



# Rob Hutton

---

STATE REPRESENTATIVE • 13<sup>TH</sup> ASSEMBLY DISTRICT

January 30, 2020

To: The Assembly Committee on Criminal Justice and Public Safety  
From: Rep. Rob Hutton  
Re: Assembly bills 805 and 809

Chairman and Members, thank you for the opportunity to testify on Assembly Bills 805 and 809.

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.

Assembly Bill 805 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.

Assembly Bill 809 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 Statute 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.



# DAVID CRAIG

STATE SENATOR

Assembly Committee on Criminal Justice and Public Safety

January 30, 2020

Tougher on Crime Initiative

Senator David Craig

Chairman Spiros and members of the Committee, thank you for taking the time to hear my testimony on the Tougher on Crime Initiative. My testimony will specifically be on Assembly Bills 805, 806, 807, 808, and 809.

In late December, Attorney General William Barr announced Operation Relentless Pursuit – a federal operation to combat crime in seven of America’s most violent cities using a surge in federal resources. Unfortunately, Milwaukee was identified as one of the seven cities most needing federal assistance to combat violent crime. While the federal aid is welcome, the State must do more to address the epidemic of violent crime in Southeast Wisconsin. This trend is not new. Milwaukee Police Department data shows that there were 102 offenders arrested in 2016 who, collectively, had been arrested 945 times for a total of 2,658 crimes over the previous decade. These are habitual offenders who repeatedly take advantage of judicial indifference in order to continue their criminal careers. To combat this epidemic we have worked to craft the Tougher on Crime Initiative.

Assembly Bill 805 requires the Department of Corrections to recommend a revocation of extended supervision, parole, or probation if an individual is charged with a crime while on extended supervision, parole, or probation. This legislation does not result in automatic revocation, but rather requires that the DOC begins investigating the new charge and determine the best course of action rather than letting individuals charged with crimes slip through the cracks.

Assembly Bill 806 expands the list of crimes for which a juvenile offender can be placed into the Serious Juvenile Offender Program (SJOP) to include crimes that would be felonies if committed by an adult. Current law only requires that juveniles who commit certain serious felonies be considered for the SJOP. Unfortunately, current law does not include juveniles guilty of many serious felonies be considered for inclusion such as certain carjacking and sexual assault crimes among many others. This legislation will enable judges to use the SJOP for many more serious violent juveniles.

Assembly Bill 809 further limits criminals convicted of violent offenses from being considered for programs granting early parole, extended supervision, or discharge from probation. These programs are not intended for those who are found guilty of violent offenses like child abuse and trafficking, bank robbery, arson, and armed burglary. These are serious violent offenses that should not be considered low-risk.

Assembly Bill 808 - authored by Senator Chris Kapenga who unfortunately was unable to attend today’s public hearing – requires that prosecutors be given court approval prior to dismissing or diverting to deferred prosecution programs felon-in-possession of a firearm charges for suspects

---

PO Box 7882 • MADISON, WI 53707-7882 • (608) 266-5400

TOLL-FREE: (800) 334-1442 • FAX: (608) 267-6790 • SEN.CRAIG@LEGIS.WI.GOV • [HTTP://LEGIS.WISCONSIN.GOV/SENATE/28/CRAIG](http://legis.wisconsin.gov/senate/28/craig)

with prior convictions for violent felonies. The court would be required to produce a report explaining the appropriateness of the prosecutor's request. It is unfortunate that this legislation is even necessary but the fact is that a Fox6 investigation found that in Milwaukee County  $\frac{3}{4}$  of felons arrested for illegal possession of a firearm saw no prison time for that offense and that 37% of these cases never even had charges filed. This a sad indictment on the judicial system in Milwaukee County at all levels. No violent felon should walk away scot-free from illegal possession of a firearm.

Assembly Bill 807 - authored by Senator Duey Stroebel who unfortunately was unable to attend today's public hearing - creates a mandatory minimum sentence for those who engage in habitual retail theft. Requiring a minimum sentence of those who are convicted of their third instance of retail theft will ensure that these habitual offenders stop being a drain on law enforcement resources and ensure that these habitual offenders understand that there are consequences to repeated acts of theft.

These bills in conjunction with legislation authored by my colleagues are a vital step in combating the spread of serious violent crime throughout Wisconsin.

Thank you for hearing my testimony.



# Wisconsin State Public Defender

17 S. Fairchild St. - 5<sup>th</sup> 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

Jon Padgham  
Deputy State  
Public Defender

---

Assembly Committee on Criminal Justice  
Thursday, January 30, 2020  
Assembly Bills 802-809

Chairman Spiros and members,

Thank you for the opportunity to testify on Assembly Bills 802-809, 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.

**Assembly Bill 802** (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.

**Assembly Bill 803** (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.



**Assembly Bill 804** (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 than intimidation of a witness in a homicide even if the type of intimidation employed is similar.

