



# JOE SANFELIPPO

STATE REPRESENTATIVE • 15<sup>th</sup> 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

January 12, 2022

## State Rep. Joe Sanfelippo's Testimony on AB 174

Chair Spiros and committee members, thank you for holding a public hearing on 2021 Assembly Bill 174.

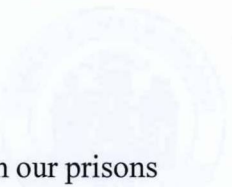
The level of crime in our communities continues to be one of the most salient issues that we hear about from our constituents. Homicide rates at or near all-time highs and stories about violent crimes fill the papers and news reports daily, so it is critical that we do everything we can to keep dangerous individuals off of our streets. With a state recidivism rate nearing 40%, we cannot continue to allow repeat offenders to wash through our judicial system due to lax policies that fail to keep known violent criminals from quickly returning to their communities without appropriate consequences.

In Milwaukee, for instance, Police Department data shows that there were 102 offenders arrested in 2016, who had collectively been arrested 945 times for a total of 2,658 crimes over the previous decade, with the worst offender having been arrested 37 times over a 10-year period. These are habitual offenders who consistently take advantage of judicial indifference in order to continue their criminal careers.

This bill seeks to limit the opportunities for repeat criminals to slip through the cracks in our community supervision system by ensuring that any further violations will receive appropriate judicial attention. Under this proposal, if an individual free on probation, parole, or extended supervision were to be charged with a subsequent crime during that period, the Department of Corrections would be required to recommend the revocation of that individual's community supervision.

The DOC's own analysis estimates that the framework implemented by this bill would force corrections officials to review the new criminal activity of 6,280 repeat offenders. These are thousands of previously convicted criminals whose subsequent offenses would otherwise escape further scrutiny by the department that is responsible for ensuring that the individuals they release do not pose an ongoing danger to the public. We are simply asking DOC to do its job by heeding these obvious red flags to prevent dangerous criminals from slipping through the cracks and being given the opportunity to continue committing crimes.

Moreover, this bill also offers reforms to the current expungement system by making it unavailable for repeat offenders. It also prohibits courts from expunging crimes for individuals who are charged with subsequent offenses or who violate the terms of their probation during their first year of release. The purpose of the expungement process is to offer a second chance to individuals who have previously made a mistake and taken responsibility for it, but have since become law-obeying citizens. What expungement is not meant to do, however, is to paper over past criminality for those who have clearly demonstrated that they have no



intention of changing their ways. It concerns me that discussions of eliminating overcrowding in our prisons and reducing administrative burdens often lose sight of the fact that the goal of our community supervision programs is not simply to release as many convicted individuals back into the public as possible; rather, the goal is to use available evidence to identify those individuals who are least likely to pose a continued danger to society through future criminal activity. This bill works to reorient the program towards that goal by utilizing the signals provided by their own recent conduct to help keep those individuals most likely to continue reoffending in custody.

Thank you for your time today, and I urge you to pass this important bill to help implement several common-sense measures to prevent individuals with demonstrated risks of recidivism from posing a continued danger to our communities.

A handwritten signature in black ink, appearing to read "Joe Sanfelippo".



**Assembly Committee on Criminal Justice and Public Safety**

Wednesday, January 12, 2022

**Assembly Bill 174**

Chairman Spiros and committee members, thank you for taking the time to hear testimony on Assembly Bill 174.

According to Wisconsin Department of Justice data, we know that statewide in 2020, there were 302 homicides — up 30% from 2016. There were 2,024 cases of rape — up 43% from 2016. And there were 41,733 cases of aggravated and simple assault — up 17% from 2016. Many of these numbers are even greater in 2021, but the complete data hasn't been released yet. This trend is disheartening, and we must do what we can to reverse it.

As I've learned in my first year on the job, most of the discussion around crime in Madison is focused on these kinds of statistics, and it's easy to get bogged down by all of that. Unfortunately, doing so loses sight of the victims we ought to protect. It misses the suffering and anguish they have endured and the pain their families have gone through. It ignores the cost to their mental health, their feeling of safety, and their trust in government to do the least we can do to ensure we keep them safe.

