



JOE SANFELIPPO

STATE REPRESENTATIVE • 15th ASSEMBLY DISTRICT

(608) 266-0620
FAX: (608) 282-3615
Toll-Free: (888) 534-0015
Rep.Sanfelippo@legis.wi.gov

P.O. Box 8953
Madison, WI 53708-8953

May 16, 2017

Rep. Sanfelippo public testimony on the Victim Prevention Package

Chairman Schraa and committee members, thank you for holding a public hearing on Assembly bill's 87, 90, and 94 which are part of our victim prevent package.

The Victim Prevention Package uses our two-pronged philosophy: ensuring dangerous, violent repeat offenders are unable to continue victimizing our communities by removing them from our streets and continuing to provide evidence-based alternatives to incarceration.

Over 39% of violent criminals return to prison following their release from prior conviction, and we cannot allow repeat offenders to continue terrorizing our communities. Action must be taken, and this package of bills is a good start to addressing these serious issues plaguing both urban and rural communities across our state.

Based on current practices, it seems as though the criminal justice system has become more focused on the offenders and less focused on the victims they prey upon. To effectively deal with crime in our state, we need to find more of a balance between rehabilitating offenders and preventing victims. This package of legislation begins that conversation.

According to Milwaukee Police Department data, in 2016 there were 102 unique offenders arrested for habitual criminality, as defined in Wisconsin State Statute 939.62. From January 1st, 2007 through December 31st, 2016 these 102 offenders were arrested 945 times for a total of 2,628 crimes. The offender with the greatest number of arrests has been arrested 37 times in that ten year period.

According to the State Department of Justice, about 31% of offenders released from prison in 2011 were convicted of a new crime within 3 years of their release. The department also tells us that 35% of offenders released after 1 year or less of prison re-offend, 31.2% of offenders released after 2-3 years in prison re-offend and that 15.7% of offenders released after 5 or more years in prison re-offend. For some individuals prison time is the best deterrent to committing future crimes.

Assembly bill 87 removes the time limit on a restrictive custody sanction under the Serious Juvenile Offender Program. More specifically, this bill removes the three-year limit on the amount of time the Department of Corrections may place certain juveniles participating in the Serious Juvenile Offender Program in secured detention facilities. It will fulfill the Department of Corrections public safety responsibility for a small number of disobedient youth who must be released to the community after three years of confinement, regardless if they are a serious threat to the public. This bill affords the Department of Corrections with proportionate sanctions that will be imposed if they demonstrate behaviors that put the public at risk.

Assembly bill 90 includes all felonies as acts for which a juvenile may be placed in correctional placement or the Serious Juvenile Offender Program. This bill permits judge's broader discretion when sentencing juveniles to the serious juvenile offender program or correctional placement. Currently, only juveniles found guilty of certain serious felonies can be sentenced to these programs. This bill provides that if a juvenile is found guilty of what would be a felony if committed by an adult, they can be sentenced to the serious juvenile offender program or placed in a correctional facility. This legislation simply expands the number of felonies a judge can consider when sentencing a juvenile to these programs.

Assembly bill 94 directs the Department of Corrections to recommend to revoke parole, probation, and extended supervision if a person is charged with a crime. Assembly bill 94 requires that when a person on probation is charged with committing a new crime, the Department of Corrections shall initiate revocation proceedings, affording the court more oversight. This bill holds individuals on probation accountable to abide by the law, knowing that if they commit a new crime while on probation, swift sanctions will be imposed.

STATE SENATOR
Leah Vukmir

Assembly Committee on Corrections

Tuesday, May 16, 2017

Victim Prevention Package

Assembly Bills 87, 90 & 94

Chairman Schraa and committee members, I would like to express my sincere gratitude for giving Representative Sanfelippo's and my bills a hearing. This legislation is part of our Victim Prevention Package that addresses the rapidly growing problem of violence in our state.