**Assembly Bill 805** (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.

**Assembly Bill 806** (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.

**Assembly Bill 807** (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.

**Assembly Bill 808** (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.

**Assembly Bill 809** (Limiting earned release programs)

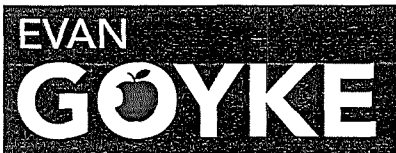
AB 809 limits the ability for an individual to qualify for the earned release program, the challenge incarceration program, or the special action release program if they have been sentenced based on a violation of a violent crime.

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.

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





STATE REPRESENTATIVE

18th ASSEMBLY DISTRICT

January 30, 2020

Written Testimony of State Representative Evan Goyke

Re: Assembly Bills 802, 803, 804, 805, 806, 807, 808, 809, 817 – The “Tougher” On Crime Package

---

Mr. Chairman and Members of the Assembly Committee on Criminal Justice and Public Safety,

Thank you for the opportunity to testify today regarding Assembly Bills 802, 803, 804, 805, 806, 807, 808, 809, and 817 – The Wisconsin Republican “Tougher” On Crime Package.

On Criminal Justice: President Trump gets it - mostly. Vice President Pence gets it. Former Speaker Ryan, Senator Ron Johnson, and Congressmen Sensenbrenner, Grothman and Gallagher also get it.

President Trump signed The First Step Act – Public Law 115-391 into law on December 21, 2018. The law makes dozens of positive changes to our criminal justice system including opportunities to be released from incarceration early, the reduction of mandatory minimums, and investments in prisoner re-entry.

During the 2019 State of the Union speech, President Trump acknowledged two formerly incarcerated individuals and highlighted the bipartisan First Step Act as a key legislative victory of his administration. Assembly Bills 805, 807, and 809 do the opposite of the First Step Act.

The question for the committee today – and the Legislature moving forward – is why Legislative Republicans disagree with President Trump and so many members of Congress? Who’s right and who’s wrong?

Wisconsin Republican Legislators are wrong. Here’s why.

More incarceration does not mean less crime. The authors of the bills site rising crime rates as justification for increased incarceration – yet incarceration has increased at the same time the crime rate has. Since 2013, the Legislature has increased penalties or created a new crime over 50 times and our prison population has grown too. We don’t need more of what’s not working.

Many states have experienced crime reductions while they’ve reduced incarceration. This is achieved by moving resources from incarceration (the most expensive criminal justice intervention) to more effective options like treatment and supervision (much less expensive). America now has over a decade of evidence that this works, with 45 states having enacted some justice reform legislation to reduce their prison populations.

Conservative and Liberal organizations have supported these bipartisan reforms, including here in Wisconsin where conservative-leaning groups like Americans for Prosperity, The Badger Institute, Right on Crime have joined with liberal-leaning groups like the ACLU and WISDOM in working to bring this legislative reality to Wisconsin. These groups in Wisconsin, like their counter parts around the country, have conducted or reviewed the strong and growing evidence that criminal justice reform can be done safely. They also warn of the massive expense of not enacting reforms.

In the 2019-2021 budget, the Legislature approved a 5% increase in the Department of Corrections budget, with an annual budget now above \$1.3 Billion. Included in the budget was an estimate that the prison population will grow roughly 600 additional inmates by the end of the biennium – which would place Wisconsin’s prison population at an all-time high of 24,350. To accommodate this growth, the DOC estimates that by 2020, roughly 1,000 inmates won’t fit within the existing prison system and will need to serve their sentence at a contracted facility.

My name is Ann Lacy and I am lifelong resident of

Madison. I am also an active member of HOSES, the

Madison-area affiliate of the WISDOM network, and as a

member of Plymouth United Church of Christ, a person

of faith.

I am here today to express my opposition to the

"Tougher on ~~crime~~ Crime" bills. When I read about this package

of bills in the news paper, my ~~heart~~ heart sank. Bills

805, 806, 807, and 809 are especially disheartening. These

bills are being promoted as "tougher on ~~crime~~ crime" but

what I think they actually are is harder on people. The

result of these bills is that more people will be incarcerated,

and for longer. This is exactly the wrong direction for

Wisconsin. To be brief, and knowing that I speak for

many who are unable <sup>to</sup> attend today's hearing when I say,

please don't go there. I urge you to oppose these

"Tougher on Crime" bills. Let's invest in restoring our

communities and in repairing harm, not in increasing

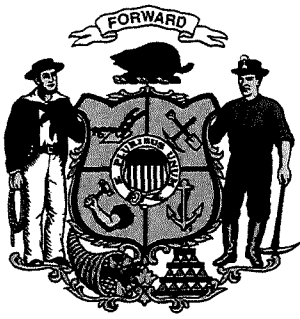
incarceration.

Thank you for this opportunity to speak today.

(apologies for submitting hand written testimony - I would have

read it myself if I had not had to leave before my name

was called)



# Wisconsin Department of Corrections

Governor Tony Evers | Secretary Kevin A. Carr

---

January 30, 2020

Representative John Spiros, Chair  
Representative Shae Sortwell, Vice Chair  
Assembly Committee on Criminal Justice and Public Safety

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

Dear Chairmen:

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.

