# Rob Hutton

STATE REPRESENTATIVE • 13TH ASSEMBLY DISTRICT


February 6, 2020

To: The Senate Committee on Judiciary and Public Safety
From: Rep. Rob Hutton
Re: Senate bills 752 and 754

Chairman and Members, thank you for the opportunity to testify on Senate Bills 752 and 754.

These bills are important steps toward addressing the community safety challenges in our neighborhoods. Most individuals in our neighborhoods are law abiding citizens who simply want to live and raise their families in peace. Unfortunately, there is a small segment of criminals who are committed to repeatedly victimizing our neighbors. These bills are aimed at identifying these criminals and removing them from our communities.

Senate Bill 752 requires the Department of Corrections to initiate a revocation proceeding when a person on extended supervision, parole, or probation is charged with a new crime. It is important to note that this bill does not require an individual to be revoked upon committing a new crime, it simply ensures that DOC will initiate an investigative proceeding if the offender is still under supervision to determine if revocation is appropriate.

There are certainly situations where a reduced sentence with community supervision is a legitimate sentence for individuals who have committed a crime and are looking to get their lives back on track, however, in many instances that discretion has been abused and dangerous criminals have been allowed to stay in the community victimizing neighbors with no significant consequences. This bill ensures that there is a review each time a criminal on supervision commits a new crime to make sure that dangerous criminals are not allowed to continuing terrorizing our communities.

Senate Bill 754 expands the list of offenses that are excluded from statutory programs granting early parole, extended supervision, or discharge from probation. These programs were implemented to offer many lower-risk convicts an opportunity to earn back their freedom by demonstrating that they are no longer a danger to the public.

While Wisconsin Statue already contains many crimes that make someone ineligible for early release, other crimes such as child trafficking and abuse, bank robbery, arson, and armed burglary remained eligible for early release. This bill will level the playing field so that all violent felonies and violent misdemeanors would be ineligible for these programs.

We need to make sure that victims are considered when determining the severity of consequences for repeat criminals and these bills ensure that those who choose to victimize our neighborhoods are punished appropriately.


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Senate Committee on Judiciary & Public Safety
Thursday, February 6, 2020
Senate Bills 745, 749, 752-754, 765-767

Chairman Wanggaard and members,

Thank you for the opportunity to testify on Senate Bills 745, 749, 752-754, and 765-767, known as the "Tougher on Crime" package. We are providing written comments on all of the proposals but will speak to those that most directly impact the State Public Defender (SPD) and its clients.

The SPD provides constitutionally mandated representation for financially eligible clients in Wisconsin who are charged with or face a criminal or civil proceeding that could result in the deprivation of their liberty. Relevant to this package of bills, we provide representation for both adults and juveniles accused of having committed a criminal offense as well as in revocation proceedings.

Following are our specific comments on each piece of legislation.

**Senate Bill 745** (Felon in possession of a firearm charging process)

AB 808 changes the process for amending or dismissing charges involving felon in possession of a firearm and limits access to deferred prosecution programs.

The total effect of the bill will be to limit the ability for the criminal justice system to consider the individual circumstances of these cases. Especially in combination with a bill like AB 805 requiring a revocation recommendation based on new criminal allegations, it is not difficult to envision a scenario where an individual is charged and, though a prosecutor may seek to dismiss the charges later, a judge does not allow it and a person is revoked based on a lower standard of proof.

**Senate Bill 749** (Mandatory minimum on 3rd offense retail theft)

AB 807 creates a 180 day mandatory minimum sentence for third or more offense retail theft.

As noted earlier in our written testimony, there is little evidence to suggest mandatory minimum sentences serve as an effective deterrent against criminal activity. Presumptive minimum sentence offers a minimum guideline but allows for a sentence beneath that minimum if the reasons for doing so are placed on the record at sentencing.

In addition, by not allowing the court to place an individual on probation, empirical studies have shown that we are likely to increase their future risk for criminal activity. That evidence shows that by placing a person who is considered low to medium risk to reoffend with a higher risk population in jail or prison, that individual is at higher risk to reoffend in the future.

Finally, it is important to highlight that as drafted, this bill would apply a minimum sentence for third offense retail theft regardless of the value of merchandise taken in the qualifying offense. To use a

hypothetical, a 17 year old who is caught taking a loaf of bread on three separate occasions would be charged as an adult and could not be sentenced to less than 180 days.

