating a state law that protects people with alcohol or drug addiction,⁵² but the Wisconsin Supreme Court rejected this interpretation of the law. Section 51.45 was

MN HOUSE RSCH. (Aug. 2024), <https://www.house.mn.gov/hrd/pubs/ss/ssbailmn.pdf> [https://perma.cc/SUS8-PM24].

49. On unconditional release, a defendant must still abide by the universal conditions that they remain law-abiding and appear at future court hearings. MINN. R. CRIM. P. 6.02.

50. In Minnesota, when a person is alleged to have violated a condition of their release, a court may issue a summons for the individual to return to court for a hearing on the alleged violation. MINN. R. CRIM. P. 6.03(1)(a). “The court may issue a warrant instead of a summons if a substantial likelihood exists that the defendant will fail to respond to a summons, that continued release of the defendant will endanger any person, or the defendant’s location is not known.” MINN. R. CRIM. P. 6.03(1)(b). “The defendant is entitled to a hearing on alleged violations of release conditions.” MINN. R. CRIM. P. 6.03(3). “If the court finds a violation, the court may revise the conditions” *Id.* A person who violates a bond condition will not be charged with a new crime unless their conduct in violation of their bond conditions constitutes a crime, such as failing to appear in court or violating a no contact order. MINN. R. CRIM. P. 6 cmt.

51. See Johnson, *supra* note 48.

52. The use of alcohol by Wisconsinites consistently remains higher than the national average. 61.8% of adults in Wisconsin reported alcohol use in the past month compared to 52.3% of adults across the U.S. *Alcohol: Adult Use Dashboard*, WIS. DEP’T OF HEALTH SERVS. (Oct. 22, 2024), <https://www.dhs.wisconsin.gov/alcohol/adult-use.htm> [https://perma.cc/VHD4-VNYK]. 18.4% of adults in Wisconsin reported binge drinking in the past month compared to 15.1% of adults across the U.S. *Id.* Additionally, there were 36,925 emergency room visits in 2019 due to chronic alcohol use conditions and, in 2020, alcohol was the most common substance for individuals seeking substance abuse services (about 46.9% of individuals seeking treatment were served for alcohol abuse). WIS. STATE COUNCIL ON ALCOHOL AND OTHER DRUG ABUSE PREVENTION COMM., MOVING FORWARD: POLICIES AND STRATEGIES TO PREVENT AND REDUCE EXCESSIVE ALCOHOL USE IN WISCONSIN 5 (2021).

enacted in 1973 to prevent and control alcoholism.⁵³ The statute provides that “alcoholics, persons who are drug dependent, and intoxicated persons may not be subjected to criminal prosecution because of their consumption of alcohol beverages or other drugs but rather should be afforded a continuum of treatment.”⁵⁴ At first glance, this policy appears to conflict with one application of the bail jumping statute. When a defendant violates an absolute sobriety condition, they will face criminal prosecution because of their consumption of alcohol.

This application of the bail jumping statute was challenged in *State ex rel. Jacobus v. State*,⁵⁵ leaving Wisconsin courts to decide whether absolute sobriety conditions violated state policy under section 51.45. The defendant in *Jacobus* was charged with and convicted of several crimes, including multiple counts of bail jumping.⁵⁶ The bail jumping charges were based solely on his consumption of alcohol, in violation of his bond conditions.⁵⁷ He argued that his conviction violated section 51.45, which, in his view, “prohibits the State from criminally charging intoxicated or alcoholic persons with consuming alcohol,” including in cases of bail jumping.⁵⁸

The Wisconsin Court of Appeals interpreted the plain language of section 51.45 to prohibit criminal prosecution for alcohol consumption.⁵⁹ The court clarified that its interpretation did not “prevent the State from prohibiting alcohol consumption as a condition of bail, parole, or probation,” but that the penalty “can only be a revocation of that status and not a separate criminal charge.”⁶⁰ The court further noted that section 51.45 does not prohibit prosecution for crimes involving alcohol, such

53. Act of May 9, 1974, ch. 198, 1973 Wis. Sess. Laws 618, 623. The statute was initially enacted to address the “revolving door” issue of the enforcement of public drunkenness statutes.

An individual is arrested for drunkenness, brought before a judge, usually jailed, and then released. According to the revolving door theory, the individual who is already disadvantaged in terms of economic and social situations finds coping with society even more difficult as a result of the experience, becomes more dependent upon alcohol, and is more likely to be arrested in the future. Persons who are caught in this revolving door are often brought through the criminal justice system an almost incredible number of times in their lives.

James J. Robb, *The Revision of Wisconsin’s Law of Alcoholism and Intoxication*, 58 MARQ. L. REV. 87, 88 (1975).

54. WIS. STAT. § 51.45(1) (2023–24).

55. 544 N.W.2d 234 (Wis. Ct. App. 1995), *rev’d*, 559 N.W.2d 900 (Wis. 1997).

56. *State ex rel. Jacobus*, 544 N.W.2d at 235.

57. *Id.*

58. *Id.*

59. *Id.* at 236.

60. *Id.*

as Operating While Intoxicated (OWI),⁶¹ but that the defendant's bail jumping charges were "based *solely* upon his consumption of alcohol."⁶² Just because "the State identified the offense as 'bail jumping' rather than 'intoxication' or 'drunkenness'" did not make it any less a violation of section 51.45.⁶³ The court of appeals reversed the trial court, holding that the bail jumping charges that arose solely based on the defendant's consumption of alcohol should be dismissed.⁶⁴

The Wisconsin Supreme Court overruled the court of appeals, holding that bail jumping charges based on consumption of alcohol were permissible because the legislature did not intend to change the bail jumping statute when it enacted section 51.45.⁶⁵ The Wisconsin Supreme Court found the language of section 51.45 to be ambiguous. The court recognized that a reasonable person could interpret the statute as "prohibit[ing] the State from criminally prosecuting an individual for bail jumping due to consumption of alcohol in violation of a condition of a bond."⁶⁶ However, it noted that another interpretation citing a different section of the statute, section 51.45(17)(a), "allows for the prosecution of bail jumping due to the consumption of alcohol in violation of a condition of a bond, since this offense is punishable by fine or imprisonment under section 946.49," the bail jumping statute.⁶⁷ The court looked to the statute's legislative history to determine that the statute was "intended to establish treatment programs for alcoholics and intoxicated persons rather than to allow prosecution of them for public drunkenness."⁶⁸ It concluded that the legislature did not intend to narrow the scope of the bail jumping statute, but only to address laws criminalizing public drunkenness.⁶⁹ Finally, the court noted that a prosecution for bail jumping is focused on the act of violating a condition

61. "OWI" refers to the crime of operating a motor vehicle under the influence of an intoxicant. *See* WIS. STAT. § 346.63 (2023–24).

62. *State ex rel. Jacobus*, 544 N.W.2d at 236–37 (emphasis added).

63. *Id.* at 237.

64. *Id.*

65. *State ex rel. Jacobus v. State*, 559 N.W.2d 900, 902 (Wis. 1997).

66. *Id.* at 903.

67. *Id.* WIS. STAT. § 51.45(17)(a) provides: "Nothing in this section affects any law, ordinance or rule the violation of which is punishable by fine, forfeiture or imprisonment." To summarize, section 51.45 contains a section that prevents it from being used to challenge charges *related* to alcohol consumption, like OWIs. The Wisconsin Supreme Court interpreted this section to include the bail jumping statute, which criminalizes a failure to comply with bond conditions. If sobriety is a condition of bond, the person facing bail jumping charges resulting from their consumption of alcohol is being charged with the criminal failure to comply with their bond conditions, not with the action of consuming alcohol.