**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](mailto:Paulina.dehaan@wi.gov) to schedule some time.

Sincerely,  
  
Kevin A. Carr  
Secretary

cc: Committee Members, Assembly Committee on Criminal Justice & Public Safety

## MEMORANDUM

**TO:** Honorable Members of the Assembly Committee on Criminal Justice and Public Safety

**FROM:** Marcie Rainbolt, Government Affairs Associate

**DATE:** January 30, 2020

**SUBJECT:** Opposition to Assembly Bill 805

Assembly Bill (AB) 805 would require 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. The Wisconsin Counties Association (WCA) is opposed AB 805 as it will have a harmful fiscal impact on county jails across the state.

State statute, §302.33(2)(a)2, states that the department shall not pay for persons who have pending criminal charges whether or not a departmental hold has been placed on the person. Payment for maintenance by the department is limited to confinements where an offender is held solely because of conduct which violates the offender's supervision and which would not otherwise constitute a criminal offense. AB 805 clearly would increase the number of individuals that would require a hold in county jails thus increasing county jail costs without further financial assistance from the state. Also, AB 805 will increase the number of revocation hearings which will become overly burdensome on the courts and will require individuals to be housed in county jails longer as they await their day in court.

Further, AB 805 does not consider the type of crime committed or allow the DOC the option to reprimand the individual with short-term sanctions developed in 2013 Wisconsin Act 196. One provision of 2013 Wisconsin Act 196 allows the DOC to confine an offender who is on probation or parole for up to 90 days in a county jail or regional detention facility if the offender signs a statement admitting a violation of a condition or rule. If the offender is confined to a county jail, the Department must reimburse the county for its actual costs. Under AB 805, the DOC would be mandated to recommend revocation for a new crime and would no longer be allowed to determine if short-term sanctions or revocation is the best option for the offender.

Due to these concerns, WCA is opposed to AB 805 and urges the committee to study this legislation further before pursuing a vote. If the committee believes that this is the right public policy, WCA would encourage the members to amend the bill and include additional funding for county jails.





To: Members, Assembly Committee on Criminal Justice and Public Safety  
From: Badger State Sheriffs' Association  
Wisconsin Sheriffs and Deputy Sheriffs Association  
Date: January 30, 2020  
**RE: For Information Only**  
**Testimony on Assembly Bill 805 – Parole Revocation Recommendation**

---

BSSA and WS&DSA submit these comments for information only regarding Assembly Bill 805. Our organizations appreciate the authors' 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.

AB 805 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. 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.

Last session DOC estimated that assuming the judge affirms DOC's recommendation 32 percent of the time, there will be 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. One option to address the fiscal impact for county jails would be to require that DOC reimburse county jails for housing regardless if the person has pending criminal charges.

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. 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.

This legislation also negates prior legislation for more short-term sanctions. 2013 Wisconsin Act 196 required 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 this bill, 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.

In addition to the fiscal impact on county jails and DOA DHA, AB 805 will drive up DOC costs. In the 2017-18 legislative session, DOC estimated 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. The 2021-23 state budget included \$14.8 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 805 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.

Select Geometry

Police District

Specific Location

within Geographic Area

(All)



# Milwaukee Police Department

Data current through:  
1/16/2020

## CompStat Part I Crimes

4 Week - 4 Week

Incident Map  
2020

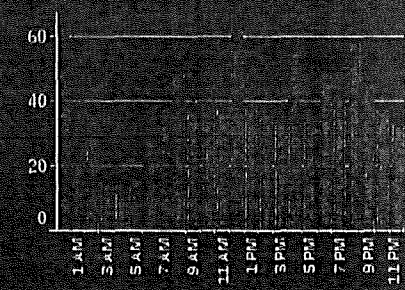
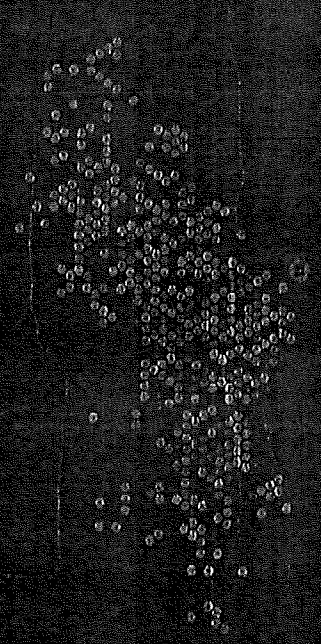
Filter Crime Type

<All Part I Crimes>

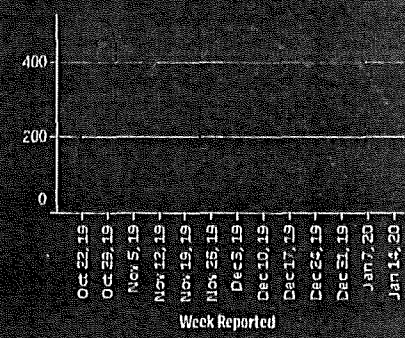
2020 Incident Time Analysis  
Based on selected time period