**Senate Bill 752** (Mandatory revocation recommendation)

AB 805 requires the Department of Corrections to recommend revocation of an individual's community supervision if they are charged with a new crime.

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 taken place for the administrative law judge to revoke supervision will have been the probable cause standard a prosecutor must meet to issue charges.

Added on top of this 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, let's consider a person who was sentenced to a term of 5 years initial confinement followed by 5 years of extended supervision. Even under current law, if the person violates supervision during year 4, the person can be reincarcerated for 5 more years. Now consider that under the bill, if the person is charged with a relatively low level crime such as disorderly conduct, even prior to the criminal case proceeding, they can be revoked for the full 5 years. Effectively the person has been sentenced to a 5 year term in state prison for 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 will lead to prison sentences that are disproportionate to the alleged criminal activity.

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 on future criminal behavior.

**Senate Bill 753** (Expanded list of crimes for Serious Juvenile Offender Program)

AB 806 expands the list of delinquent acts that qualify a young person to be placed in the Serious Juvenile Offender Program. By expanding the types of crimes that qualify for the Serious Juvenile Offender Program to include any crime classified as a felony if committed by an adult, there will be a significant expansion in the number of juveniles placed at Lincoln Hills. Placement at Lincoln Hills is not an effective way to reduce recidivism and is less cost effective than nearly every other alternative.

The Serious Juvenile Offender Program was created as a way to impose more serious punishment through more severe types of incarceration. The Legislature, in the legislative intent section of Chapter 938, has stated that the goals of the juvenile justice system include conducting an "individualized assessment" and to "divert juveniles from the juvenile justice system through early intervention." To be sure, the intent recognizes the need to protect public safety as well. By treating all adult felonies as a serious juvenile offense, the individualized assessment is removed from consideration. In current law, by enumerating individual serious juvenile offenses, the legislature has recognized that some felony offenses committed by juveniles do not carry the same level of culpability when committed by a juvenile. While a juvenile charged with felony retail theft (a $500 value threshold) can still be sentenced to Lincoln Hills based on an individualized assessment, this bill assumes that all juveniles committing that crime are serious juvenile offenders.

Research and data suggests that juveniles are not capable of the same cognitive process as adults. By treating all juveniles committing an adult felony the same, we will not effectively address the needs and root causes of the delinquent behavior.

**Senate Bill 754** (Limiting earned release programs)

AB 809 limits the ability for an individual to qualify for the earned release program, the challenge incarceration program, or the special action release program if they have been sentenced based on a violation of a violent crime.

These limits will place additional burdens on an already overcrowded prison system.

The total effect of Assembly Bills 805, 806, 807, and 808 will be to significantly increase the population of Wisconsin's jails and prisons while AB 809 will remove the few limited provisions that allow the Department of Corrections to provide release to appropriate individuals in limited circumstances. It is not unrealistic to expect that the bills will result in a need for a considerable number of new jail and prison beds, a cost not accounted for in the package.

**Senate Bill 765** (Videoconferencing at a proceeding)

Assembly Bill (AB) 802 provides new criteria to allow the use of videoconferencing for participation as a witness in a court proceeding. While the language allowing its use if there is "the risk that the witness may be unavailable" appears to be broad, there is existing language in s. 885.56(1)(L) which already gives courts significant discretion in allowing this use of videoconferencing.

**Senate Bill 766** (Witness deposition based on intimidation)

AB 803 allows for depositions in criminal trials if a witness is at risk of being intimidated. While Wisconsin currently allows for criminal depositions, it is only in very limited circumstances such that depositions rarely occur now. This bill would likely increase the number of depositions which would have an impact on both SPD staff time and resources as the ability to depose witnesses in those circumstances would be available to all parties in the criminal proceeding.

There is one specific concern with the language used on page 3, line 2 of the bill which allows a court to use as a factor in determining whether to allow the deposition the "nature of the defendant." This is an undefined term of art that could exacerbate systemic racial bias in the criminal justice system and continue implicit biases already present in the criminal justice system. We had the opportunity to raise

this concern with the Senate author of the bill and look forward to future discussions on possible alternative language.

**Senate Bill 767** (Domestic abuse victim intimidation penalty enhancer)

AB 804 essentially creates a penalty enhancer if the victim in a domestic abuse allegation is intimidated. As with most penalty enhancers or mandatory minimum sentences, evidence does not demonstrate that they serve as an effective deterrent.