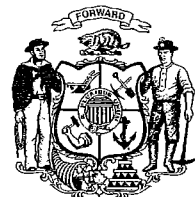
Over the past five years, national crime rates as a whole have dropped, but sadly Wisconsin's have risen. According to the Uniform Crime Report compiled by the Department of Justice from 2011 to 2015, Wisconsin saw a 72.6% increase in murder, 2% increase of sexual assaults, 13% increase in robberies, 21.5% increase in aggravated assaults, and 50% jump in motor vehicle thefts from 2013.

As a result of system failures, we are allowing violent criminals who have victimized our communities in the most egregious manner the ability to continue to do so.

Assembly Bill 87 removes the three-year maximum term of confinement for juveniles placed in the Serious Juvenile Offender Program. This bill is a Department of Corrections ask to fulfill its public safety responsibility for a small number of disobedient youth who represent a serious threat to the public, but must be released into society.

Assembly Bill 90 before you today affords judges more discretion by allowing them to consider more felonies when sentencing juveniles in correctional facilities. Current law does not allow for habitual juvenile offenders to be placed in a correctional facility, unless that juvenile commits an extremely egregious crime. This bill allows judges to consider the totality of a juvenile's record and gives them more latitude when sentencing.

WISCONSIN STATE CAPITOL
P.O. Box 7882
Madison, WI 53707
PHONE (608) 266-2512
EMAIL Sen.Vukmir@legis.wi.gov
WEBSITE www.SenatorVukmir.com



Assembly Bill 94 requires that when an individual is on probation and commits a crime that is punishable by a term of confinement, the probation agent shall recommend that individual be revoked from probation, parole or extended supervision. This simply requires the probationer to appear in front of a judge for a hearing to determine if they are still eligible for probation, parole or extended supervision.

When we focus on converting crime statistics into numbers and dollars, we often lose sight of the victims and the brutality they have endured, the anguish their families have gone through. It is with those people in mind that I bring these bills before you.

These bills are simply the beginning of our effort to combat our rising crime issues and make law abiding residents our first priority. Thank you again for allowing me to testify on bills from our victim prevention package.

Scott Walker
Governor

Jon E. Litscher
Secretary



State of Wisconsin
Department of Corrections

Mailing Address

3099 E. Washington Ave.
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 240-5000
Fax (608) 240-3300

SB 54

This bill requires the Department of Corrections to recommend revoking a person's extended supervision, parole, or probation if the person is charged with a crime while on extended supervision, parole, or probation.

Under current law, the Department of Corrections (DOC) utilizes Department Policy, evidence-based practices, Department Administrative Code, and statutory requirements to determine whether or not to revoke a person's extended supervision, parole, or probation if the person is charged with a crime while on extended supervision, parole, or probation.

2013 Act 196 provided the DOC with the authority to develop a system of short-term sanctions for violations of conditions of parole, probation, extended supervision (ES), and deferred prosecution agreements. These sanctions can result in offenders being placed in a regional detention facility or a county jail for up to 90 days. Under this proposed bill, the system of short-term sanctions established by 2013 Act 196 would not be an option for offenders charged with a crime while on extended supervision, parole, or probation.

In CY16, the DOC recommended the revocation for 9,416 cases of individuals on extended supervision, parole, or probation. The Department of Administration's Division of Hearings and Appeals (DOA DHA) reviews and determines the outcome of revocations recommended by the DOC. It is estimated that DOA DHA would see an increase of 5,570 revocation cases each year. DOA DHA charges DOC approximately \$223 to review and provide a disposition for each revocation case. Under this bill, it is estimated that increased revocation recommendations would result in increased DOA DHA charges to DOC in the amount of \$1,242,247 annually.

In CY16, Approximately 92% of the cases recommended for revocation by DOC were revoked by DOA DHA, resulting in the offender being sent to prison. In FY16, on average, individuals on community supervision with a new conviction were revoked to prison for approximately 39 months of incarceration. It is unknown if these patterns of revocation rates and sentencing will continue under the proposed legislation. It is possible that both will decrease due to the DOC being required to recommend revocation for the charge of any crime, instead of the current process that utilizes several factors to determine if recommending revocation is an appropriate response to the offender's behavior.