68. *State ex rel. Jacobus*, 559 N.W.2d at 904.

69. *Id.*

of bond, not on the underlying act of consuming alcohol.⁷⁰ Thus, no Wisconsin law protects defendants struggling with addiction from prosecution for bail jumping based on their consumption of alcohol in violation of their bond conditions.

C. 2023 Constitutional Amendments Expand Judicial Bail-Setting Discretion

Two amendments to the Wisconsin Constitution, passed in 2023, changed Wisconsin bail law by giving judges even more discretion in setting bail. In 2021, Darrell Brooks killed six people and injured sixty others when he drove his car through a Christmas parade in Waukesha, Wisconsin.⁷¹ At the time of the killings, Brooks was out of custody on a \$1,000 cash bail for charges related to an incident in which he allegedly ran over a woman in a gas station parking lot.⁷² The Christmas parade tragedy made national news, prompting widespread support for stricter bail laws.⁷³ It reignited the push for a change in the bail law that some Wisconsin representatives had been advocating for since 2017.⁷⁴ The Wisconsin legislature aimed to change the state's bail laws by proposing two amendments to the Wisconsin Constitution⁷⁵ and passing a bill clarifying the application of the amendments.⁷⁶ In April 2023, the majority of Wisconsin voters answered “yes” to the proposed amendments to article I, section 8(2) of the Wisconsin Constitution.⁷⁷

70. *Id.* at 905.

71. Associated Press, *supra* note 17.

72. Ralph Ellis, Kay Jones, Holly Yan & Paul P. Murphy, *The Suspect in the Waukesha Parade Tragedy Was Out on Bond After Allegedly Running Over a Woman Earlier This Month*, CNN (Nov. 23, 2021, at 18:14 ET), <https://edition.cnn.com/2021/11/22/us/what-we-know-about-suspect-in-waukesha-parade-tragedy/index.html> [https://perma.cc/Z9PT-JBS7].

73. Associated Press, *supra* note 17.

74. Anya Van Wagendonk, *Lawmakers Debate Constitutional Change to Cash Bail*, WIS. PUB. RADIO (Jan. 11, 2023), <https://www.wpr.org/justice/lawmakers-debate-constitutional-change-cash-bail> [https://perma.cc/9Q6K-CSJL].

75. Harm Venhuizen, *Wisconsin Assembly Puts Bail Amendment on April Ballot*, A.P. (Jan. 19, 2023, at 16:27 CT), <https://apnews.com/article/politics-wisconsin-state-government-tony-evers-f1ed4951d9275604a063d9cc357ceae3> [https://perma.cc/FW3M-SXFZ].

76. Harm Venhuizen, *Wisconsin Lawmakers Pass Bill to Clarify Cash Bail Amendment*, A.P. (Mar. 22, 2023, at 13:55 CT), <https://apnews.com/article/wisconsin-legislature-cash-bail-543c098447a4742b6856123a6f6ed010> [https://perma.cc/83N6-99DU].

77. *Wisconsin Question 1, Conditions of Release Before Conviction Amendment (April 2023)*, BALLOTPEDIA (Apr. 2023) [hereinafter *Wisconsin Question 1*] [https://ballotpedia.org/Wisconsin_Question_1,_Conditions_of_Release_Before_Conviction_Amendment_\(April_2023\)](https://ballotpedia.org/Wisconsin_Question_1,_Conditions_of_Release_Before_Conviction_Amendment_(April_2023)) [https://perma.cc/3CTH-QQB7]; *Wisconsin Question 2, Conditions for Cash Bail Amendment (April 2023)*, BALLOTPEDIA (Apr. 2023) [hereinafter *Wisconsin Question 2*] https://ballotpedia.org/Wisconsin_Question_2,_

Prior to the changes, the language of the Wisconsin Constitution allowed reasonable bond conditions designed to “protect the members of the community from serious bodily harm.”⁷⁸ The first amendment removed “bodily” from “serious bodily harm” and allowed the legislature to define “serious harm” when deciding conditions under which a defendant could be released.⁷⁹ The second amendment authorized judges to consider a defendant’s previous convictions for violent crimes and their potential affirmative defenses when imposing and setting cash bail.⁸⁰ This amendment expanded the considerations available to judges, authorizing them to consider the “totality of the circumstances” when setting bail.⁸¹ This gives judges an opportunity to set a defendant’s amount of cash bail and their bond conditions based on factors unrelated to the pending charges and the facts in the record. Judges still consider the likelihood of future appearance in court, the protection of the community, and the prevention of witness intimidation, but the amendments allow them to look beyond the facts in the record (*i.e.*, the criminal complaint) and instead at the “totality of the circumstances,”

Conditions_for_Cash_Bail_Amendment_(April_2023) [https://perma.cc/37GK-EDEV]. Article I, section 8(2) of the Wisconsin Constitution provides that:

All persons, before conviction, shall be eligible for release under reasonable conditions designed to assure their appearance in court, protect members of the community from serious harm as defined by the legislature by law, or prevent the intimidation of witnesses. Monetary conditions of release may be imposed at or after the initial appearance only upon a finding that there is a reasonable basis to believe that the conditions are necessary to assure appearance in court, or if the person is accused of a violent crime as defined by the legislature by law, only upon a finding that there is a reasonable basis to believe that the conditions are necessary based on the *totality of the circumstances*, taking into account whether the accused has a previous conviction for a *violent crime as defined by the legislature by law*, the probability that the accused will fail to appear in court, the need to protect members of the community from *serious harm as defined by the legislature by law*, the need to prevent the intimidation of witnesses, and the potential affirmative defenses of the accused. The legislature may authorize, by law, courts to revoke a person’s release for a violation of a condition of release.

WIS. CONST. art. I, § 8(2) (emphasis added).

78. David Moore, *Statutory Changes to Implement Constitutional Amendment Relating to Conditions of Release*, WIS. LEGIS. COUNCIL (Apr. 21, 2023), <https://docs.legis.wisconsin.gov/2023/related/lcactmemo/act003.pdf> [https://perma.cc/M38U-EEE5].

79. *Wisconsin Question 1*, *supra* note 77.

80. *Wisconsin Question 2*, *supra* note 77. This amendment specifically allows judges to consider the totality of the circumstances when imposing *cash* bail, but because judges impose amounts of cash bail and bond conditions at the same time, their considerations must bleed into one another. A judge, with the knowledge of a defendant’s criminal record, will set cash bail and bond conditions accordingly. Judges must consider the totality of the circumstances when setting bond conditions if they are to consider them when setting an amount of cash bail.

81. *Id.*

which includes a defendant's criminal history.⁸² With the power to evaluate a defendant based on their criminal history and other factors, this amendment gives Wisconsin judges authority to set stricter bond conditions and higher cash bail while remaining within the scope of "reasonableness." What may have been considered overbearing and unreasonable before can now be justified when judges consider the totality of the circumstances surrounding a defendant and their charges.

The changes to the Wisconsin Constitution significantly altered Wisconsin bail law by emphasizing the need to consider public safety when determining a defendant's bail. The amendments were reinforced by 2023 Wisconsin Act 3, which designated more than one hundred offenses as "violent crimes."⁸³ Now, judges can consider prior convictions for violent crimes when setting bail.⁸⁴ Act 3 allowed the category of "violent crimes" to be defined by the state legislature.⁸⁵ Opponents of the changes have said "the list is too broad and includes offenses that should not make it more difficult for people to get out on bail, such as watching a cockfight, violating a court order against contacting members of a criminal gang or leaving a firearm where a child gains access to it."⁸⁶ These amendments were enacted largely in response to the tragedy in Waukesha, but their consequences will have a greater impact on vulnerable defendants, who will now have a harder time avoiding pretrial detention, than they will on the safety of the community.⁸⁷ As it stands today, Wisconsin bail law provides expansive power to individual judges in determining bond conditions, all in the name of "public safety."