Hour

UCR/Incident	Full Year			Year-to-Date			Comparison Time Frame Date Ranges auto-update		
	2010	2019	% Change 2010-2019	2019	2020	% Change 2019-2020	11/22/2019 - 12/19/2019	12/20/2019 - 1/16/2020	% Change Time Frame
Homicide	99	97		7	1		5	4	
Rape	499	487		40	25		48	35	
Robbery	2,320	1,994		125	86		158	147	
Aggravated Assault	5,802	5,757		322	210		469	405	
Burglary	4,432	3,683		231	139		260	263	
Theft - Larceny	8,458	7,973		515	329		686	558	
Motor Vehicle Theft	4,651	3,481		235	154		340	256	
Arson	263	202		9	11		14	14	
<b>Grand Total</b>	<b>26,317</b>	<b>23,511</b>		<b>1,468</b>	<b>949</b>		<b>1,967</b>	<b>1,672</b>	



Weekly Incident Trend Analysis  
Based on selected date range



Uniform Crime Reporting (UCR) guidelines for Part I Offenses include counting Homicide, Rape, and Aggravated Assault by victims. All other crime types are counted by incidents. Geographic areas are based on reporting districts. Incidents without an identified reporting district in the incident report are coded as null locations. Specific locations and names of persons involved have not been included to protect the identity of the individuals. Information is not yet verified and may include mechanical or human error. Preliminary crime classifications may be changed at a later date based upon further investigation(s).



# NIBRS CITYWIDE PART I CRIME

<b>Offense</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>17-19 % Change</b>	<b>18-19 % Change</b>
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%
<b>Violent Crime</b>	<b>9,611</b>	<b>8,718</b>	<b>8,270</b>	<b>-14%</b>	<b>-5%</b>
<b>Property Crime</b>	<b>22,041</b>	<b>17,788</b>	<b>15,329</b>	<b>-30%</b>	<b>-14%</b>
<b>Total</b>	<b>31,652</b>	<b>26,506</b>	<b>23,599</b>	<b>-25%</b>	<b>-11%</b>

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.

“Tougher” on Crime Won’t  
Make us Safer

**Why you should oppose Assembly Bills 802-809 & 817**

By Representative Evan Goyke (not his staff)



*From the State of the Union, 2019:*

***“Inspired by stories like hers [after recognizing a recently released individual] my administration worked closely with members of both parties to sign the First Step Act into law.***

***This legislation reformed sentencing laws that have wrongly and disproportionately harmed the African-American community. The First Step Act gives nonviolent offenders re-enter society. Now states across the country are following our lead.”***