S. 940.45 includes six other scenarios to charge intimidation of a witness as a Class G felony. In those cases, the enhancer is accompanied by an additional act such as injury or force as a reason that the action of intimidation is more serious than a Class A misdemeanor. This section of statute does not differentiate one type of crime or one type of victim from another, it treats all intimidation of a witness crimes equally based on the degree of intimidation that's employed. The subtle difference in AB 804 is that it increases the penalty based not on the action taken to intimidate, but based on the type of underlying crime. This could present the hypothetical scenario that intimidation of a witness in a domestic abuse crime is treated more severely that intimidation of a witness in a homicide even if the type of intimidation employed is similar.

We appreciate the opportunity to testify today. If you have any additional questions, please do not hesitate to contact us.

Department of Administration
Intergovernmental Relations Division

**Tom Barrett**
Mayor

**Sharon Robinson**
Director of Administration

**Kimberly Montgomery**
Director of Intergovernmental Relations

City of Milwaukee Testimony on SB745, SB749, SB752, SB753, SB754, SB765, SB766, SB767 and SB769 Relating to: "Tougher on Crime" Package.

Senate Committee on Judiciary and Public Safety
*February 6, 2020*

Thank you, Chairman Wanggaard and fellow committee members, for allowing me to speak on behalf of the City of Milwaukee this afternoon. I would like to address the "Tougher on Crime" legislative package, encompassing SB 745, SB 749, SB 752, SB 753, SB 754, SB 765, SB 766, SB 767 and SB 769. The City of Milwaukee stands opposed to the passage of this entire legislative package.

While the City of Milwaukee appreciates the Legislature's intention to address crime and domestic violence victims, this legislation would not be an effective way to continue to combat these issues. As we have seen over the last three years, nearly all crime rates have been continually declining in the City of Milwaukee. From 2017 through 2019, total violent crimes are down 14% and property crimes are down 30%. Contrary to the anecdotal evidence we have heard today, the initiatives and actions of local elected officials, community leaders and law enforcement have been working to lower the crime rates.

As we have heard in previous testimony during public hearings on this legislative package, there are constitutionality issues with some of these bills, significant fiscal costs that will arise from other bills, and the restriction of judicial and prosecutorial discretion. Senate Bill 753 would lead to a significant increase in juveniles placed in correctional facilities at a time when this legislature has still not provided funding for 2017 Act 185 ordering the closure of Lincoln Hills and establishing new county residential care centers for juvenile offenders.

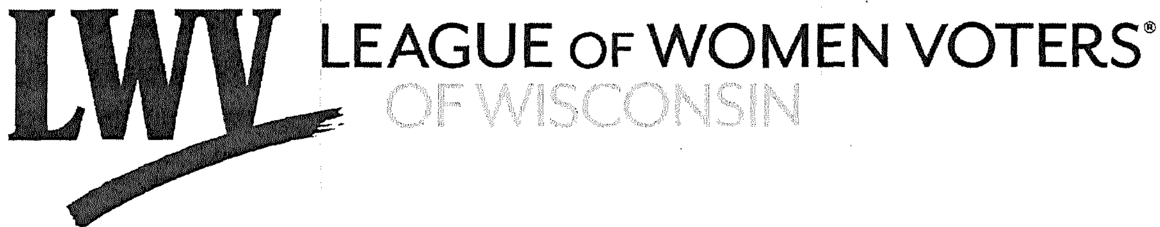
Senate Bill 749 is particularly problematic. There is little evidence that mandatory minimum sentences serve as an effective deterrent against criminal activity. Additionally, this bill requires a 180 day sentence regardless of the value of the merchandise taken and does not limit the timeframe for previous qualifying retail theft convictions. Incidents of retail theft from decades earlier would be counted toward a third offense.

For all of these reasons, the City of Milwaukee is opposed to the 'Tougher on Crime' legislation. Thank you again for allowing me the opportunity to testify today. I would be happy to answer any additional questions committee members may have.