For purposes of this fiscal estimate, the Department assumes that approximately 52% of the cases recommended for revocation by DOC will be revoked by DOA DHA, resulting in the offender being sent to prison. In addition, the Department assumes revocation sentences will be 19 months.

The Department requested data from Wisconsin Court System Circuit Court Access (CCAP) to determine the number of offenders under community supervision that were charged with a crime during FY16. Using that data, the Department estimates 5,570 offenders on community supervision were charged with a new crime and remained on community supervision. Under this bill, DOC would be required to recommend revoking the community supervision of all 5,570 individuals. The Department assumes 52% of revocations recommended by DOC will be affirmed by the Administrative Law Judge (ALJ). The Department estimates this bill will result in an average increased daily population of 1,569 in the Department's Division of Adult Institutions (DAI) during the first year. When the population is annualized after 19 months, there will be a permanent increase of 4,586 inmates to DAI's population.

The estimated population change will ultimately depend upon: 1) the number of offenders being charged with a crime, 2) the rate at which the ALJs affirm the revocation recommendations, and 3) the length of reincarceration time imposed upon the offenders.

SUMMARY:

It is estimated that this bill would result in increased operations costs (excluding possible construction costs) to the Department of Corrections in the amount of \$51,917,200 during the first year of enactment. The Department estimates there will be a permanent increased operations cost of approximately \$149,369,000 after the population is annualized during the second year of enactment.

Prepared by: Emily Lindsey

SB54/AB94 Scenarios		Prison Costs				Average Daily Population			Total Estimated Cost			
Sentence Length	% Revocation Affirmation	Year One	Year Two	Annualized	DHA Costs	Year One	Year Two	Annualized	# of Institutions Needed*	Year One	Year Two	Annualized
36 months	92%	\$89,655,648	\$255,173,768	\$524,140,713	\$1,242,247	2,776	7,900	16,227	8	\$90,897,896	\$256,416,016	\$525,382,961
	72%	\$70,165,290	\$199,701,210	\$420,991,740	\$1,242,247	2,172	6,183	13,034	6	\$71,407,537	\$200,943,457	\$422,233,987
	52%	\$50,674,932	\$144,228,652	\$304,049,580	\$1,242,247	1,569	4,465	9,413	5	\$51,917,179	\$145,470,899	\$305,291,837
18 months	92%	\$31,184,573	\$88,756,093	\$187,107,440	\$1,242,247	965	2,748	5,793	3	\$32,426,821	\$89,998,341	\$188,349,687
	72%	\$89,655,648		\$262,070,357	\$1,242,247	2,776		8,114	4	\$90,897,896		\$263,312,604
	52%	\$70,165,290		\$205,098,540	\$1,242,247	2,172		6,350	3	\$71,407,537		\$206,340,787
	32%	\$31,184,573		\$91,154,907	\$1,242,247	965		2,822	1	\$32,426,821		\$92,397,154

* Based on annualized number of inmates.

**This is the assumption that the written narrative is based on.

-Assumes an increase of 5,570 revocations recommendations over FY16 levels

-Assumes annual prison cost of \$32,300

-Assumes each revocation recommendation costs DOC \$223

Prepared by: Emily Lindsey

5/5/2017



**Assembly Committee on Corrections
Testimony on Assembly Bill 94
May 16, 2017**

Thank you Representative Schraa and members of the Corrections Committee for giving me the opportunity to testify in opposition to Assembly Bill 94. My name is Tom Lyons. I am the Wisconsin State Director for Right on Crime. Right on Crime is a national campaign of the Texas Public Policy Foundation, in partnership with the American Conservative Union Foundation and Justice Fellowship that supports fighting crime, prioritizing victims, and protecting taxpayers.

On its face, AB 94 makes a seemingly common sense change to DOC's process for deciding when to revoke a person's supervision. Committing a crime is a violation of rule number one of the standard rules of community supervision. Unfortunately, AB 94, as drafted, will very likely result in predictable unjust outcomes causing increased incarceration at an increased cost to the state and counties.