# Wisconsin Congressional Republicans Supported the First Step Act



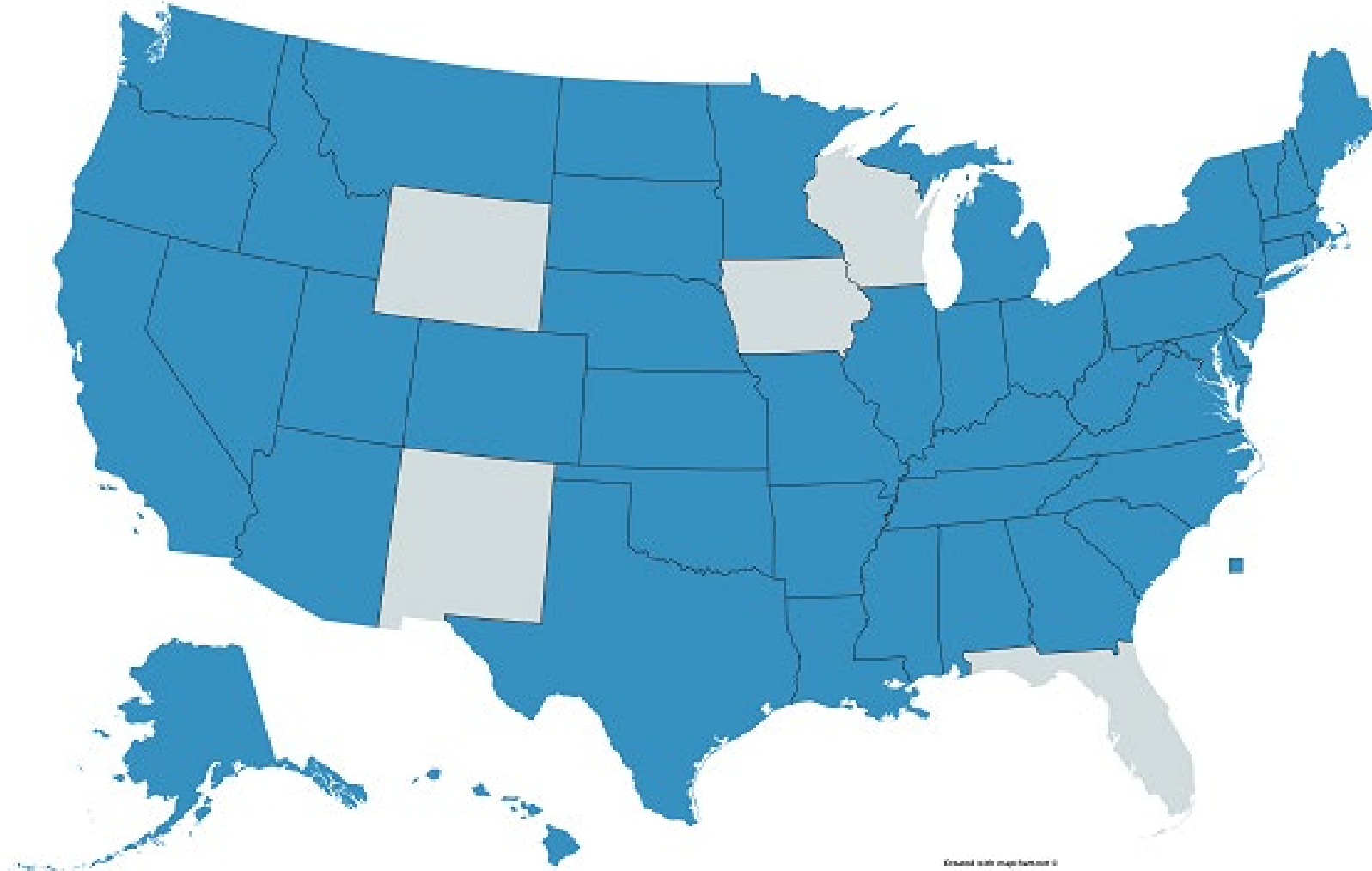


The First Step Act and “Tougher on Crime” go in the opposite directions:

### The First Step Act:

- Reduces Mandatory Minimums (AB 807 creates a new one)
- Expands options for Early Release (AB 809 takes them away)
- Increases Judicial Discretion (ABs 809, 808, 807 take it away)
  
- Increases funding for re-entry (none)
- Increases funding for treatment (nope)
- Clears red tape as individuals re-enter (zilch)

Beyond Congress, 45 States have passed reform



# The “Tougher on Crime” package – issues

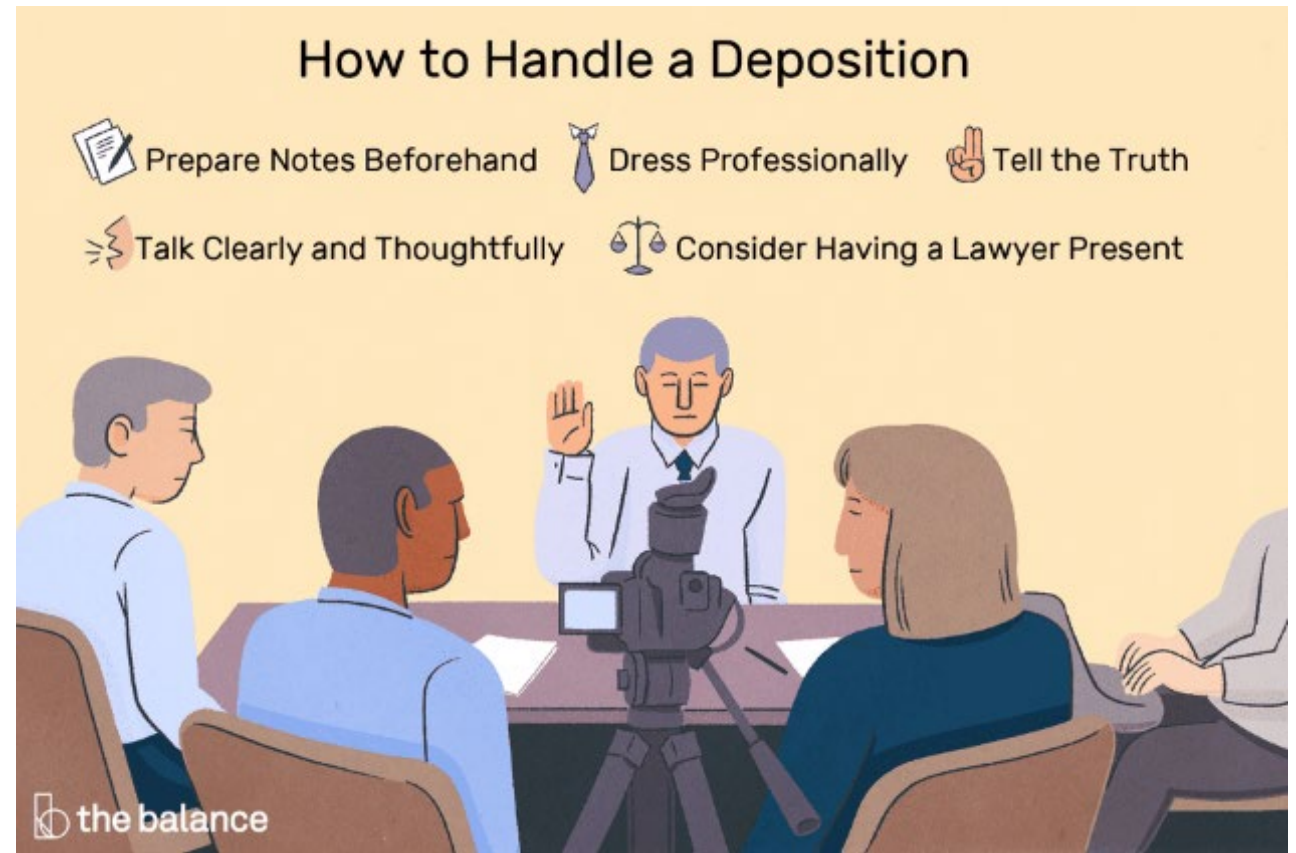
AB 802:

The intent of the bill, to increase the use of video conferencing, is a good one. The bill is short and to the point, but also probably not necessary.

Current law allows a judge to consider: “Any other factors that the court may in each individual case determine to be relevant” to assess whether to use video conferencing.

# AB 803

- Sixth Amendment of the US Constitution: “to be confronted with the witnesses against him” – meaning the defendant may have the right to be present at the deposition and/or admission could be difficult
- Adds work to Judges, DA’s, and Defense by creating a new hearing, with a new standard of proof



- Depositions may be more intimidating than trial
- Defense Counsel may have more room to cross examine the witness

# AB 804

Felony Intimidation exists and includes:

Whenever the person is already charged with a felony

Any “expressed or implied threat of force, violence, injury”

Domestic Violence as defined in the bill includes:

- his or her spouse or former spouse,
- an adult with whom the person resides or formerly resided,
- an adult with whom the person has a child in common

# AB 805 – part 1

- Re-introduction of 2017 Senate Bill 54 – exact same language
- DOC's 2017 fiscal estimate had the prison increase of over 1,000 inmates per year
- Speaker Vos hired the Council of State Governments to validate the DOC fiscal estimate
- A substitute amendment was passed, which included \$350 Million in new bonding authority to build a new prison
- The substitute amendment estimated \$57 Million annually for increased operational expenses



# Speaker Vos CSG Memorandum

## MEMORANDUM

TO: Wisconsin Assembly Speaker Robin Vos

FROM: Marc Pelka, Deputy Director of State Initiatives, CSG Justice Center  
Ed Weckerly, Research Manager, CSG Justice Center

CC: Marshall Clement, Director, Council of State Governments Justice Center

DATE: January 12, 2018

RE: Independent Review of Impact Estimates for Legislation (SB54 and AB94)

“...WI DOC’s impact estimate  
rightly considers impacts on the  
prison population.”

“...WI DOC’s methodology is sound..”

---

This memo responds to a request for an independent review of the impact estimate the Wisconsin Department of Corrections carried out for legislation (SB54 and AB94) pending in the legislature.

# AB 805 – part 2

Revocation hearings are very different than trials:

- Lesser rules of evidence
- Lower burden of proof
- Lesser appellate rights

When the DOC recommends revocation, the Administrative Law Judge follows the recommendation 92% of the time

“Charged” with a crime does not mean guilty. If the individual is not guilty or the charge is dismissed, the revocation can still go forward (sometimes it’s already over), the bill has no provision for these situations