82. *Id.* For example, for a defendant charged with a minor offense, a judge may perceive a low risk to the community when looking only at the criminal complaint. However, if the judge, looking at the totality of the circumstances, considers the defendant's criminal history and finds a record of "violent" convictions, the judge may perceive a greater risk to the community and set bail accordingly—likely resulting in higher cash bail and more restrictive conditions imposed on the defendant.

83. 2023 Wisconsin Act 3, 2023 Wis. Sess. Laws 2, 3.

84. *Id.*

85. *Id.*

86. Associated Press, *Wisconsin Legislature Passes Bill in Anticipation of Cash Bail Amendment*, PBS WIS. (Mar. 22, 2023), <https://pbswisconsin.org/news-item/wisconsin-legislature-passes-bill-in-anticipation-of-cash-bail-amendment/> [<https://perma.cc/YMC5-EAXU>].

87. The amendments open up a larger number of criminal defendants to the possibility of stricter bail practices. The changes created a class of statutorily defined "violent crimes," which include a list of crimes ranging from first degree intentional homicide to instigating fights between animals. 2023 Wisconsin Act 3, 2023 Wis. Sess. Laws 2, 3. This not only affects defendants' potential bond conditions, but also their potential amounts of cash bail. *Id.* at 3–4. A defendant who cannot afford their cash bail must remain in pretrial detention during the pendency of their case, which is sometimes longer than the potential sentence of the crime they are charged with. *See* WIS. STAT. § 969.03 (2023–24).

II. ABSOLUTE SOBRIETY RESTRICTIONS: FUTILE, HARMFUL, AND UNRELENTING

This Part proceeds in three sections. Section A argues that absolute sobriety restrictions do not meet the statutorily defined goals of bond conditions: assuring defendants' appearance in court, protecting the community from serious harm, and preventing witness intimidation. Section B addresses the problem with the current practice of setting bail. It argues that a "reasonableness" standard gives judges too much discretion and leaves appellate courts little room to intervene when judges over-step their authority. Section C argues that judges' far-reaching discretion for setting bail burdens low-risk defendants and increases sentence exposure, and it illustrates these problems in the context of absolute sobriety restrictions.

A. Absolute Sobriety Restrictions Do Not Meet the Goals of Bond Conditions

When a judge sets a defendant's bond conditions, they must only impose reasonable conditions that are designed to assure the defendant's appearance in court, protect the community from serious harm, and prevent witness intimidation.⁸⁸ Absolute sobriety conditions do not meet any of these goals because they only restrict the defendant's behavior towards themselves. At sentencing, circuit courts have discretion to set conditions of probation or extended supervision that are not tailored to the underlying crime. However, the same standard has not been formally applied to bond conditions.⁸⁹ Although it is reasonable to argue that sobriety conditions protect the public from harm, their impact is indirect. The same standard should not be applied at bail, when a defendant is presumed innocent, as at sentencing, after a defendant has been found guilty.

1. The Goal of Assuring Defendants' Appearance in Court

Absolute sobriety restrictions do nothing to assure a defendant's appearance in court, and thus, cannot be justified under this goal. When courts impose bond conditions, one thing they must consider is the likelihood of the defendant's future appearance in court.⁹⁰ Some ways

88. § 969.01(4). The 2023 amendments did not change these elements, but they allowed judges to consider the totality of the circumstances when evaluating the defendant's likelihood of future appearance, risk to the community, and risk to potential witnesses. *See supra* Section I.C.

89. Saperstein, *supra* note 10.

90. § 969.01(4).

courts address this concern are by imposing cash bail to incentivize appearance with the threat of forfeiture of the cash posted or by placing restrictions on a defendant's ability to travel.⁹¹ While these conditions are tailored to the purpose of assuring future appearance in court, absolute sobriety restrictions are not.

Courts have the authority to impose cash bail at or after a defendant's initial appearance upon a finding (1) that there is a reasonable basis to believe that bail is necessary to assure the defendant's appearance in court, or (2) that, for defendants accused of violent crimes, there is a reasonable basis to believe that bail is necessary based on the totality of the circumstances.⁹² Both the United States Constitution and the Wisconsin Constitution prohibit excessive bail, which is any amount higher than that necessary to assure appearance at trial.⁹³ In the event that a defendant fails to appear or to comply with their bond conditions, the court is obligated to enter an order declaring the bail to be forfeited.⁹⁴ Judges do not always impose cash bail in misdemeanor cases, but maintain the authority to when circumstances require it. In *State v. Tennant*,⁹⁵ the defendant, charged with misdemeanor battery, challenged the court's imposition of cash bail as "excessive."⁹⁶ The Wisconsin Court of Appeals rejected the defendant's claim, reasoning that the trial court was justified in requiring cash bail because the defendant had several charges pending against him, had repeatedly failed to appear in court, and had to be returned to court three times on bench warrants.⁹⁷ Imposing cash bail on a defendant is clearly tailored to the purpose of future appearance in court because it provides a financial incentive for defendants to comply with court directives.

Similarly, courts have the authority to impose non-monetary conditions on defendants to ensure their appearance at future

91. Saperstein, *supra* note 10.

92. § 969.01(1). Note that this language reflects the 2023 amendments to the Wisconsin Constitution mentioned in Part I.

93. U.S. CONST. amend. VIII; WIS. CONST. art. I, § 6; WIS. CONST. art. I, § 8 ("Monetary conditions of release may be imposed at or after the initial appearance *only upon a finding that there is a reasonable basis to believe that the conditions are necessary to assure appearance in court . . .*" (emphasis added)); see Moore, *supra* note 78, at 1.

94. § 969.13. Judges have discretion to set aside an order for forfeiture "if it appears that justice does not require the enforcement of the forfeiture." *Id.*

95. No. 86-1025-CR, 1987 Wisc. App. LEXIS 3796 (June 24, 1987).

96. *Id.* at *1.

97. *Id.* at *2-3. A "bench warrant" is "issued directly by a judge or magistrate when an individual has failed either to show up for a scheduled court date or follow directives issued by the court." *Bench or Arrest Warrants in Wisconsin*, TRACY WOOD, <https://www.traceywood.com/bench-or-arrest-warrants-in-wisconsin/> [<https://perma.cc/A8EC-YX92>] (last visited Oct. 27, 2025). Bench warrants do not require law enforcement to seek out the defendant, but are entered into a database that officers can access during routine encounters, like traffic stops. *Id.*

proceedings. Restrictions on travel are statutorily permitted conditions that meet this goal.⁹⁸ When judges impose travel restrictions, they must be clear in their purpose. In *State v. Rabe*,⁹⁹ the Wisconsin Court of Appeals rejected the trial court's prohibition on the defendant's ability to operate a motor vehicle within the state.¹⁰⁰ The State contended that the condition was reasonably related to assuring the defendant's future appearance, arguing that if "Rabe were allowed to drive, he would probably commit other traffic offenses and might well be jailed in another county and be unavailable for appearance in Dane County."¹⁰¹ The court held that the restriction was unreasonable because it did "not impose any significant limitation on Rabe's ability to travel. He could still leave Wisconsin as a passenger in a car, on foot, or by plane, train, bus or horseback."¹⁰² Travel restrictions generally have a clear purpose of assuring a defendant's appearance at future court dates, but regardless of their purpose, the trial court must give clear reasons for the restriction.¹⁰³

Unlike cash bail and travel restrictions, absolute sobriety restrictions are not tailored to the purpose of assuring defendants' appearance in court. Sobriety restrictions do not give the same incentive for defendants to return to court as cash bail. Cash bail is effective because the threat of forfeiture is real; courts are quick to forfeit cash bail when defendants fail to appear or otherwise violate their bond conditions. Alternatively, sobriety restrictions do not make defendants less likely to flee. Travel restrictions target those deemed "flight risks" by directly limiting their ability to leave the county or state. The court in *State v. Rabe* rejected the State's far-fetched logic for restricting the defendant's ability to drive while out on bail because it would not actually impose a limitation on the defendant's ability to flee the jurisdiction.¹⁰⁴ Similarly, enforcing sobriety would not actually limit a defendant's ability to flee. Sobriety restrictions fail at assuring defendants' return to court because they are not tailored to that purpose.