# NIBRS CITYWIDE PART I CRIME

| Offense | 2017 | 2018 | 2019 | 17-19 % Change | 18-19 % Change |
|---|---|---|---|---|---|
| Homicide | 119 | 99 | 97 | -18% | -2% |
| Rape | 445 | 499 | 460 | 3% | -8% |
| Robbery | 2,950 | 2,326 | 1,993 | -32% | -14% |
| Aggravated Assault | 6,097 | 5,794 | 5,720 | -6% | -1% |
| Burglary | 5,719 | 4,430 | 3,678 | -36% | -17% |
| Auto Theft | 5,448 | 4,646 | 3,488 | -36% | -25% |
| Theft | 10,559 | 8,450 | 7,960 | -25% | -6% |
| Arson | 315 | 262 | 203 | -36% | -23% |
| **Violent Crime** | **9,611** | **8,718** | **8,270** | **-14%** | **-5%** |
| **Property Crime** | **22,041** | **17,788** | **15,329** | **-30%** | **-14%** |
| ***Total*** | ***31,652*** | ***26,506*** | ***23,599*** | ***-25%*** | ***-11%*** |

Part I crime data was obtained from the Wisconsin Department of Justice (DOJ) and reflects preliminary UCR Summary Statistics for the time period of January 1 - December 31, 2017-2019. UCR statistics are subject to change for a period of up to two years. Homicide data was obtained from the OMAP Homicide database and counts victims for the time period of January 1 – December 31, 2017-2019.



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February 5, 2020

To: Senate Committee on Criminal Justice and Public Safety

Re: Statement on "Tougher on Crime" package and opposition to SB 752, SB 753, SB 749 and SB 754

The League of Women Voters of Wisconsin has long held that the primary goal of criminal sanctions should be the protection of society through deterrence and incapacitation. While acts that inflict death or extreme bodily harm to others should also incur punishment, retribution should not be the primary goal of punishment. We believe that punishments should be humane and should seek to avoid criminalization. We have consistently supported measures that provide inmates programs that enhance their opportunities for a successful return to society.

The package of bills you are considering today would set Wisconsin on a path for corrections that is less effective in rehabilitating offenders, more expensive in tax dollars and ultimately unsustainable. At a time when the prison population in many other states has shrunk without jeopardizing public safety, Wisconsin's prison population has grown to 134% of capacity. We are faced with the prospect of building an expensive new prison to relieve the overcrowding and hazardous conditions of the prison in Green Bay. These bills threaten to exacerbate, not relieve, the problem.

We oppose four proposals in particular among the many you are considering today:

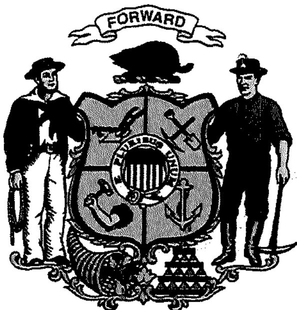
**SB 752** would require the Department of Corrections to recommend the revocation of extended supervision, probation or parole for anyone charged with a new crime. Those charged would spend time in prison while waiting disposition of their cases and might be returned to prison to serve additional time. We oppose this bill because it imposes punishment before a person has received a fair trial and been convicted of a new crime. In addition, it would add to the burgeoning prison population and might result in new prison construction.

**SB 754** would lengthen the list of crimes that render a prisoner ineligible for a program permitting early release to parole. Specifically, it would add to the list of crimes that render prisoners ineligible for release due to age or health conditions, and further limit prisoners eligible for special action release programs that reduce overcrowding of detention facilities. It would be a step backward in dealing with Wisconsin's burgeoning prison population.

**SB 753** would expand acts for which a juvenile may be placed in a juvenile correctional facility or secured residential care center to any acts that would be considered a felony if committed by an adult. Enactment of this bill would increase the difficulties of the closure of Lincoln Hills/Copper Lakes by adding to the populations there. The League has long opposed measures that blur the distinction between juveniles and adults. We opposed measures to lower the age of delinquency from 12 to 10, make 17 year olds subject to the adult court, and waive juveniles to adult court at a younger age. AB 806 would only lead to further criminalization of juveniles.

**SB 749** would mandate a minimum sentence of 180 days in jail for third conviction of shop-lifting. While some form of punishment for three convictions of the same crime seems reasonable, we nonetheless favor restorative justice programs to detention and oppose mandatory minimums.

We urge you to reject SB 752, SB 753, SB 749 and SB 754. We further urge you to evaluate all of the bills considered in today's hearing through a lens of restoration and rehabilitation, rather than punishment.