To understand the harm of AB 94, a review of the revocation process is necessary. DOC is charged with ensuring compliance with conditions of supervision. To do so, local agents are assigned individual people on supervision. If there is an allegation the person violated the rules of supervision, the agent investigates the wrongdoing. If the agent decides to recommend revocation, the agent, if they have not already done so during the investigation, will likely place the person in custody. The result is the person will remain in custody until the outcome of the case. If the person is in custody, as almost all of them are, the final hearing on revocation must be held within fifty calendar days. After that, the administrative law judge (ALJ) must issue a decision within ten business days.

With the process in mind, there are a number of scenarios where AB 94 will produce absurd results. The first is AB 94 makes no contingency for charges that are dismissed. For example, let's say a probationer is charged with battery as a result of a bar fight. The probation agent will then recommend the supervision be revoked. Let's say a subsequent review of the evidence, like surveillance video, shows the probationer, while near the bar fight, did not actually engage in any conduct that could be considered criminal. The District Attorney would then dismiss the criminal complaint. Meanwhile, the probation agent would be forced to continue to recommend revocation based on allegations no one who investigated the crime believes to be true. While the ALJ will likely dismiss the revocation petition, the probationer will have to wait weeks for an end to the proceedings.

The second problematic scenario will happen when a person on supervision is charged with a crime that predates supervision. For example, a probationer starts supervision on January 1, 2017. In March of 2017, the probationer is charged with a new crime that occurred in January of 2015. As a result, AB 94 would require the agent to recommend revocation. The purpose of supervision is to monitor a person for a period of time, to provide services aimed at reducing recidivism, and to make sure the court's orders from the time of sentencing are followed. Including conduct that leads to a revocation occurring outside the time of supervision serves none of those purposes.

The third problematic scenario will arise because the type of evidence gathered and used in a revocation proceeding is different from the evidence used in a criminal proceeding. People on supervision lose certain rights while on supervision. One of those rights is the right to remain silent. A person on supervision must provide a truthful, full statement when requested from their probation officer. Failing to do so is a violation of the terms of their supervision. Statements given probation officers under these circumstances are not admissible in criminal cases. While common belief is the exclusion of evidence is beneficial to the defendant, the truth is the exclusion of evidence can be just as harmful to the defendant. It is possible a statement given to a probation agent could result in the agent coming to the conclusion the person on supervision did not commit the crime charged. However, under AB 94, the agent has no choice but to ignore their own investigation and recommend revocation. Again, the ALJ may also come to the same conclusion but several weeks later.

The fourth problematic scenario applies to anyone on supervision for a single count of disorderly conduct or any other misdemeanor with a relatively low maximum sentence. The maximum possible penalty for disorderly conduct is ninety days. When statutory good time is applied, the maximum is sixty-seven days. Because the process can take up to fifty days before the matter is heard by an ALJ followed by up to fourteen days for a decision from the ALJ, it is possible the person can have sixty-four days elapse before receiving a decision on the recommendation to revoke. Because of the length of the process, any person facing a relatively low period of incarceration would be foolish to contest the allegations. This is a problem under AB 94 because the bill strips an agent's ability to consider alternatives to revocations.



To: Members, Assembly Committee on Corrections
From: Iowa County Sheriff Steve Michek
Date: May 16, 2017
RE: For Information Only
Testimony on Assembly Bill 94 – Parole Revocation Recommendation

Good morning, I am Sheriff Steve Michek of Iowa County. I am here today on behalf of Badger State Sheriffs' Association (BSSA) and Wisconsin Sheriffs and Deputy Sheriffs Association (WS&DSA) to discuss Assembly Bill (AB) 94, relating to recommendation to revoke parole, probation, and extended supervision if a person is charged with a crime. BSSA is a statewide organization representing all of Wisconsin's 72 Sheriffs and WS&DSA is a statewide organization representing over 1,000 members, including Sheriffs, Deputies, and jail officers. BSSA and WS&DSA have a joint legislative committee and work closely on public safety issues of concern to our members.