2. The Goal of Protecting the Community from Serious Harm

Sobriety restrictions fit more securely into the second goal of bond conditions—to protect the community from serious harm—but they still fall short. Courts impose a wide range of conditions aimed at this

98. See § 969.02(3)(b); § 969.03(1)(b).

99. No. 79-1814-CR, 1980 Wisc. App. LEXIS 3934 (July 28, 1980).

100. *Id.* at *1.

101. *Id.* at *2.

102. *Id.* at *2-3. The court said that this restriction would be justified as one necessary for protection of the public, but the bail law at the time only allowed conditions that were tailored to assure a defendant's appearance at trial. *Id.* at *3.

103. See *State v. Gallion*, 2004 WI 42, ¶¶ 2-4, 678 N.W.2d 197, 200-01.

104. *Rabe*, 1980 Wisc. App. LEXIS 3934, at *2.

purpose, though the conditions are usually closely related to the nature of the underlying crime. At sentencing, circuit courts can impose conditions that are not directly related to the nature of the underlying crime if they are tailored to the defendant's rehabilitation or to protect the public from harm.¹⁰⁵ Courts routinely use this logic in setting conditions of bond, but they should not. The same standard should not be applied for bail as for sentencing because the defendant is presumed innocent. Finally, the risks that are said to be avoided by absolute sobriety restrictions are accounted for under the universal bond condition: to not commit any crimes while out of custody. For these reasons, absolute sobriety restrictions do not meet the goal of protecting the community from harm.

Wisconsin's bail statute allows judges to impose reasonable bond conditions designed to protect members of the community from serious harm.¹⁰⁶ Judges impose a variety of conditions aimed at this goal. In a case where the defendant was charged with operating a motor vehicle after revocation, a court found a restriction on the defendant's ability to drive to be reasonable to protect the community from serious harm.¹⁰⁷ The Wisconsin Court of Appeals recognized the danger of a car becoming "a crippling, if not lethal, weapon in the hands of an irresponsible driver."¹⁰⁸ In this case, the trial court tailored the bond condition to the crime charged, aiming to prevent reckless driving for a defendant charged with a driving offense.

Courts impose a variety of other bond conditions with the goal of protecting the community from harm. These include, but are not limited to, no contact with an alleged victim, no possession of any type of weapon (sometimes requiring a defendant to surrender their weapons to the county), no operating a motor vehicle with *any* alcohol in a defendant's system, and limited use of internet devices.¹⁰⁹ Each of these examples is tailored to a specific crime. No contact restrictions are meant to protect alleged victims of domestic abuse or other violent crimes.¹¹⁰ In some domestic violence cases, defendants can lose their right to possess a firearm during the pendency of the case or after an injunction is issued to protect the alleged victim.¹¹¹ Sobriety restrictions on driving are often

105. *State v. Miller*, 2005 WI App 114, ¶ 11, 701 N.W.2d 47, 51–52.

106. WIS. STAT. § 969.01 (2023–24).

107. *State v. Dennis*, 405 N.W.2d 711, 713 (Wis. Ct. App. 1987).

108. *Id.* (quoting *Steen v. State*, 271 N.W.2d 396, 400 (Wis. 1978)).

109. *Pre-Trial Release: Bond and Bail 101 in Wisconsin*, *supra* note 4; Eric Eickhoff, *How Bail Works in Wisconsin*, HOGAN EICKHOFF (June 8, 2022), <https://www.hoganeickhoff.com/blog/how-bail-works-in-wisconsin/> [https://perma.cc/XY9T-P5F8].

110. *See Pre-Trial Release: Bond and Bail 101 in Wisconsin*, *supra* note 4.

111. *Surrendering Firearms*, PORTAGE CNTY. SHERIFF'S OFF., <https://www.co.portage.wi.gov/425/Surrendering-Firearms> [https://perma.cc/FM2L-

imposed in OWI offenses to address a defendant's risk of recklessly operating a motor vehicle.¹¹² Finally, in crimes involving internet access (*e.g.*, possession of child pornography), a defendant may have their access to the internet restricted to prevent further engagement with illegal material.¹¹³ Absolute sobriety restrictions, though meant to protect the community from harm, are not specifically tailored when applied to most crimes.¹¹⁴

Courts have consistently held that absolute sobriety restrictions—as conditions of bond, probation, and extended supervision¹¹⁵—are reasonable conditions that promote the goal of protecting the community from harm. In *State v. Tapia*,¹¹⁶ a defendant pled guilty to vehicle operator fleeing or attempting to elude an officer resulting in bodily harm and argued that the trial court “erroneously exercised its discretion when it imposed absolute sobriety as a condition of extended supervision.”¹¹⁷ He argued that the absolute sobriety requirement had no basis because his offense did not involve alcohol or drug use.¹¹⁸ However, conditions of sentencing imposed by a circuit court “need not ‘directly relate to the defendant’s criminal conduct in the underlying conviction.’”¹¹⁹ The

THKJ] (last visited Oct. 27, 2025) (“Wisconsin State Statute 813.12(4m), prohibits a person (the respondent) from possessing firearms when there is a Domestic Injunction ordered or a Harassment Injunction if it is specifically ordered.”). This specifically applies to a defendant with a domestic injunction order or something similar. In my personal experience working in Ozaukee County, I have observed judges ordering defendants to surrender weapons in cases involving weapons or threats of violence as well.

112. *Bail Jumping in Wisconsin*, GRIEVE L., <https://www.grievelaw.com/WICriminalProcess/BeforeCourt/BailJumpingWI> [<https://perma.cc/P7TA-BVDK>] (last visited Oct. 27, 2025) (“In drunk driving cases, many courts will require absolute sobriety and no driving without a valid license.”).

113. See Eickhoff, *supra* note 109.

114. An absolute sobriety restriction may be reasonable and tailored to a specific charge in cases that involve alcohol or substance use. Common examples are OWI cases. A court may impose an absolute sobriety condition or a condition that restricts the defendant's use of alcohol by prohibiting them from operating a vehicle with any alcohol in their system (even if the defendant is below the legal limit for driving with alcohol in one's system, a BAC of 0.08 or lower, they would be in violation of their bond condition). This Comment does not argue that absolute sobriety restrictions *never* protect the community from harm, but that they are often used inappropriately.

115. “When imposing a sentence, the trial court must consider: the gravity of the offense, the offender's character, and the public's need for protection.” *State v. Thompson*, 493 N.W.2d 729, 732 (Wis. Ct. App. 1992). I include conditions of probation and parole in my analysis because the public protection factor applies to a trial court's discretionary determination at both bail and sentencing. See text accompanying notes 111–114.