Wisconsin Department of Corrections
Governor Tony Evers | Secretary Kevin A. Carr

February 6, 2020

Senator Van Wanggaard, Chair
Senator Alberta Darling, Vice Chair
Senate Committee on Judiciary and Public Safety

Re: Opposition to AB 805, AB 806, AB 809

Dear Chairpersons:

Thank you for the opportunity to provide this correspondence related the proposed bills AB 805, AB 806, and AB 809 that are being heard at your Assembly Committee on Criminal Justice and Public Safety on Thursday, January 30, 2020. The Department of Corrections is opposed to the aforementioned bills.

Across the Country, states, both red and blue, have been changing their approach to criminal justice, from an old school, ineffective mentality of "lock them up and throw away the key," to a smart, safe, and rehabilitative approach that supports the transition of formerly incarcerated people back into our community to become employable, tax paying citizens. States like Texas and Michigan changed laws and policies, reduced their prison population, closed prisons, and saved the taxpayer money; while increasing public safety! In fact, in other states, over time crime and incarceration rates have followed similar trends downward together, which appears to directly counter the, "tougher on crime" narrative.

Over the past year, I have met with many of you and your colleagues to discuss how we can work together on common-sense bipartisan criminal justice reform. I believe these conversations have been productive, and regardless of what side of the aisle you are on, we have been in agreement that those reforms must be a good investment for our taxpayers and the focus must be on evidence-based outcomes. I believe we can develop a plan for criminal justice reform that is right for Wisconsin. In fact, just this fall, Senator Darling and Representative Schraa co-signed a letter with their Democratic colleagues to all of you stating, "Wisconsin is not experiencing savings that other states have because we lag behind the national trends in criminal justice reform." As they highlighted in their letter, focusing on bipartisan reforms could provide real savings to tax payers and maintain public safety, just as Texas and Michigan have done. Wisconsin is already an outlier when it comes to criminal justice and AB 805, AB 806, and AB 809 move us in the wrong direction.

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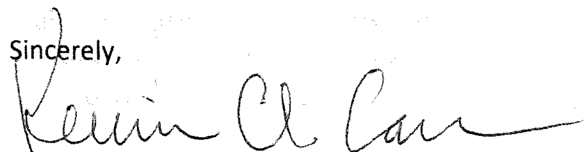
**Here are some facts that I hope you will be considering as you debate moving these bills forward:**

- In Wisconsin, it is currently costing taxpayers more than $33,000 per incarcerated person each year. Our state currently houses nearly 24,000 incarcerated individuals.
- There are serious and immediate safety consequences within existing DOC facilities if any legislation increases the incarceration rate. Our prisons are already operating at an average of 133.8 percent of their design capacities. Building any new prisons to house a ballooning prison population would require hundreds of millions of taxpayer dollars and years in the state building process before any doors would open to provide capacity relief. We should not look to add more prison beds; instead we should work together to reduce our prison population.
- The Legislative Audit Bureau (LAB) noted in 2019 that when compared with six other Midwestern states, only Wisconsin experienced an increase in its inmate population from 2009 to 2018.
- Wisconsin's prison population is projected to increase during each of the next two years without any changes to current policies and laws.
- AB 805 would eliminate the current framework that DOC works within to determine the best course of action when a person under supervisions is charged with a crime. This framework includes: Department Policy, evidence-based practices, Department Administrative Code, and statutory requirements.
- AB 805 would essentially eliminate the system of short-term sanctions established by 2013 Act 196 would no longer be an option for offenders charged with a crime while on extended supervision, parole, or probation.
- AB 806 could expand the number of incarcerated youth, at a time when the legislature has yet to move forward on both the bi-partisan Juvenile Corrections Grant Committee statewide plan for County Secure Residential Care Centers for Children and Youth (SRCCCYs), and the submitted plan for the construction of two Type 1 facilities. Both of these plans required in the unanimously supported 2017 Act 185 and 2019 Act 9.
- AB 809's prohibitions on carefully monitored and defined release mechanisms further exasperates our prison population concerns especially considering our aging population whose health care needs and costs will continue to rise.

Reflecting on the abovementioned facts, by working together, I believe we can do much better than the bills you have in front of you today.

Thank you again for your time. I am more than happy to sit down and discuss criminal justice reform in more detail. Please contact my Legislative Advisor, Paulina de Haan, at 608-240-5056 or via email at Paulina.dehaan@wi.gov to schedule some time.

Sincerely,



Kevin A. Carr
Secretary

cc: Committee Members, Senate Committee on Judiciary & Public Safety