



LENA C. TAYLOR

Wisconsin State Senator • 4th District

HERE TO SERVE YOU!

**Senate Committee on Judiciary and Public Safety
Senate Bill 104 – The Sexual Contact with Law Enforcement Bill
August 14, 2019**

Good morning Chairman Wanggaard, Vice Chairman Jacque and members of the Committee Judiciary and Public Safety. Thank you for granting me the opportunity to submit written testimony regarding Senate Bill 104, which aims to acknowledge the imbalance of power between Law Enforcement Officers and individuals within their custody, and specifically, the inability of those individuals to provide consent in that situation.

On September 15, 2017, an 18 year-old passenger in a car, Anna Chambers, was detained after a traffic stop in Brooklyn, New York. She was taken into custody by two plainclothes NYPD detectives after the male driver and another male passenger were told to go home. The teenager was handcuffed and placed in the back of an unmarked police van with tinted windows. The detectives then took turns raping Anna while the other drove the car around for just under an hour, Eventually dropping her off less than a quarter of a mile from a police station. The detectives filed no paperwork or report regarding their contact with the teen. When Anna made it home and told her mother, they went to the hospital. A rape kit collected the semen of detectives Eddie Martin and Richard Hall. There was also surveillance footage, obtained from the police station near where Anna said the detectives dropped her off that supported her claims. It should have been a cut and dry case. It wasn't.

Under New York law, it is not illegal for a police officer to have sex with an individual in their custody. The fact that officers of the law had intercourse with a person in their custody was not, in and of itself, illegal. After learning about this story, I casually mentioned to my staff, that I wanted them to check what we did in Wisconsin on this conduct I was completely floored when I learned, the answer was nothing.

Following this violation of the public trust by officers of the law, various states across the country have introduced and enacted legislation to mandate individuals' inability to give consent while under police custody. But still not here. Nationally and in the state of Wisconsin, sexual contact between prison or parole officers and inmates or parolees is already criminalized, as they are legally unable to consent to such acts with their custodians. This is in recognition of the imbalance of power between the two actors.

The sexual contact with law enforcement bill extends this protection to all individuals in police custody. Due to the compromised state of individuals in police custody and imbalances of power, consent cannot be given for sexual acts in these cases. The bipartisan support behind this bill only further illustrates Wisconsin lawmakers' dedication to the protection of our citizens and maintaining high standards for our police officers. I urge my fellow lawmakers to continue to support these important efforts.

Thank you.

Senator Lena C. Taylor
4th Senate District



WISCONSIN COALITION AGAINST SEXUAL ASSAULT

Testimony

To: Members of the State Senate Committee on Judiciary and Public Safety
From: Wisconsin Coalition Against Sexual Assault (WCASA)
Date: August 14, 2019
Re: Senate Bill 104
Position: Support

The Wisconsin Coalition Against Sexual Assault (WCASA) appreciates the opportunity to offer this written testimony for your consideration. WCASA is a statewide membership agency comprised of organizations and individuals working to end sexual violence in Wisconsin. Among these are the 60 sexual assault service providers located throughout the state that offer support, advocacy and information to survivors of sexual assault and their families.

WCASA thanks Chairman Wanggaard for bringing this important piece of legislation forward for a hearing today. We also thank the leading sponsors of the bill, Representatives Thiesfeldt and Representative LaKeshia Myers and Senators Taylor and Wanggaard for their leadership on this legislation in both houses.

SB 104 closes an important loophole in Wisconsin's sexual assault laws. Currently, there is no prohibition on a law enforcement officer having sexual contact or intercourse with a person in their custody. As a result, in cases where a law enforcement officer sexually assaults someone in their custody, the prosecution is required to prove the sexual contact/intercourse was not consensual. Under current law, a correctional staff member cannot have sexual contact or intercourse with a person who is confined in a correctional institution, and consent is not an element of this crime. This crime, along with others prohibiting sexual contact by probation agents and employees of certain community-based residential facilities, recognize the imbalance of power between these individuals means actual consent to sexual contact is not possible. We believe this legislation is a logical extension of these existing crimes under Wisconsin's sexual assault laws.

Law enforcement officers have a significant amount of power in our society, which means they have the ability to influence the actions and choices of people in their custody. As a result, an individual who is in the custody of a law enforcement officer may not feel comfortable saying no to sex, or they may fear negative consequences for not agreeing to sexual contact. Either way, consent is never possible when someone feels they do not have a choice.¹

This legislation follows in the wake of a high-profile case in New York, in which two law enforcement officers sexually assaulted an 18 year old in their custody.² When the assault was reported by the survivor, the law enforcement officers claimed the sex was consensual.³ As a result, New York and

¹ National Sexual Violence Resource Center. *I Ask How Power Impacts Consent*. Available at: https://www.nsvrc.org/sites/default/files/publications/2019-01/Power%20Dynamics%20Handout_508.pdf (2019).

² <https://www.nytimes.com/2017/10/30/nyregion/nypd-detectives-rape-kidnapping-charges.html?rref=collection%2Fsectioncollection%2Fnyregion>

³ Ibid.



August 14, 2019

To: The Honorable Van Wanggaard and Members of the Committee on Judiciary and Public Safety
Regarding: SB 49

Dear Chairman Wanggaard and Committee Members,

I am representing the Lutheran Office for Public Policy in Wisconsin, a statewide advocacy ministry of the Evangelical Lutheran Church in America. We advocate for just policies, especially related to hunger and poverty and care for God's creation.

SB 104 & SB 316: We support SB 104 because making sexual contact between a law enforcement officer and person in their custody a criminal act could provide another barrier to victimizing anyone safeguard for potential victims. SB 316 protects the health of pregnant women and their children.

During the last five and one half years, I have

- learned that this state law will put us in alignment with federal law.
- heard from direct service providers that the system of holding sex trafficked youth in jail is not working. We need to focus on getting them to human services, and continuing to support state budgets that provide that funding.
- witnessed a former attorney general, Brad Schimel, move from being against this bill to being in support of it to the extent of testifying that he had a change of heart at a hearing.
- heard Judge Ramona Gonzalez who drove from La Crosse to testify that sex trafficking of youth is a serious problem in our state and that even though there is good will between judges, who don't want to charge youth for prostitution, that they still charge youth with "lewd and lascivious behavior," that can go on a youth's record in place of prostitution.
- observed my colleagues in other states watch this same type of bill pass. Those states include Pennsylvania and Georgia. We are behind Georgia.

We ask that you support this bill, but not only that. We respectfully ask that you support bringing this bill to the floor and encourage the assembly to not let this bill disappear again, the way we sometimes let young people disappear.

Thank you for your consideration.

Reverend Cindy Crane, Director

But Jesus called the children to him and said, "Let the little children come to me, and do not hinder them, for the kingdom of God belongs to such as these." Luke 18:16