116. No. 2023AP1391-CR, 2024 Wisc. App. LEXIS 453 (May 29, 2024).

117. *Id.* at *1.

118. *Id.* at *3–4.

119. *Id.* at *5–6 (quoting *State v. Miller*, 2005 WI App 114, ¶ 11, 701 N.W.2d 47, 51).

Wisconsin Court of Appeals therefore rejected the defendant's claim that if alcohol was not involved in the underlying crime, then an absolute sobriety condition was an abuse of the trial court's discretion.¹²⁰ It clarified that the condition need only be "reasonably related to either ensuring that Tapia does not commit more crimes or furthering his general rehabilitation."¹²¹ Thus, the circuit court's determination that absolute sobriety was necessary for Tapia's rehabilitation and to protect the public was not an abuse of discretion.¹²² At sentencing, conditions of sobriety are permitted even if the underlying crime did not involve alcohol.

Circuit courts often employ the same logic when setting bail.¹²³ Their authority to do so comes from their far-reaching discretion to impose any condition that is "reasonable" and meets one of the three goals described in this Section.¹²⁴ However, circuit courts should not treat bail the same as they treat sentencing. The Wisconsin Supreme Court has clarified that "the basic principle underlying the right to reasonable bail is the presumption of innocence."¹²⁵ During the pendency of their case, a defendant maintains this presumption of innocence and "any denial of personal liberty must meet the test of due process."¹²⁶ On the other hand, a person convicted of a crime "has lost the presumption of innocence, and if imprisoned, [their] right to unfettered liberty."¹²⁷ Under this logic, a circuit court should not have the same power to impose conditions on defendants who await trial as it does for those who have been convicted.

Finally, absolute sobriety restrictions are unnecessary to meet the goal of protecting the community from harm because the risks addressed

120. *Id.* at *6.

121. *Id.*

122. *See id.* at *7. The circuit court "noted that Tapia made a choice to flee at excessive speeds while *sober*, which caused the court grave concern about Tapia's judgment should he use alcohol or drugs—something Tapia admitted he currently did socially." *Id.* at *6. Further, it stressed that alcohol consumption can impair judgment and is often linked to violent behavior. *Id.* at *7.

123. MICHELE LAVIGNE, RENEE SPENCE & BONNIE HOFFMAN, *THE WISCONSIN BAIL MANUAL* 3–4 (2018). For example, some courts

routinely impose a litany of conditions with little regard for whether those conditions bear a relation to the charges or the needs of the accused. For example, in County A, the court may not make total abstinence from alcoholic beverages a condition of release unless the prosecution provides information that alcohol was involved in the alleged offense. Meanwhile, in County B, the court may mandate that every arrestee, regardless of the nature of the offense or their background, must refrain abstain from all substances including alcohol as a condition of their release.

Id.

124. WIS. STAT. § 969.01(4) (2023–24); *see supra* Section II.A.

125. *Gaertner v. State*, 150 N.W.2d 370, 373 (Wis. 1967).

126. *Id.*

127. *State v. Salmon*, 471 N.W.2d 286, 288 (Wis. 1991).

by sobriety can be addressed under other parts of the bail law. A universal bond condition in all criminal cases is that the defendant not commit any crimes during the pendency of their case.¹²⁸ While sobriety restrictions are often justified as a means to prevent defendants from committing crimes due to their lower inhibitions, they add no incentive for defendants to refrain from criminal behavior. Whether a defendant is sober or not, they still must refrain from committing crimes while out of custody or risk being charged with bail jumping.¹²⁹ Though there is some merit to the claim that absolute sobriety restrictions are tailored to the goal of protecting the community from harm, with the assumption that sober defendants “stay out of trouble,” they ultimately fall short because they lack specificity and an incentive to comply.

3. The Goal of Preventing Witness Intimidation

The final goal courts aim to address when setting bond conditions is to prevent witness intimidation. Once again, absolute sobriety restrictions fail to meet this goal. Absolute sobriety restrictions do not incentivize defendants to refrain from witness intimidation, nor do they make defendants less likely to engage in such behavior. One common condition imposed by courts to meet this goal is a “no contact” order with witnesses or locations in which the alleged crime occurred. In *State v. Holman*,¹³⁰ the defendant challenged a no contact condition as a violation of his free speech.¹³¹ He was charged with battery and released from custody on a personal recognizance bond.¹³² After his release, he was observed yelling and screaming at the alleged victim and subsequently charged with bail jumping.¹³³ The Wisconsin Court of Appeals held that the condition was “reasonably necessary to protect a witness in the battery case.”¹³⁴ Further, the statements made were “reasonably related to the legitimate purpose for the imposition of the bail condition to prevent the intimidation of witnesses.”¹³⁵ No contact orders that prohibit contact with

128. § 969.02(4); § 969.03(2).

129. In fact, if a person violates both a sobriety restriction and commits a crime while out on bond (*e.g.*, an OWI), they will be charged with bail jumping for *each violation* of their bond. They will receive two bail jumping charges: one for consuming alcohol and one for committing another crime. *See State v. Anderson*, 580 N.W.2d 329, 334 (Wis. 1998). They will also receive a separate charge for the crime they committed. With additional charges, defendants are at an even greater risk of losing negotiating leverage with the prosecutor on their original case. *See infra* Section II.C.

130. No. 01-2323-CR, 2002 Wisc. App. LEXIS 149 (Feb. 5, 2002).

131. *Id.* at *1.

132. *Id.* at *1–2.

133. *Id.* at *2.

134. *Id.* at *3.

135. *Id.*

alleged victims and witnesses are clearly related to the goal of preventing witness intimidation. They are effective because of their specificity; a no contact order will always put the defendant on notice of who the witness is and that any contact with that person is a violation of their bond. Absolute sobriety conditions do not address the goal of preventing witness intimidation because they lack the specialized purpose provided by no contact orders.

B. Limits on Judicial Discretion Should Prevent Over-Conditioning but Lack a Proper Enforcement Mechanism

Judicial discretion in this area is not unlimited, but limits are rarely enforced on circuit courts because bail rulings rarely face appellate review, resulting in unnecessary and burdensome conditions like absolute sobriety restrictions. Under Wisconsin Statutes section 969.01, bond conditions must be “reasonable.”¹³⁶ There is no legal test that can be applied to this reasonableness standard, but the Wisconsin state legislature has provided factors for judges to consider in setting reasonable bond conditions.¹³⁷ When bond conditions are challenged for their reasonableness, appellate courts may only review them for “an erroneous exercise of discretion.”¹³⁸ However, bond conditions—and subsequent bail jumping charges and convictions—rarely reach appellate review because of the nature of the criminal justice system: Most cases end in plea deals, and bail jumping charges are often dismissed in the process of negotiating for a defendant’s guilty plea.¹³⁹ The combination of judges’ expansive discretionary authority and prosecutors’ practice of leveraging bail jumping charges to reach plea agreements effectively prevents an opportunity for appellate review, allowing judges to over-condition defendants without a check on their authority.

Discretionary authority imposes a responsibility on judges to “show their work” by giving specific, justifiable reasons for the conditions they set. A “trial court has properly exercised its discretion if it examined relevant facts, applied proper legal standards and engaged in a rational decision-making process.”¹⁴⁰ Further, “[t]he term ‘discretion’ contemplates a *reasoning process* that depends on the *facts in the record* and yields a conclusion *based on logic* and *founded on a proper*

136. WIS. STAT. § 969.01(1) (2023–24).

137. § 969.01(4).