AB 94 requires the Department of Corrections (DOC) to recommend revoking a person's extended supervision, parole, or probation if the person is charged with a crime while on extended supervision, parole, or probation. BSSA and WS&DSA appreciate the author's intention to focus on policies protecting victims, holding offenders accountable and targeting repeat violent offenders. However, Wisconsin Sheriffs are very concerned about the **fiscal impact** this legislation will have on county jails - big and small - across the state.

2013 Wisconsin Act 196 requires DOC to develop a system of short-term sanctions for violations of conditions of probation, parole, extended supervision and deferred prosecution agreements. This system allows for offenders to be placed in a regional detention or a county jail for 90 days. According to DOC, under AB 94, the system implemented under 2013 Act 196, would not be an option. This bill eliminates the discretion of DOC to make a recommendation and instead mandates DOC recommend revocation if there are criminal charges.

Wis. Stat. § 302.33(2)(a)2 provides that DOC "shall not pay for [county jails for housing] persons who have pending criminal charges whether or not a departmental hold has been placed on the person." Mandating DOC to recommend revocation will certainly increase the number of individuals that will be in a county jail pending the hearing before the administrative law judge. In fact, DOC estimates that AB 94 will result in an increase of 5,570 revocation cases each year. **This means 5,570 more individuals will be occupying county jails without reimbursement from DOC. Essentially, this bill is an unfunded mandate to Wisconsin county jails.**

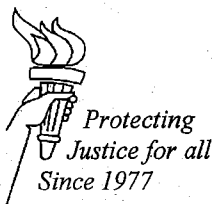
Furthermore, this bill does not consider the fiscal impact to the Department of Administration's Division of Hearings and Appeals (DOA/DHA). If revocation hearings are backlogged due to an

increased number of revocations, those individuals will be in jails longer. Wis. Stat. § 302.335(2)(b) requires final revocation hearings to begin within 50 calendar days after the person is detained in a county jail. The statutes provide for that time frame to be extended by 10 additional days. DOC estimates that DOA DHA will charge DOC an additional \$1.2 million to manage the expenses of 5,570 more cases. The ability of DOA DHA to have adequate resources and hold proceedings in a timely matter directly impacts the budgets of Wisconsin's county jails.

In addition to the fiscal impact on county jails and DOA DHA, AB 94 will drive up DOC costs. In fact, DOC estimates that the total estimated annualized cost for a 19-month revocation sentence will be \$149.3 million dollars. DOC may need to contract with county jails for beds to meet the increased demands. Governor Walker's 2017-19 budget includes \$17 million more for contract beds. According to Legislative Fiscal Bureau, DOC's current per diem rate for contract beds with counties is \$51.46. Although jails are reimbursed for contract beds, demands for more beds can strain a jails' resources and capacity.

We ask that the Assembly Committee on Corrections consider the fiscal impact AB 94 will have on county jails. There is a cost to this proposed policy and we ask that it is addressed before the bill advances further. One potential option to address the fiscal impact would be to require that DOC reimburse county jails for housing regardless if the person has pending criminal charges. Another option that lessens the fiscal impact would be to narrow the bill to require DOC recommend revocation only for certain crimes. We have been discussing options with the bill's authors and will continue to engage in those conversations.

Thank you for your time. I'd be happy to answer any questions you may have.



Wisconsin State Public Defender

17 S. Fairchild St. - 5th Floor

PO Box 7923 Madison, WI 53707-7923

Office Number: 608-266-0087 / Fax Number: 608-267-0584

www.wisspd.org

Kelli S. Thompson
State Public Defender

Michael Tobin
Deputy State
Public Defender

Assembly Committee on Corrections
Public Hearing on Assembly Bill 94
Tuesday, May 16, 2017

Assembly Bill 94 removes the ability for probation and parole agents, administrative law judges, district attorneys, and judges to review cases based on the individual circumstances.

Evidence, research and action by the Legislature in the last couple of sessions all point to the greater success achieved through a concept called dosage-based probation. In simple terms, dosage-based probation provides for more rapid but more tailored sanctions for probation violations. It recognizes the fact that even the time spent in detention pending the revocation hearing (which can be anywhere from 3 to 10 days or longer) has a detrimental impact on the person's ability to maintain employment and housing. Requiring a recommendation of revocation after new charges are issued will have several impacts which are more severe than perhaps anticipated by the author.

