



## WISCONSIN LEGISLATIVE COUNCIL

### JUSTICE REINVESTMENT INITIATIVE OVERSIGHT

Room 412 East, State Capitol  
Madison, Wisconsin

May 15, 2009  
1:00 p.m. – 3:30 p.m.

[The following is a summary of the May 15, 2009 meeting of the Special Committee on Justice Reinvestment Initiative Oversight. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

#### Call to Order and Roll Call

Chair Taylor called the meeting to order. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Sen. Lena Taylor, Chair; Rep. Robert Turner, Vice-Chair; Reps. Joel Kleefisch and Scott Suder; and Public Members Nicholas Chiarkas, Richard Dufour, James Dwyer, Lisa Stark, Tony Streveler, A. John Voelker, and Maxine White.

COMMITTEE MEMBERS EXCUSED: Sens. Dan Kapanke and Luther Olsen; Rep. Tamara Grigsby; and Public Members John Chisholm, Dave Graves, Frank Humphrey, Kit McNally, and Noble Wray.

COUNCIL STAFF PRESENT: Anne Sappenfield and Ronald Sklansky, Senior Staff Attorneys; and Melissa Schmidt, Staff Attorney.

APPEARANCES: Marshall Clement, Project Director, Justice Reinvestment, Council of State Governments (CSG) Justice Center.

**\*ATTENTION:** This was the final meeting of the Special Committee on Justice Reinvestment Initiative Oversight. Committee members are requested to send any corrections regarding these Minutes to the Legislative Council staff. After the incorporation of any corrections, these Minutes will be considered approved by the committee.

## **Approval of the Minutes of the Committee's May 6, 2009 Meeting**

*Representative Turner moved, seconded by Mr. Chiarkas, that the minutes of the May 6, 2009 meeting be approved. The motion passed by unanimous consent.*

### **Discussion of Committee Assignment**

Mr. Dufour reported on a meeting that he had with victim advocates before the meeting. Mr. Dufour said that Marshall Clement, Project Director, Justice Reinvestment, CSG Justice Center, Marc Pelka, Policy Analyst, Justice Reinvestment, CSG Justice Center, and Pat Kenney, Deputy District Attorney, Milwaukee District Attorney's Office had all participated in the meeting.

Mr. Dufour said that the victim advocates shared that victims had two requests. First, victims wanted to be notified of revocation proceedings. He said victims were rarely notified during the revocation process and want this information. Mr. Dufour thought it would be possible to include this information into the Department of Corrections (DOC) existing notification database, Victim Information Notification Everyday (VINE).

Mr. Dufour said the second request from victim advocates was to know what programming is recommended and provided by DOC. He said the victims expressed the desire to know what treatments or programs are effective so that they can advocate for programming.

### **Description of Bill Drafts**

- ***WLC: 0425/3, relating to maximum term of extended supervision***

Ms. Sappenfield explained three changes made to WLC: 0425/3 in response to the committee's discussion in the last meeting. The first change was to SECTION 1 of the bill draft, restructuring s. 973.01 (2) (d) (intro.), Stats., for clarity. The second change included a new provision on victims' rights, included in SECTION 2 of the bill draft. Ms. Sappenfield noted that this provision was included as bracketed language for the committee to determine if this captured its intent. The third change included an initial applicability date for crimes committed on the effective date of the act.

Mr. Dufour said that while the bracketed language regarding victims' rights was drafted in response to his concerns about restitution, he thought that there might be a better way to address victims' rights issues. He shared Mr. Kenney's idea of having a program similar to child support, whereby restitution could be enforced without using extended supervision resources.

Ms. White explained that the intent of the judicial discretion included in the bracketed language was to allow an offender to have more time to make restitution. She said that what is included in the brackets, however, expands the scope and gives broad judicial discretion to increase the reconfinement term for any victims' rights concern.

Chair Taylor said that the committee's focus was on reinvesting state resources. She said she was committed to addressing Mr. Dufour's ideas outside of the committee and that she would pursue legislation separately from the committee's final report.

Mr. Schuh said that he supported the broad judicial discretion for including other types of victims' rights such as no-contact orders.

Mr. Chiarkas said he did not want to include broad judicial discretion. He said that even if there was a provision that the maximum term of extended supervision was the presumption, most courts would increase the term beyond the presumption. He explained that no one wants to be viewed as unsympathetic to victims' rights.

Representative Suder asked whether creating a maximum term of extended supervision to be 75% of the term of confinement would reduce confinement. Ms. Sappenfield explained that it would not reduce the initial confinement period. She said that it would reduce the total sentence in some cases, as some classes of felonies allow for a maximum term of extended supervision that is over 75% of the maximum term of confinement. Representative Suder said he still believed in truth-in-sentencing and was concerned about reducing the length of the total sentence.