138. *State v. Wilcenski*, 2013 WI App 21, ¶ 9, 827 N.W.2d 642, 647.

139. In Wisconsin, in 2023, 72,539 criminal cases ended in a plea or settlement, making up about 70 percent of all disposed cases. *Disposition Summary*, WIS. CT. SYS. (Mar. 20, 2024, at 00:20 CT), <https://www.wicourts.gov/publications/statistics/circuit/docs/disposumstate23.pdf> [https://perma.cc/E7SK-JAAW]. See also the discussion about plea negotiations *infra* Part III.

140. *State v. Melone*, 2001 WI App. 13, ¶ 4, 623 N.W.2d 179, 180–81.

legal standard.”¹⁴¹ Thus, judicial discretion in setting bond conditions requires some level of individualized consideration based on the specific facts of a case. In most cases, absolute sobriety conditions do not meet this standard, especially when the individual’s circumstances and charges are not considered.

The case law challenging judicial discretion in this area is lacking.¹⁴² One of the few limits on judicial discretion in bail setting is the prohibition of blanket bail policies—policies that are applicable to all defendants within a specified class.¹⁴³ In *State v. Wilcenski*,¹⁴⁴ Waukesha County had a policy of requiring every person charged with “operating a motor vehicle while under the influence of an intoxicant . . . as a second or subsequent offense . . . to go to drug and/or alcohol treatment as a condition of bail.”¹⁴⁵ The defendant challenged the blanket policy.¹⁴⁶ The Wisconsin Court of Appeals held that the condition was reasonable as applied to the defendant, but the practice of setting a blanket policy was an inappropriate act of judicial discretion.¹⁴⁷ The court warned that a “bail-setting program that operates as a ‘one size fits all’ system is a system preordained to fail the criminal justice system.”¹⁴⁸ Blanket policies are unreasonable because they do not address each case individually, but instead treat all defendants in a specific category the same way.

The aversion to blanket bail policies extends to trial courts’ bail forfeiture procedure. In *State v. Melone*,¹⁴⁹ the trial court declined to set aside an order that the defendant’s \$20,000 bail money—which was posted by his mother—be forfeited to the State on the ground that it

141. *Id.* ¶ 6.

142. There are very few published opinions addressing judicial discretion in bail setting because bail practices rarely reach appellate review. Dorothy Weldon, *More Appealing: Reforming Bail Review in State Courts*, 118 COLUM. L. REV. 2401, 2418 (2018). Consequently, there are few clearly defined limits on judicial bail-setting practices.

143. *Wilcenski*, 2013 WI App 21, ¶ 19. A class of defendants is a group of defendants with something in common, such as a group of defendants all charged with the same crime. *Id.* ¶ 17.

144. 2013 WI App. 21, 827 N.W.2d 642.

145. *Id.* ¶ 1.

146. *See id.* ¶ 2.

147. *Id.* ¶ 18. The court found that the circuit court did not erroneously exercise its discretion in imposing conditions of bond upon Wilcenski because the court made an individualized determination that the treatment was an appropriate condition for his release. *Id.* On the other hand, the court held that “a circuit court that follows a blanket policy that mandates participation in a pretrial program as a condition of release for all persons based on only one factor (the nature of the offense), without making an individualized determination that that condition is appropriate, erroneously exercises its discretion.” *Id.*

148. *Id.* ¶ 19.

149. 2001 WI App. 13, 623 N.W.2d 179.

always refused to return bail money after a violation no matter the circumstance.¹⁵⁰ The defendant was found not in compliance with his bond conditions, which included a condition that he not consume alcohol or drugs, when he failed a urinalysis test.¹⁵¹ The governing statute, section 969.13, “allows the court to set aside an order forfeiting bail ‘if it appears that justice does not require the enforcement of the forfeiture.’”¹⁵² The Wisconsin Court of Appeals held that the trial court abused its discretion when it failed to consider the unique facts of the case in determining whether to set aside the order.¹⁵³ The court disagreed “with the trial court that giving money back to the person who posted bail provides a disincentive, in every instance, to those on bail to follow their bail conditions,” arguing that sometimes “a defendant’s drug or alcohol addiction may be so strong that it overrides the defendant’s intent not to bring financial harm to the person who posted the bond.”¹⁵⁴ In evaluating bail practices, Wisconsin courts have drawn one clear line: Blanket bail policies are unreasonable.

Wilcenski and *Melone* establish clear limits on judicial discretion in setting bail, but it is unlikely that judges actually stay within these limits. It is hard to know with certainty whether circuit courts impose only *reasonable* bond conditions without comprehensive pretrial court statistics.¹⁵⁵ Anecdotal evidence reveals that judges do abuse their discretion when setting bail. For example, in Ozaukee County, an absolute sobriety condition is imposed on nearly every defendant, regardless of their charges.¹⁵⁶ Further, the problem of over-conditioning

150. *Id.* ¶ 3. For clarification: “no matter the circumstance” refers to any instance where a defendant violated their bond. A forfeiture requires a bond violation.

151. *Id.* ¶ 2.

152. *Id.* ¶ 4 (quoting WIS. STAT. § 969.13(2) (1997–98)).

153. *Id.* ¶ 1.

154. *Id.* ¶ 7. This quote also highlights the problem with sobriety restrictions as bond conditions. In many cases, a defendant’s drug or alcohol addiction may be so strong that it overrides the defendant’s intent to comply with their bond conditions. If the issue of the reasonableness of the defendant’s sobriety restriction had been raised in this case, I am curious to know how this court would have addressed it, considering its stance on the unfairness of the cash bail forfeiture.

155. There are no publicly available statistics on the types of bond conditions judges set or the frequency in which they are set. Wisconsin Circuit Court Access (CCAP) provides access to certain public records of the Wisconsin circuit courts. These records include details of specific cases, including notes recorded at each hearing. Notes on individual cases often list the bond conditions set by judges, but that is only a reflection of one defendant’s bond conditions.

156. Based on my personal observation from working in the Wisconsin State Public Defender’s Port Washington Trial Office in 2024. This demonstrates a blanket policy even if there are some outlying cases that do not receive absolute sobriety conditions because it is a standard practice of the judges in this county, without regard for the facts in the records of individual cases.

is relevant enough to be identified as a “problem area”¹⁵⁷ in the Wisconsin Bail Manual, a tool developed to support defense attorneys in Wisconsin “as they work to end pretrial injustice.”¹⁵⁸ If over-conditioning affects “countless clients,”¹⁵⁹ there must be a problem with judges failing to impose reasonable conditions on defendants based on specific, articulable facts in the record. However, this problem is rarely addressed because bail jumping charges tend not to reach appellate review.

*C. Circuit Courts’ Far-Reaching Discretion to Set Bond Conditions
Burdens Low-Risk Defendants and Increases Sentence Exposure*

Broad judicial discretion in bail setting results in the imposition of bond conditions that burden low-risk defendants and consequently increase their sentence exposure. The imposition of non-monetary bond conditions can lead to many indirect consequences. The primary problem with judges’ expansive discretion in bail setting is that it creates stark disparities between defendants based on how equipped they are to manage their bond conditions. Low-risk defendants under unnecessary bond conditions have increased rates of non-appearance and new criminal activity.¹⁶⁰ Additionally, when a defendant violates a bond condition, they are exposed to increased sentences and lose some power to negotiate with the prosecutor before accepting a plea deal.¹⁶¹ Unmanageable conditions of bond often lead to violations and bail jumping charges, which can be detrimental to vulnerable defendants. Defendants struggling with addiction are not exempt from this issue and should be considered in the conversation around over-conditioning and increased sentence exposure.