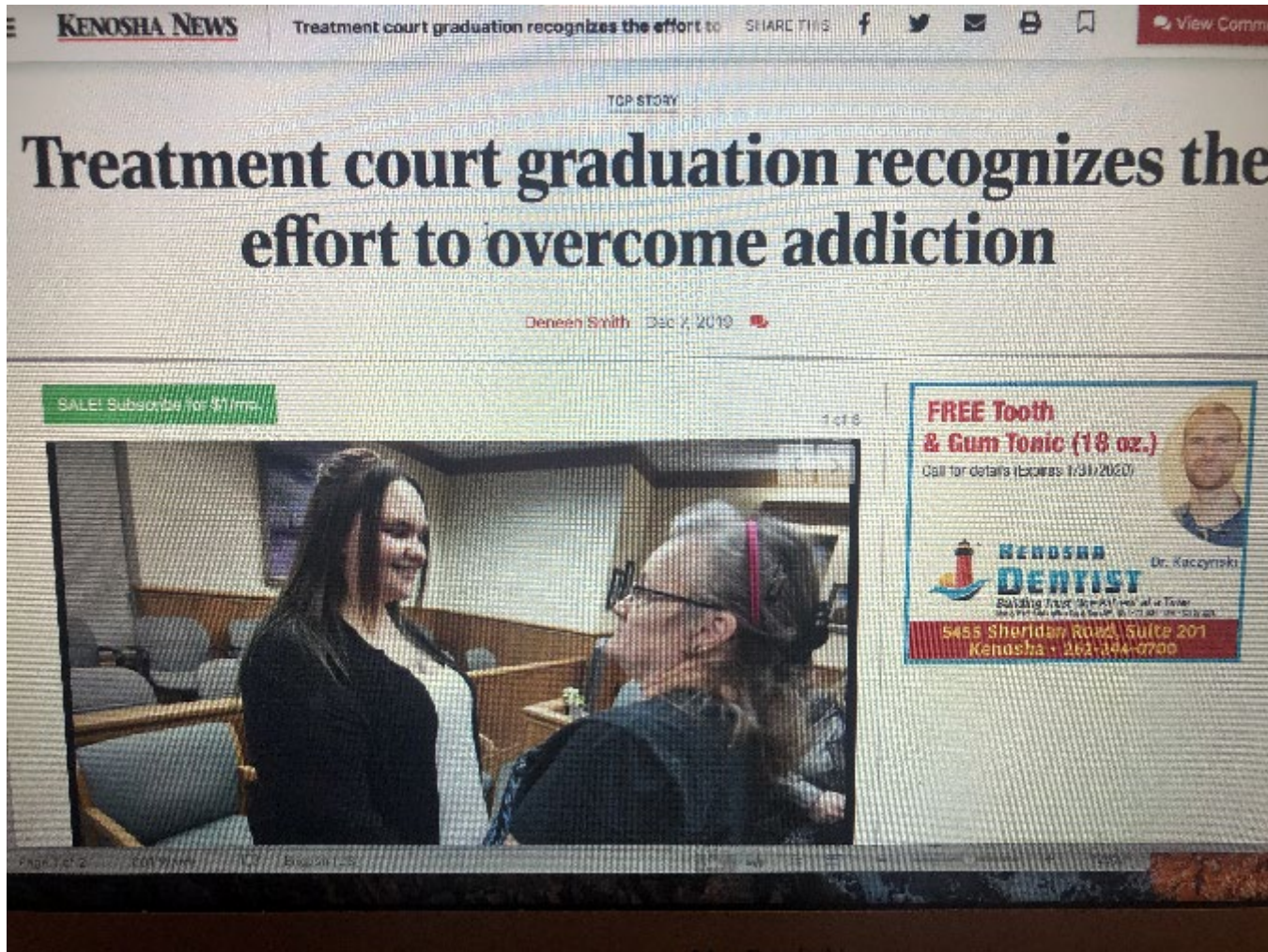
# AB 806

- It has been 679 days since the passage of 2017 Act 185
- Funding is stalled by the GOP in Joint Finance – breaking the impasse should be the top priority of Legislative Republicans
- AB 806 will increase the juvenile prison population and create the need for an additional juvenile prison
- The bill allows a juvenile to go to prison and be supervised until age 25 for “any felony”
- The bill also treats “any felony” as prima facie evidence “that the juvenile is a danger to the public and in need of restrictive placement”
- Felonies could include: any heroin or opiate, 2<sup>nd</sup> offense marijuana, theft of property over \$2,500 – roughly 500 felonies in Wisconsin

# AB 807 – part 1

- Mandatory Minimums don't work
- Donald Trump says these types of laws “***disproportionately harmed the African-American community***”
- Reduce Judicial discretion and increase litigation
- Not necessary: current law Wis. Stat. 939.62 “Habitual Criminality” allows and increased penalty for: 1 felony or 3 misdemeanors within the previous 5 years
- With 180 days required jail, individuals would not be able to participate in treatment, drug courts

# AB 807



When the judge called Detective Jeff Bliss to the front of the courtroom, Katie Erickson looked over at her friends and whispered, “that’s who arrested me.”

This meeting was a much different from the last day Erickson and Bliss met in April 2017. Then, Erickson was a 26-year-old heroin user stealing to support her habit. Now, Erickson was two years clean, graduating from drug treatment court, the mother of a healthy baby girl and a mentor to people in the program.

# AB 808 – part 1

Violent offenders are currently not eligible to participate in TAD programs:

Wis. Stat. 165.95 Alternatives to incarceration; grant program.

(3) (c) The program establishes eligibility criteria for a person's participation. The criteria shall specify that a violent offender is not eligible to participate in the program.

Removes the discretion of a DA to amend or dismiss the charge

Reduces judicial discretion to amend or dismiss the charge

Possible violation of Separation of Powers to require judges to write reports explaining their discretionary decisions to partisan elected legislators

# AB 808 – part 2

There are a lot of reasons a charge may be amended or dismissed:

- The person is innocent

- The evidence was obtained unlawfully and was suppressed

The lack of discretion is at odds with a lawyer's ethical obligation:

**SCR 20:3.8 Special responsibilities of a prosecutor. (a)** A prosecutor in a criminal case or a proceeding that could result in deprivation of liberty shall not prosecute a charge that the prosecutor knows is not supported by probable cause.