Ms. Stark said that truth-in-sentencing was not intended to increase sentences but to give certainty to them. She explained that because a person is not given credit while out on community supervision, the person could be under community supervision longer than the term of extended supervision. She also said that one unintended consequence is that judges may give longer terms of confinement in response to any cap on the term of extended supervision.

*Chair Taylor moved, seconded by Representative Turner, that WLC: 0425/3 be approved, as modified, without the bracketed language. The motion passed by a roll call vote of Ayes, 6 (Taylor, Turner, Chiarkas, Stark, Voelker, and White); Noes, 4 (Kleefisch, Suder, Dufour, and Dwyer); Absent 8 (Kapanke, Olsen, Grigsby, Chisholm, Graves, Humphrey, McNally, and Wray); and Not Voting, 1 (Streveler).*

- ***WLC: 0426/3, relating to the parole and extended supervision revocation process and time spent in prison after revocation***

Ms. Sappenfield explained the changes made to WLC: 0426/3 in response to the last committee meeting. She highlighted the bracketed language in SECTION 6 of the draft. She explained that under the bracketed language, a person may be sent back to prison for longer than six months if the extended supervision is revoked after a criminal complaint is filed or DOC demonstrates the conduct which lead to revocation indicates a substantial risk to public safety.

Ms. Sappenfield also explained that under the draft, a person whose revocation is revoked will be given credit for time served in connection with the revocation. She said that this is consistent with current law.

Chair Taylor said that the bracketed language in SECTION 6 of the draft deviates from CSG's recommendations and would result in less savings. She said that CSG projects that such a change would increase costs by 1,000 beds.

In response to questions, Mr. Clement reported that other states implementing CSG's policy recommendations did not have exceptions for cases in which charges had been filed against a person on community supervision. He said that if a state has exceptions, it is for a conviction.

Mr. Chiarkas and Ms. White said that they did not want an exception for cases in which a criminal complaint is filed. Ms. White was concerned about due process and the impact of longer reconfinement based only upon charges filed, not a conviction.

Mr. Kenney, attending the meeting on behalf of Mr. Chisholm, thought it would be rare for a district attorney to dismiss a charge based upon pending revocations.

*Chair Taylor moved, seconded by Representative Turner, that WLC: 0426/3 be approved without the bracketed language in SECTION 6. The motion passed by a roll call vote of Ayes, 8 (Taylor, Turner, Chiarkas, Dufour, Dwyer, Stark, Voelker, and White); Noes, 2 (Kleefisch and Suder), Absent, 8 (Kapanke, Olsen, Grigsby, Chisholm, Graves, Humphrey, McNally, and Wray); and Not Voting, 1 (Streveler).*

- **WLC: 0428/3, relating to risk reduction sentence**

Ms. Sappenfield described the three changes to WLC: 0428/3 in response to the committee's last meeting. She said that the phrase "if the court determines that a risk reduction sentence is appropriate" was inserted into SECTION 2 of the bill draft to clarify that there is judicial discretion in giving this disposition. She said that in regard to a person's needs and risk of re-offending, also in SECTION 2, the draft was modified to clarify that a person's risks and needs must be assessed at CSG's request.

Ms. Sappenfield also explained the bracketed language in SECTION 1, lines 3 and 9 to 14. She said that the bracketed changes would allow a person serving a risk reduction sentence to be released at 75% of the term of confinement if the person completed programming and treatment or, if DOC did not have the recommended programming or treatment resources available, the person would be released when the programming and treatment were completed or after serving 85% of the term of confinement, whichever occurred first. She said that this language was drafted in response to concerns raised by Mr. Streveler.

Representative Kleefisch raised concerns about the bracketed language. He said that the intent of the bill was to ensure a person received treatment during confinement. Mr. Dufour, Ms. White, and Representative Suder also raised concerns about the language.

Mr. Streveler explained the reason behind the bracketed language. He said that the bill draft included a lot of mandatory requirements but that current resources are not enough to provide recommended treatment. He reported that there are currently roughly 300 people on a waiting list to get into the earned release program for alcohol treatment. He said that if DOC was required to provide mandatory treatment for those serving a risk reduction sentence, then those on the waiting list would be bumped down and wait longer for treatment.

Ms. Sappenfield explained that the bill draft also requires DOC to notify the court that the inmate has successfully completed requirements of the risk reduction sentence, to that point, at least 30 days before the inmate has served 75% of the term of confinement.

Mr. Kenney raised concerns that without the bracketed language, DOC could be subject to a writ of habeas corpus or subject to a civil suit under the Civil Rights Act.