Many, often low-risk, defendants face the burdens of over-conditioning, the practice of imposing unnecessary conditions during pretrial release, such as reporting or monitoring.¹⁶² These defendants are highly likely to appear for court and are highly unlikely to commit an offense while their case is pending, but courts still impose restrictive conditions with the mindset that they are “better safe than sorry.”¹⁶³ However, the opposite is true. Research indicates that “overconditioning low-risk individuals leads to increases in both their rates of non-appearance and new criminal activity.”¹⁶⁴ Restrictive pretrial conditions can create tangible issues for defendants, like having to take time off

157. LAVIGNE, SPENCE & HOFFMAN, *supra* note 123, at 24.

158. *Id.* at Acknowledgements.

159. *Id.* at 24.

160. *Id.*

161. *See infra* text accompanying note 139.

162. LAVIGNE, SPENCE & HOFFMAN, *supra* note 123, at 24.

163. *Id.*

164. *Id.*

work or incur transportation costs,¹⁶⁵ and can also have negative psychological effects.¹⁶⁶ Bond conditions “often mirror and, in some instances, exceed the punishment an individual may face if convicted—communicating to the client that they have been found guilty before they ever had a trial.”¹⁶⁷ The burdens on low-risk defendants can counteract the goals of bond conditions by increasing an individual’s likelihood to fail to appear or commit additional crimes.

Additionally, when defendants are unable to manage their bond conditions and violate them, bail jumping charges significantly increase their sentence exposure and limit their ability to negotiate with prosecutors on plea agreements. Misdemeanor bail jumping, a Class A misdemeanor,¹⁶⁸ carries a possible penalty of nine months in jail, a fine of \$10,000, or both.¹⁶⁹ Felony bail jumping, a Class H felony,¹⁷⁰ carries a possible penalty of six years in prison and a fine of up to \$10,000, or both.¹⁷¹ While misdemeanor and felony bail jumping are some of the most charged crimes, they also have extremely high dismissal rates.¹⁷² Prosecutors may dismiss charges for a variety of reasons, but when the “percentage of bail jumping charges dismissed in cases where the defendant pled to other charges reaches 70, 80, or nearly 90% the correlation between the dismissal of bail jumping to the plea to other charge becomes hard to ignore, particularly when dismissal rates of other charges are significantly lower.”¹⁷³ The high dismissal rate can be interpreted as an indicator that the bail jumping charges were used to coerce guilty pleas for underlying offenses.¹⁷⁴ Judges’ discretion to impose bond conditions and prosecutors’ discretion to bring bail jumping charges work together to give defendants less favorable plea agreements and discourage trials.

Judicial discretion is especially problematic in the context of absolute sobriety restrictions. In cases where alcohol was not related to

165. *Id.* at 3 (“Other hidden costs can also be incurred by non-monetary release conditions. For instance, individuals required to regularly meet with a pretrial officer may sustain additional costs for transportation to and from each appointment, and their employment may be compromised as their ability to work certain hours or shifts can be limited due to obligations imposed by pretrial monitoring or random drug test appointments.”).

166. *See id.* at 24.

167. *Id.*

168. WIS. STAT. § 946.49(1)(a) (2023–24).

169. WIS. STAT. § 939.51(3)(a) (2023–24).

170. § 946.49(1)(b).

171. § 939.50(3)(h).

172. *See* Amy Johnson, *The Use of Wisconsin’s Bail Jumping Statute: A Legal and Quantitative Analysis*, 2018 WIS. L. REV. 619, 636, 647–52; *Felony Disposition Summary*, *supra* note 1.

173. *Id.* at 651.

174. LAVIGNE, SPENCE & HOFFMAN, *supra* note 123, at 26.

the crime charged, an absolute sobriety restriction is an unnecessary condition.¹⁷⁵ For a defendant struggling with addiction, an absolute sobriety restriction could be the reason they land back in custody and receive new charges. Statistics show that over-conditioning leads to a higher likelihood of non-appearance and additional charges.¹⁷⁶ In theory, an absolute sobriety restriction may be what is “best” for a defendant struggling with addiction. A court might argue that such conditions “keep defendants out of trouble.” However, it is more likely to harm them by exposing them to the risk of further charges and higher sentences than it is to meet the desired outcome of recovery from addiction. A defendant who violates their unnecessary bond condition and gets charged with bail jumping will also lose bargaining power with the prosecutor when negotiating a plea agreement or settlement. Courts should not be able to impose sobriety restrictions on defendants with non-alcohol related charges because their burdens and risks outweigh their potential positive outcomes.

Beyond the burdens and risks of over-conditioning, judges’ power to set bail should only be used to assure appearance at trial, protect the community from harm, and prevent witness intimidation. Judges should not impose restrictions because they personally believe they will benefit a defendant or prevent them from getting in more trouble. The bail jumping statute is not a sobriety statute. It is not a means to impose moral guidelines on defendants. Its purpose—to prevent defendants from violating their bond conditions and committing additional crimes while out of custody—is clearly defined and should not be overstepped.

III. REFORMING BAIL PRACTICES WITHOUT CHANGING THE LAW: A PRACTICAL SOLUTION

Bail jumping is one of the most charged crimes in Wisconsin¹⁷⁷ and is the most likely to be dismissed before trial.¹⁷⁸ Bail jumping charges are often dismissed in the process of plea negotiations, but they play a significant role in the determination of sentences.¹⁷⁹ To make the bail

175. I am referring to crimes that are unrelated to alcohol consumption. In some cases, alcohol may play a role in the behaviors that led to a crime being charged (*e.g.*, disorderly conduct), and in these cases, a careful evaluation of the facts in the record may give a trial court a good reason to impose absolute sobriety as a bond condition. I argue that where alcohol played no role in the crime charged, an absolute sobriety restriction cannot be supported by facts in the record and thus is an unnecessary bond condition.

176. LAVIGNE, SPENCE & HOFFMAN, *supra* note 123, at 24.

177. See *Felony Disposition Summary*, *supra* note 1; *Misdemeanor Disposition Summary*, *supra* note 1.

178. Schuldt, *supra* note 35.

179. See *supra* text accompanying notes 168–174. Though bail jumping charges are often dismissed in the process of negotiating plea agreements, bail jumping charges

jumping statute more effective and to prevent defendants from facing new charges, a few things must change. First, defense attorneys need to challenge unreasonable bond conditions and force judges to “show their work” when setting conditions of bond. Second, judges need to reconsider why they impose certain conditions and use their discretion to make it “easier” for defendants to comply with their bond conditions. Finally, the treatment of addiction should not be the responsibility of individual circuit court judges, but rather, should be addressed on a larger scale through access to addiction recovery resources. The state of bail law today gives judges too much discretion with little to no accountability and indirectly harms vulnerable members of the community, particularly those struggling with addiction.