Ladies and gentlemen, I was shocked when I learned that if a criminal is out on probation and gets charged with a new crime, they are not automatically brought before a judge for a probation revocation hearing.

On behalf of victims, I bring this bill today for your consideration.

This bill, Senate Bill 188, addresses the rising crime in Wisconsin by promoting transparency and accountability in our corrections system. First and foremost, this bill requires the Department of Corrections to recommend revoking extended supervision, parole, or probation for someone who has been charged with a new crime while on release.

I want to point out that the Department of Corrections, in its fiscal estimate for this bill, has admitted that recommending revocation for criminals committing new crimes on probation increased by 6,280 in the first year of this bill. This is based on information from the Wisconsin Court System Circuit Court Access (CCAP). This means that under their own supervision, previously convicted criminals are today being charged with 6,280 crimes annually, and they're left on our streets. That's in addition to the 9,961 times crimes are charged where probation is already recommended for revocation. Adding these numbers

up means that offenders on supervision are being charged with more than 16,000 crimes annually — or 1,300 crimes a month — yet they are out and about in our communities.

We must do what we can to ensure previously convicted offenders who have proven they haven't changed or shown regret for their crimes cannot terrorize our communities. Now is especially the time for us to take a look at how we manage probation. In 2020, the Department of Corrections released at least 1,600 prisoners early due to the coronavirus outbreak. We need to ensure the Department has strict guidelines monitoring those who have broken our laws and were supposed to be in prison serving out their sentences. They shouldn't be given extra chances to commit new crimes because of the pandemic's extraordinary circumstances.

When I learned that probation isn't immediately revoked if a criminal is charged with another crime or that an offender can violate their probation conditions and still qualify for expungement, it frankly blew my mind. I favor second chances, but we must ensure those who have already broken our laws aren't getting opportunity after opportunity to wreak havoc on Wisconsin families. The system isn't working, and we must ensure our laws put the safety of our families and communities first.

Furthermore, this bill says that someone who has already been found guilty of a crime, even if that crime was expunged, cannot have future crimes expunged because they have already proven they don't deserve the trust of their communities. Any rule violation or breaking any probation condition would also disqualify a criminal from being granted an expungement. Additionally, expungement would not be granted under the bill until one full year after completing a sentence. So often, people talk about criminals needing incentives for good behavior. I believe these are small commonsense steps that motivate criminals to continue acting in good behavior and show that they have earned expungement.

When a criminal is on probation, they are receiving their second chance. If a judge determines probation restrictions, the offender must follow all of those guidelines, which they shouldn't just ignore. However, suppose an offender on probation decides not to follow those terms. In that case, the public should not be endangered by allowing this repeat criminal the privilege of concealing their record through expungement.

I want to repeat it clearly: I believe in second chances. This bill does not impact a second chance unless the public's trust has been violated a second time. For the innocent, law-abiding people in Wisconsin who are murdered, raped, or assaulted at an alarmingly increasing rate, we must do better. Senate Bill 188 will help us hold accountable those who have been convicted of a crime and then continue to commit crimes.

I know this proposal has a long history in this building. Still, it's time that we make this policy reality and focus on the families we need to prevent from becoming victims.

Again, thank you for your time to consider this bill.



# 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](http://www.wisspd.org)

**Kelli S. Thompson**  
State Public Defender

**Jon Padgham**  
Deputy State  
Public Defender

---

Assembly Committee on Criminal Justice & Public Safety  
Public Hearing - Assembly Bill 174  
Wednesday, January 12, 2022

Chairman Spiros & Committee Members,

Thank you for having this hearing on Assembly Bill (AB) 174 related to changes to the revocation process if an individual is alleged to have committed a crime while on supervision. The State Public Defender (SPD) has concerns with the burden and standard shift in this bill that will result in a significant increase in the number of people being revoked to prison.