The primary concern is the potentially unconstitutional burden shift for extended periods of incarceration. If an individual on extended supervision is charged with a new crime and, as a result of this bill, the new crime is handled as an administrative revocation rather than a new circuit court case, the practical standard of conviction will have become "probable cause" rather than "beyond a reasonable doubt." The only burden that will have applied to the administrative law judge's decision to revoke supervision will have been the probable cause standard a prosecutor must meet to issue charges.

Added to this concern is the impact of Wisconsin's sentencing structure. Because individuals do not earn credit for time served on extended supervision, any violation during the period of supervision can result in re-incarceration for the full term. For an example, consider a person sentenced to a term of 10 years initial confinement followed by 10 years of extended supervision. Even under current law, if the person violates supervision during year 9, the person can be reincarcerated for 10 more years. Now consider that under the bill, if the person is charged with a relatively low level crime such as disorderly conduct, even without conviction, he or she can be revoked for the full 10 years. Effectively the person has been sentenced to a 10 year term in state prison for suspicion of a crime that carries a potential penalty of a \$1000 fine and 90 days in jail.

And while the administrative law judge would still retain discretion under the bill whether or not to revoke supervision, because of a combination of the conditions of release, the administrative hearing process for a revocation proceeding, and the burdens and standards for a revocation proceeding, this bill could lead to prison sentences that are grossly disproportionate to the alleged criminal activity.

During the Senate committee's discussion on this proposal, several issues were raised that we wanted to make sure to address with this committee. First, that this bill only requires a probation and parole agent to recommend revocation but the Administrative Law Judge hearing the case still makes the final decision. Discussion on this point indicated that people may not be familiar with the completely different standards and burdens that are required in a criminal case as opposed to a revocation hearing.

The standard of proof is lower, and due process protections guaranteed by the Constitution do not apply throughout the revocation process.

Another issue raised in the Senate was also process related – what happens if the revocation is commenced based on the criminal complaint and the complaint is subsequently dismissed or the person is found not guilty on the allegations? The answer to both scenarios is that there is no easy fix to undue the revocation. Once a person is revoked, there is no “exoneration” process.

As part of Wisconsin’s continuing efforts to expand the use of research-based practices in the area of criminal justice, justice professionals (including prosecutors and staff of the Department of Corrections) are increasingly making individualized decisions and recommendations in light of the risk level and needs of the defendant. Often, appropriate and effective programs available in the community provide for greater public safety while saving taxpayer funds.

This bill may result in a significant number of new prison terms which will neither be cost effective nor have a substantially beneficial impact in deterring future criminal behavior.

I strongly support the idea that any violation of the law that would be a felony if committed by an adult should also be a felony if committed by a juvenile. There are too many stories in the press of victims severely injured or killed in car jackings, robberies and other felonies. It's time to stop feeling sorry for the perpetrators and consider the victims whose lives have often been ruined or taken.

Putting a teenage felon in a juvenile center for a limit of three years may just put him or her back on the street too soon and see that person go right back to their felonious behavior. A longer term may serve a) as a deterrent and b) provide time for rehabilitation.

And, that having been said, there must be some attempt at rehabilitation. Judging from the stories about Lincoln Hills, rehab is not happening. So while I am very much in favor of longer sentences, I don't believe they will be effective without serious rehabilitation.

And any felon, juvenile or adult, who commits another crime while under supervision or probation, should be put right back into detention for as long as deemed necessary. The safety of the public depends on this. Too many violent felons are released to subsequently do more harm, often in a very short period after their release.

If I were given a vote on Assembly Bills 87, 90 and 94, I'd vote for each of them. For too long the justice system has made excuses for criminals. It's time to consider the victims, their families and the effect on our communities.

Sally A. Gregg
2345 S. 80th St.
West Allis, Wis

414-534-3764

sallah626@earthlink.net