Bail hearings, which are typically defendants’ initial appearances in front of a judge or commissioner, are a critical, yet sometimes overlooked, part of the judicial process. A defendant with an attorney at their initial appearance is “two-and-a-half times more likely to be released on recognizance”¹⁸⁰ and “four-and-a-half times more likely to have their bail significantly reduced.”¹⁸¹ Simply having an attorney significantly improves a defendant’s chances of receiving less burdensome monetary bail. The Wisconsin Bail Manual urges defense attorneys to “press the judge to rationalize the particular” amount of bail when they set a monetary bail that the defendant cannot afford.¹⁸² The same pressure should be applied to bond conditions. Defense attorneys should press the judge to explain why certain conditions are necessary and how they relate to the facts in the record or the allegations in the criminal complaint.¹⁸³ This may also involve pressing the prosecutor to explain why they requested certain conditions.¹⁸⁴ Defense attorneys in

give prosecutors more leverage in these negotiations, sometimes resulting in defendants receiving longer or harsher sentences than they would have without the bail jumping charges. See Johnson, *supra* note 172, at 654–55. Additionally, when charges are dismissed in the process of plea negotiations, they are not erased entirely but are “read in” at sentencing. *Understanding Wisconsin Criminal Proceedings*, L. OFF. OF NICHOLAS J. RIFELJ, <https://madisondefender.com/criminal-procedures/> [<https://perma.cc/3QUU-ZSWH>] (last visited Oct. 27, 2025) (“A judge considers the read-in charges at sentencing, even though the defendant does not plead to those charges and cannot be prosecuted for them in the future. Judges are not bound by plea agreements but usually accept them.”).

180. LAVIGNE, SPENCE & HOFFMAN, *supra* note 123, at 7. “Released on recognizance” refers to a “recognizance bond,” a written agreement in which a defendant is released from jail without posting any cash but includes a promise to appear in court and follow bond conditions. Saperstein, *supra* note 10.

181. LAVIGNE, SPENCE & HOFFMAN, *supra* note 123, at 7.

182. *Id.* at 22.

183. This is likely a routine practice among many defense attorneys, but based on anecdotal evidence, it is not a universal practice. This Comment urges all defense attorneys to implement this practice at bail hearings.

184. Typically, the district attorney requests bond conditions along with the amount of monetary bond. See Lisel Petis, *Everything You Need to Know About Bail*

counties where blanket bail policies persist should challenge the status quo and request an explanation for every bond condition applied to each individual defendant. This practice requires no change in law, only a change in habit; it will aid in upholding the legal standard that only *reasonable* conditions can be imposed on defendants.

In that same vein, judges should examine requests for bond conditions carefully and determine whether these conditions are reasonable and designed to assure a defendant's appearance in court, protect the community from harm, or prevent witness intimidation.¹⁸⁵ Though this practice should be used when considering any bond condition, judges should be especially wary when considering absolute sobriety restrictions. This Comment does not call for absolute sobriety restrictions to be abandoned entirely. There are certainly cases where imposing absolute sobriety will promote the goal of protecting the community from harm.¹⁸⁶ However, the general idea that sobriety "keeps defendants out of trouble" is problematic because bond conditions should be designed with a specific purpose, not set as a general rule for every defendant to follow regardless of the crime they are charged with. Imposing supervision on every person charged with a crime probably also "keeps them out of trouble," but research shows that when low-risk defendants are burdened with unnecessary conditions, their rates of non-appearance and new criminal activity increases.¹⁸⁷ Some have argued that bail jumping is a "system-created crime."¹⁸⁸ If judges wish to dispel this narrative, they should only be imposing conditions that defendants can reasonably abide by while still keeping in mind the considerations mentioned in this paragraph.¹⁸⁹ If the purpose of the bail jumping statute is to prevent criminal activity during the pendency of a defendant's case,

and Pretrial Release, R St. (Feb. 11, 2025), <https://www.rstreet.org/commentary/everything-you-need-to-know-about-bail-and-pretrial-release/> [https://perma.cc/ZGM9-ZJTA]. Defense attorneys have a chance to challenge those requests during their bail arguments, then judges make the final determination as to bond amounts and conditions. *Id.*

185. See *supra* Section II.A.

186. A judge may reasonably impose a sobriety restriction on a defendant charged with an alcohol- or drug-related crime, such as an OWI. Absolute sobriety could protect the community from a defendant with multiple prior OWI convictions by preventing them from driving while intoxicated (or at least discouraging them from driving under the influence with the threat of prosecution).

187. LAVIGNE, SPENCE & HOFFMAN, *supra* note 123, at 24.

188. Schuldt, *supra* note 35. The bail jumping statute criminalizes the intentional violation of one's bond conditions. Bond conditions often prohibit defendants from engaging in certain behaviors that would otherwise be legal, like consuming alcohol. LAVIGNE, SPENCE & HOFFMAN, *supra* note 123, at 3–4. The criminalization of a common behavior will naturally increase the rate of crime, even if its goal is to discourage that behavior. See *id.* at 24.

189. See *supra* text accompanying notes 185–186.

judges should try to reduce the number of behaviors they criminalize for a defendant out on bail.

Finally, in caring for defendants struggling with addiction, criminalization of their consumption as a condition of release is not the solution. Instead, defendants should be given better access to treatment and rehabilitation during the pretrial phase of the judicial process. Many counties in Wisconsin have addressed the issue of addiction and crime by establishing special courts. “Problem-solving courts” are popping up in many counties throughout the state.¹⁹⁰ “The most common types of problem-solving courts are drug treatment court and OWI courts,” and they “use interventions that treat offenders while also holding them accountable for their criminal actions.”¹⁹¹ In Dane County, for example, the mission of the drug treatment court program is to “enhance community safety by providing targeted treatment interventions for participants while fostering individualized recovery and accountability through clinical guidance and structured support.”¹⁹² However, to participate in drug court, a defendant must be charged with a drug crime.¹⁹³ Many defendants who struggle with addiction may be charged with crimes completely unrelated to alcohol or drugs. In these cases, some other treatment programs should be implemented, especially for those who are high risk to reoffend.

Reforming bail practices to improve the success of defendants during the pretrial release period does not require a statutory change or another constitutional amendment. Instead, actors like defense attorneys and judges can alter their standard practices to effect change. Additionally, improving accessibility of recovery programs for everyone could have a positive impact on defendants struggling with addiction. Programs that are already available, like problem-solving courts, could be expanded throughout Wisconsin to give more people the opportunity to receive treatment and accountability in tandem. The state of Wisconsin bail law today authorizes judges to impose restrictive and over-bearing bond conditions, but it could also empower them to use their expansive discretion to rethink their practices and impose only reasonable conditions going forward.

190. Heather Kierzek, *Problem-Solving Courts*, WIS. CT. SYS., <https://www.wicourts.gov/courts/programs/problemsolving/> [https://perma.cc/UXZ7-L277] (last visited Oct. 27, 2025).

191. *Id.*

192. *Drug Treatment and Diversion Court Programs*, CNTY. OF DANE, <https://courts.danecounty.gov/Alternatives/Drug-Court> [https://perma.cc/6ZH5-4KCE] (last visited Oct. 27, 2025).

193. *Id.*

CONCLUSION

Ultimately, the system of pretrial release is imperfect. Judges are tasked with the immense responsibility of imposing conditions that are reasonable and fair to defendants, but also effective in assuring appearance at trial, the safety of the community, and the protection of witnesses. The bail jumping statute is a good idea in theory; its goal is to prevent defendants from further criminal activity while their case is pending. However, in its effort to reduce criminal activity, the statute criminalizes behavior that would otherwise be legal. Being one of the most-charged crimes in the state, the crime of “bail jumping” seems to defeat the purpose of the statute’s goal. One way to reduce bail jumping charges is to impose fewer bond conditions on defendants. This Comment argues that absolute sobriety conditions are too often unnecessary and overly burdensome on defendants, particularly those struggling with addiction. Criminalizing the consumption of alcohol as a means to reduce criminal activity in the pretrial period does not meet the goal of the bail jumping statute and adversely impacts defendants who struggle with addiction.

* * *