

November 7, 2010

FROM: Ben Kempinen

TO: Courts and Effective Justice Strategies Subcommittee

SUBJECT: Topics for Discussion

Following up on our last subcommittee meeting I think there is value in considering what system changes – at the state or local level – are possible without additional resources.

The financial difficulties our state faces may mean this is a time of opportunity to rethink our approach to public safety at the state and local level. Amid the pre-election rhetoric about excessive spending little was said about whether our criminal justice expenditures – possibly the greatest drain on state and local resources – are being wisely made. If it can be shown that certain accepted practices are simply not cost effective there may be a receptiveness to re-think how we go about seeking to provide public safety.

#### Felony Sentencing

Truth in Sentencing has dramatically increased the length of felony sentences and corrections costs without any clear proof of more than marginal public safety benefits. Its impact has been an explosion of corrections expenses and a consequent loss of community corrections resources that could be used to strengthen the quality of offender supervision in the community.

What options are there? It is unlikely there would be interest in a roll back of the lengths of sentences to pre-TIS maximums. However, a commitment to evidence based practices for future sentences – requiring empirical support for the benefit of lengthy terms – could blunt the indiscriminate imposition of lengthy sentences for all types of felonies.

#### Slowing Down the Pace of Enactment of New Criminal Offenses

There are more than twice as many crimes in the Wisconsin statutes today than thirty years ago. Crime rates have not doubled nor have the ways that people hurt others or steal. What has changed it a legislative willingness to respond to publicized instances of undesirable behaviors by enacting new crimes. Given our narrow definition of included offenses in Wis. Stat. § 939.66 the practical consequence of this tendency is more convictions, longer sentences, and greater disparity – not increased public safety.

Legislation that could discourage enactment of new crimes – for example, requiring funding of new public defender, prosecutor, or court – whenever new crimes are enacted might be one idea to underscore that the proliferation of new crimes is neither a free nor an effective response to public safety concerns.

#### Decriminalization of Low Level Misdemeanor Offenses

Statistics from the Director of State Courts demonstrate that more than 75% of the criminal cases prosecuted for the past several years were misdemeanors of which 25% were dismissed before trial. The most common ten misdemeanor offenses listed for 2009 were:

- Misdemeanor traffic – 41%

- Disorderly Conduct – 11%
- Battery – 8%
- Bail Jumping – 7%
- Resisting an Officer – 7%
- Drug possession – 5%
- Theft – 4%
- Criminal Damage to Property – 3%
- Worthless checks – 3%
- Shoplifting – 2.5%

Many of these offenses merit prosecution as crimes – drunk driving and domestic violence cases to name a few. However, many have marginal public safety implications, are dismissed before trial, or are amended to ordinance violations. When charged as crimes the cost of processing – even with a plea – is often several thousand dollars.

Decriminalization of many of these offenses could result in substantial savings – either by allowing for prosecution in municipal courts if available or in circuit court, where, by virtue of their non-criminal nature, the full costs of a criminal prosecution could be avoided.

There also may be procedures by which law enforcement could deal with minor violations without referral to a municipal or state prosecutor at all. The system of “cautions” in Great Britain is an example of such an approach.

#### Provide Assistance and Incentives to Deal with Public Safety Issues at the County Level

The most promising innovations in the past decade in Wisconsin have been at the county level without involvement or interference from the state. Examples are criminal justice coordinating councils, treatment courts and diversion programs. Given that lack of state level expertise or funding support counties have had to seek guidance from out-of-state, for example, from the National Institute of Corrections, to design and implement such programs.

The creation of a state agency to develop homegrown expertise to assist counties could go far to encourage development of such innovations in all Wisconsin counties.

Similarly, developing a funding system to give local communities an incentive to deal with offenders in their home communities – as is done with our juvenile justice system – could encourage more effective and less costly interventions than an almost exclusive reliance on state corrections for felony level offenses.