WISCONSIN STATE LEGISLATURE COMMITTEE HEARING RECORDS

2007-08
(session year)

Assembly
(Assembly, Senate or Joint)

Committee on Corrections and Courts (AC-CC)

(Form Updated: 07/24/2009)

COMMITTEE NOTICES ...

➢ Committee Reports ... CR
**

➢ Executive Sessions ... ES
**

➢ Public Hearings ... PH
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➢ Record of Comm. Proceedings ... RCP
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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL ...

➢ Appointments ... Appt
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Name:

➢ Clearinghouse Rules ... CRule
**

➢ Hearing Records ... HR (bills and resolutions)
** **07hr_ab0249_AC-CC_pt01**

➢ Miscellaneous ... Misc
**

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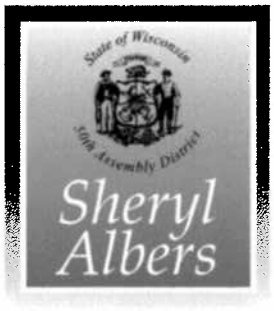

April 10, 2007

Representative Garey Bies
Chair, Assembly Committee on Corrections and Courts
Room 125 West
State Capitol

Dear Representative Bies;

I am writing today to respectfully request that you hold a public hearing on Assembly Bill 249 which was today referred to your committee today. AB 249 relates to conditions prior to disposition for a juvenile who is not being held in a secure or non-secure custody and providing a penalty. This legislation was brought to my attention by DA Andrew Sharp in Richland County because of a situation he encountered with the court and his not being able to impose stipulations for juveniles before they are sentenced.

Thank you for your attention to this matter. Please feel free to contact me with any questions you may have regarding AB 249.

Sincerely,

Sheryl K. Albers
State Representative

/tg

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STATE REPRESENTATIVE
Garey Bies
1ST ASSEMBLY DISTRICT
COMMITTEE ON CORRECTIONS AND THE COURTS

Memorandum

To: Members, Assembly Corrections and the Courts Committee

From: Rep. Garey Bies, Chair

Date: May 1, 2007

Re: Materials for 5-3-07 Committee Meeting

Attached to this memo, please find a copy of a Legislative Council memo concerning Assembly Bill 57, which is scheduled for executive action on Thursday, May 3rd, 2007.

Also attached please find correspondence from the office of the Richland County District Attorney pertaining to Assembly Bill 249, which is scheduled for a public hearing on Thursday, May 3rd, 2007.

First for Wisconsin!

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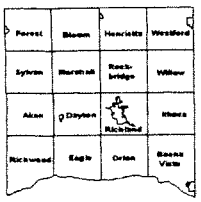

DISTRICT ATTORNEY
OF RICHLAND COUNTY

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NANCY SCHOEPP
Clerical

WM. ANDREW SHARP
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April 12, 2007

Representative Garey D. Bies
Chair, Assembly Committee on Corrections and Courts
Room 125 West State Capitol
Madison, WI 53707

RE: 2007 Assembly Bill 249 relating to restrictions on alleged delinquents

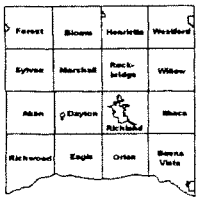
Dear Representative Bies:

I am writing to respectfully request that you hold a public hearing on Assembly Bill 249, relating to conditions prior to disposition for a juvenile who is not being held in secure or non-secure custody and providing a penalty. I wrote to Representative Albers originally and asked her to sponsor this bill.

My request arose out of a situation where our judge ordered a juvenile girl who was alleged to be delinquent to attend school. At the first hearing in the case, the judge learned that she had apparently missed three of every four days of school with 75% of these absences being unexcused. The court ordered her to attend school, as was her obligation under the law. When she did not attend, a capias [warrant] was issued and she was taken into custody. The girl and her parent later sued the Department of Health and Human Services in Federal Court for enforcing the circuit court's order because the judge didn't have the authority under our present statutes to require her to go to school while the case was pending.