Ms. Stark raised concern that with the bracketed language, DOC had no incentive to provide treatment or programming resources. Mr. Chiarkas said that the treatment and programming decisions are made up front at sentencing. He said that DOC should not be excused if the court decides to give the risk reduction sentence and the defendant agrees to participate.

Representative Kleefisch reminded the committee that its charge was not fiscal policy and it should not decide policy based upon the financial resources, or lack thereof. Representative Suder said that the bracketed language was contrary to public opinion of what the role of corrections should be.

*Representative Kleefisch moved, seconded by Representative Suder, to remove the bracketed language. The motion passed by a roll call vote of Ayes, 10 (Taylor, Turner, Kleefisch, Suder, Chiarkas, Dufour, Dwyer, Stark, Voelker, and White); Noes, 0; Absent, 8 (Kapanke, Olsen, Grigsby, Chisholm, Graves, Humphrey, McNally, and Wray); and Not Voting, 1 (Streveler).*

*Chair Taylor moved, seconded by Representative Turner, to approve WLC: 0428/3, as modified, without the bracketed language. The motion passed by a roll call vote of Ayes, 8 (Taylor, Turner, Chiarkas, Dufour, Dwyer, Stark, Voelker, and White); Noes, 2 (Kleefisch and Suder); Absent, 8 (Kapanke, Olsen, Grigsby, Chisholm, Graves, Humphrey, McNally, and Wray); and Not Voting, 1 (Streveler).*

- **WLC: 0427/3, relating to community supervision services**

Ms. Sappenfield explained four changes made to WLC: 0427/3 in response to the committee's last meeting. Ms. Sappenfield pointed out the first change, on page 3, line 6, made at CSG's request, was to clarify that DOC was to provide or purchase "mental health" services for severely mentally ill persons.

Ms. Sappenfield pointed out that the draft requires DOC to provide community services to reduce recidivism instead of community alternatives to revocation. She said that, under the draft, one category of services is treatment and services that are evidence-based and are set forth in DOC rules.

Ms. Sappenfield said the third change was on page 5, starting at line 5. She explained this section required DOC to provide training and skill development for community corrections agents. She explained that the bracketed language starting at line 9 required DOC to promulgate rules regarding the training and skill development. She asked the committee if they wanted this language.

Ms. Sappenfield explained the fourth change added the requirement that DOC report to the Director of State Courts when it reports to the Governor and Chief Clerk of each house regarding the effectiveness of community services to reduce recidivism and progress toward reducing recidivism by 25% by 2011.

In response to questions, Mr. Clement explained that cognitive intervention DOC would be required to provide under the draft was an evidence-based approach to change criminal thought processes.

Mr. Schuh asked whether DOC should be required to establish training by rule or by policy. He said that rule-making was cumbersome, but policies would allow DOC to act more quickly. Representative Kleefisch asked whether the bill should include specific training requirements. Chair Taylor expressed concern about not having legislative oversight and said that rule-making would solve this problem.

Representative Suder stated that he liked portions of the draft but that he would not support the transitional employment provision for inmates transitioning into the community because of rates of unemployment among Wisconsin citizens.

*Senator Taylor moved, seconded by Representative Taylor, to approve WLC: 0427/3 as amended, with the bracketed language. The motion passed by a roll call vote of Ayes, 8 (Taylor, Turner, Chiarkas, Dufour, Dwyer, Stark, Voelker, and White); Noes, 2 (Kleefisch and Suder), Absent, 8 (Kapanke, Olsen, Grigsby, Chisholm, Graves, Humphrey, McNally, and Wray); and Not Voting, 1 (Streveler).*

### **Other Business**

Mr. Dwyer expressed concern regarding the current economic climate. He reported that Waukesha County was facing a \$60 million deficit. He reminded the committee that there were worse deficits in other counties. He said with spending cuts, that the state will have to implement the justice reinvestment policies without the help of counties.

Representative Kleefisch thanked CSG, Legislative Council staff, and public members for their efforts in this committee. Mr. Chiarkas said that this was his first time working with legislators and that he was proud to live in Wisconsin.

Mr. Dufour shared that he hoped the bill drafts the committee recommended are introduced into the Legislature. He added that the Legislature also needs to address the concerns he raised regarding victims' rights.

Representative Suder thanked CSG for its data-driven, not policy-driven recommendations. Mr. Clement responded that he and his colleagues enjoyed working with the committee. He acknowledged the quality and uniqueness that the special study committee process brought to Wisconsin's justice reinvestment, compared with other states.

Chair Taylor thanked CSG for their hard work and committee members for their commitment to the justice reinvestment process. She shared her excitement that the committee was creating policies that would target resources more effectively.

## **Adjournment**

The meeting was adjourned at 3:30 p.m.

MS:AS:jal