A previous version of this bill, 2017 Senate Bill 54, was amended to limit both the types of allegations that would result in an automatic revocation recommendation and to provide the necessary investment in building new facilities to accommodate the increase in prison populations. AB 174 returns to the original version of SB 54, with an added component that impacts the expungement process.

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 will lead to prison sentences that are grossly disproportionate to the alleged criminal activity. It is also worth noting that currently, 90% or more of revocation proceedings decided by an administrative law judge result in re-incarceration. Practically, that means that if a Probation and Parole Agent recommends revocation, it is almost certain to happen. SB 188 removes the current discretion of these agents to recommend alternatives to incarceration.

The new provision related to expungement in AB 174 is not an evidence based approach and also presents issues that will result in litigation. Research demonstrates that increased penalties and longer sentences are not a deterrent to criminal behavior. In addition, including the provision denying expungement after the fact faces serious challenges in court. Under current Wisconsin statute, a judge can only grant expungement at sentencing. This statute would allow a process that administratively undoes a valid court order.

The Badger Institute has conducted extensive data collection and analysis on revocation in Wisconsin. Among some of the more significant findings as pertains to AB 174 are:

- The top non-criminal violations are non-reporting, non-compliance with treatment programming, and absconding. Under AB 174, the limit on expungement for technical rule violations means that people will lose access to a vital rehabilitative tool that is already out of reach for so many because they, for example, failed to inform their agent of a change in address.
- Just over half of people in prison are serving a term of revocation. Revocation is already a significant driver of the prison population. A bill such as AB 174 only threatens to dramatically escalate that without the necessary resources.
- In a study sample, 49% of revocation conduct later led to a criminal conviction, 51% did not result in an additional criminal conviction. AB 174 removes the current discretion on the 51% of alleged criminal activity that does not result in a criminal conviction. Put another way, it skips the burden of proving criminal allegations by bypassing due process of the criminal justice system to instead use an administrative process with far fewer rights and process.

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 decision (which can be anywhere from 3 to 10 days) 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.

As part of Wisconsin's continuing efforts to expand the use of research-based practices in the area of criminal justice, justice professionals 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.

Thank you again for the opportunity to provide information on Assembly Bill 174. If you have additional questions, please do not hesitate to contact us at 608-264-8572 or [plotkina@opd.wi.gov](mailto:plotkina@opd.wi.gov).



To: Members, Senate Committee on Judiciary and Public Safety  
From: Badger State Sheriffs' Association  
Wisconsin Sheriffs and Deputy Sheriffs Association  
Date: January 12, 2022  
RE: **For Information Only**  
**Testimony on Assembly Bill 174 – Revocation Recommendation**

---

BSSA and WS&DSA submit these comments for information only regarding AB 174. 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 174 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.

DOC estimates that assuming the judge affirms DOC's recommendation 47 percent of the time, there will be an increase of 6,280 revocation cases each year. This means 6,280 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 of 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.

We ask that the committee consider the fiscal impact AB 174 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.



January 12, 2022

To: Chairman Spiros and Members of the Assembly Committee on Criminal Justice and Public Safety

From: Wisconsin Chiefs of Police Association

Re: Support Assembly Bill 174, Revocation and Expungement Legislation

---

Chairman Spiros, thank you for your willingness to hold a hearing on this legislation. We would also like to thank the authors, Representative Sanfelippo and Senator Bradley for introducing this bill.

We urge support of Assembly Bill 174.

Assembly Bill 174 addresses two issues.

First, 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 release.

The other issue this legislation addresses is expungement.

The bill adds that the court may not order the record expunged of a crime if the person had previously been convicted of a crime, including a crime for which the record had been expunged.

The Wisconsin Chiefs of Police Association constantly look at ways to help ensure that our communities are safe. By revoking parole of someone who commits another crime while out in public, we are making our communities safer.

We also believe that providing transparency regarding the criminal activity of those individuals who continue to commit crimes provides our citizens and law enforcement the knowledge to educate and protect our communities.

The Wisconsin Chiefs of Police Association support this legislation and ask that the committee move forward on this legislation.

We would be happy to take any questions regarding this legislation.