While that lawsuit was recently dismissed by the Federal Judge, it underscores the need for a court to be able to put reasonable restrictions on a juvenile once they land themselves in juvenile court. In criminal cases, most adult defendants are subject to bond conditions while the case is pending, even if they were never held in custody. There are no provisions for doing this in juvenile court.

The nature of juvenile crime has become more serious over the past years. While the most dangerous offenders are probably held in custody, many less serious offenders are not. Because of the increased costs for holding a juvenile in custody



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and budget constraints after 9/11, fewer juveniles are being placed in custody than was the case a few years ago. If they are not placed in custody, the court cannot make any orders regarding their conduct until they are found "guilty."

This is different from the adult system. For instance, an adult who commits a simple battery would only be charged with a misdemeanor, but that adult would likely have a "no contact with the victim" condition put on his or her bond. There is no provision to do even that under the present juvenile code. If an adult steals from a home or business, the adult can be ordered to not be on the premises of those places. A juvenile cannot. Thus, this also becomes a question of protecting victims of crime from harassment and intimidation.

Finally, I believe it is in the best interests of the juveniles to be subjected to judicially-approved oversight as soon as possible. Psychologists and social scientists stress that young people need immediate consequences for their bad acts. To keep them from committing new offenses is obviously in everyone's best interests. Oftentimes, the parents of these kids either cannot control them or sometimes do not care.

When a juvenile can continue along the path of delinquency, without any restriction by authorities who have been officially notified of the bad behavior, it makes a mockery of the juvenile justice system.

I am asking you to do what you can to move the passage of AB 249 along.

Respectfully,

Wm. Andrew Sharp
District Attorney

WAS/was


FORWARD

WISCONSIN COUNCIL ON
children
&families
Raising Voices to Make Every Kid Count

555 West Washington Ave, Suite 200
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To: Assembly Committee on
Corrections and the Courts

From: Wendy Henderson, Policy Analyst

Re: AB 249

Date: May 3, 2007

Thank you for the opportunity to comment on this legislative proposal. The Wisconsin Council on Children and Families is very concerned about allowing conditions prior to disposition for a juvenile who is not under a custody order because of the potential for juvenile court case expansion under this proposal. This proposal is sweeping and would cover every child who comes into contact with the juvenile court. Further, we are concerned that federal dollars Wisconsin receives for delinquency prevention would be jeopardy if this legislation were to pass.

Each year in Wisconsin, there are over 100,000 juvenile arrests. The vast majority of these arrests are for non-violent crimes. Currently, a small proportion of kids who are arrested are subject to custody orders (secure or non-secure) due to one of three factors: 1) the likelihood the they will commit injury to a person or property if not held, 2) likelihood they will run away or be taken away so as to be unavailable for future court proceedings, or 3) the inability to a responsible adult (parent or guardian) to provide adequate supervision. In other words, if they are not dangerous, will not run away, and have a parent to supervise them, the court process is allowed to continue without any interim interference. The rest of the kids who come in to court are given the opportunity to avail themselves of services voluntarily during the pendency of their proceedings.

Custody orders are available tools for the kids who are in need of the kind of supervision the court provides. However, for kids who do not rise to the level of requiring a custody order, there is no need for the type of interim orders allowed here. Children brought in on serious allegations, such as sexual assaults, are almost always subject to a custody order with a no-contact with the victim provisions because they fall under the dangerousness category described above.

Kids brought in to court on less serious allegations who have the family support to provide supervision and ensure their appearance at court hearings must be given the opportunity to present their cases prior to being subject to court ordered conditions. This bill would create an anomaly where kids who are not found to be delinquent of the initial crime may then be found in violation of interim court rules and that would create an independent

delinquency action. Thus, more kids will be spending more time in court, there will be many more hearings about whether a child violated the conditions of their pre-dispositional order, and the juvenile court, which is meant to move swiftly to disposition, will become clogged with needless cases.