# AB 809 – part 1

- The sick, dying and aging population represents one of the most expensive (and growing) populations for DOC
- Terminal or elderly individuals represent a reduced risk to public safety
- The bill reduces judicial discretion to craft the appropriate sentence
- The bill reduces the DOC's discretion to release when safe and earned
- The bill takes away an individual's incentive to perform required rules of supervision – including paying restitution

## AB 809 – part 2



# Frail, Old and Dying, but Their Only Way Out of Prison Is a Coffin

Kevin Zeich had three and a half years to go on his prison sentence, but his doctors told him he had less than half that long to live. Nearly blind, battling cancer and virtually unable to eat, he requested “compassionate release,” a special provision for inmates who are very sick or old. – NYT, 2018

He died the day before he was to be released

# AB 817

- Just eliminate cash bail, create a pretrial detention system and be done with it
- Bail jumping is over used and doesn't require the commission of a new offense – can be used as leverage to plead guilty, this bill may make that worse through pretrial incarceration
- Services and monitoring is more effective to assure appearance and promote public safety than cash bail
- 7 Wisconsin counties are working on evidence based risk assessments to guide bail decisions, this is the way forward

# More incarceration does not equal more safety

The  
Economist

**Locking up more people does not reduce crime**

But it has a heavy social cost

**BRENNAN  
CENTER**  
**FOR JUSTICE**

**Between 2007 and 2017, 34 States Reduced Crime and Incarceration in Tandem.** Some still argue that increasing imprisonment is necessary to reduce crime. Data show otherwise.

**SCIENTIFIC  
AMERICAN®**

**Do Prisons Make Us Safer?**

New research shows that prisons prevent far less violent crime than you might think

# Racial Disparities and Costs in Wisconsin Corrections

January 30<sup>th</sup>, 2020

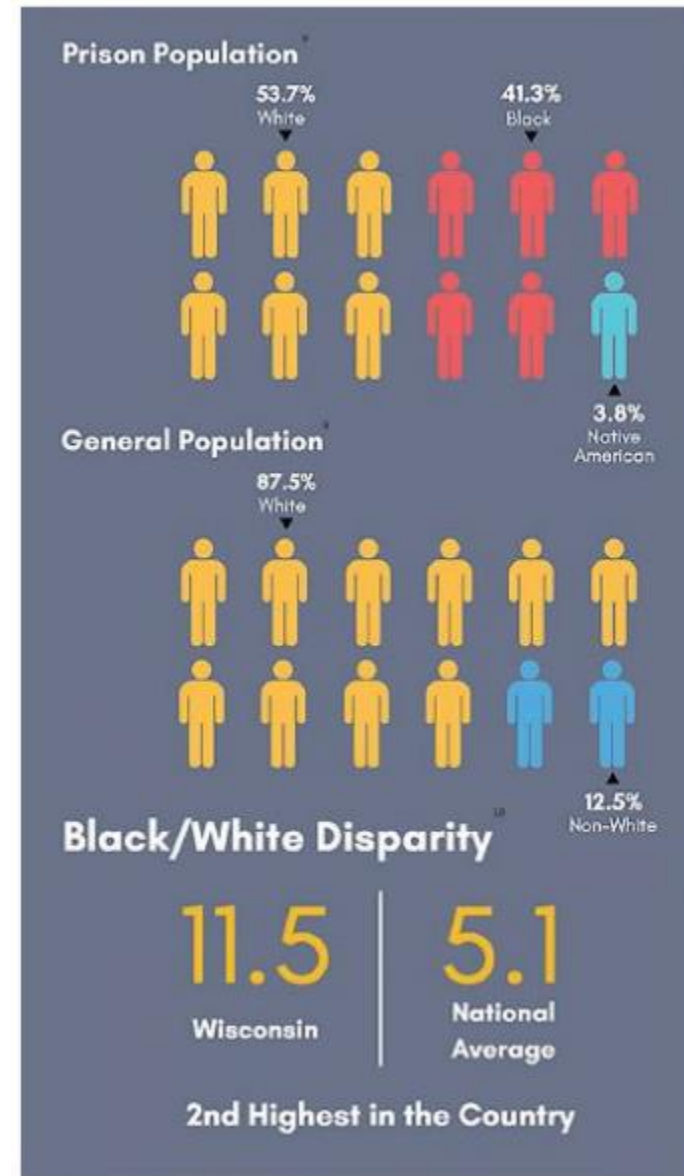
Wisconsin Prison Population: 23,555

Contract Beds: 532

Cost today of contract beds: \$27,400

2020 DOC Budget: roughly  
\$1,300,000,000

Estimated Prison population by 2021:  
24,350



- Crime is real, victims deserve justice, the system can be improved
- Incarceration doesn't make us safer and is the most expensive intervention we have
- If passed in current form, the “tougher on crime” package will require a new prison, plus annual operational costs
- 45 States and Congress are going in the opposite direction – including Wisconsin Congressional Republicans and President Trump
- Bi-partisan criminal justice reform and re-investment in what is most effective is the way forward

Thank you!