As a practical matter, part of the juvenile court process involves counseling kids to remedy whatever problem has brought them to court. If a child is brought in on a truancy petition, their attorney will advise to attend school. If they do not attend school during the court process, they will be dealt with more seriously by the judge than a kid who straightens out their act.

Finally, and very importantly, **federal law prohibits locking status offenders (like truants) in juvenile detention**. In 2006, the Wisconsin Office of Justice Assistance was informed that our secure detention rate is too high and that Wisconsin persists in locking status offenders in detention. Both of these practices resulted in a loss of $200,000 federal dollars. Under this bill a truant could be put in detention for continuing to be truant. This may cause a significant problem with our federal compliance and put more federal delinquency dollars in jeopardy.


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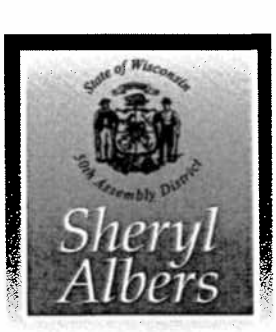

Testimony of Rep. Sheryl Albers
AB 249 – Restrictions on alleged delinquents
Assembly Committee on Corrections and Courts
May 3, 2007

Good morning Chairman Bies and Committee Members. Thank you for holding a public hearing on AB 249 that addresses the ability of the court to order specific bail conditions for a juvenile. Chapter 938 of Wisconsin statutes is "The Juvenile Justice Code". The code was created by 1995 Wisconsin Act 77 and took effect on July 1, 1996. The major provisions in the new chapter 938 were previously found in the Children's Code, Ch. 48, Statutes. The Act created the separate Juvenile Justice Code to govern juveniles who are alleged to have violated a criminal law, civil law, or municipal ordinance or who are alleged to be uncontrollable dropouts, or habitually truant from home or school. In 2005 the Special Committee on Recodification of Chapter 938, The Juvenile Justice Code- 2005 Assembly Bill 443 – improved upon the original language of the law which over the years had been modified through piecemeal amendments. One change to the Juvenile Justice Code was overlooked at the time and brought to my attention by DA Wm. Andrew Sharp of Richland County.

DA Sharp informed me that the court lacks authority to make orders regarding a juvenile's conduct prior to adjudication if the juvenile has not been taken into custody pursuant to s.938.19 and held in custody pursuant to s.938.205. The circumstance that occurred in Richland County Court is only one of many situations that occur daily in juvenile court. The judge ordered

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a juvenile girl who was alleged to be delinquent to attend school with no unexcused absences. Later, the judge learned that she had evidently missed three of every four days of school with 75% of these absences being unexcused. When she did not follow the order, she was taken into custody. The girl and her parent sued the Department of Health and Human Services in Federal Court for enforcing the circuit court's order because the judge didn't have the authority under our present statutes to require her to go to school while the case was pending.

Under 938.205, unless a child will commit injury to the person or property of another, or the juvenile's parent is neglecting, refusing, unable or unavailable to provide adequate supervision and care, or the juvenile will run away, there are no grounds to hold them and no bail condition-type orders can be made. In this particular case, the judge upon review of the facts concluded that the aforementioned circumstances did not apply.

Bottom line, without this change to our Juvenile Justice Code, a child cannot be ordered to attend school while his or her case is pending – without recourse! A child who sexually assaults another child cannot be ordered to have no contact with the victim.

Assembly Bill 249 will give the court in juvenile cases the power to issue orders imposing conditions on bail. This change will give back to courts the power to impose conditions; it will help to assure that the child will obey the

laws set forth, prevent further injury to the victim, and would prohibit contact with any victim while the case is pending.

This proposal is important to District Attorneys who have experienced circumstances similar to that of DA Sharp. I know that other DA's have responded positively to this proposal and I believe it will be a valuable change to the Juvenile Justice Code.

Thank you again for hold this public hearing.


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While case is pending the court cannot order a juvenile to attend school.