



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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To: Members of the Assembly Committee on Corrections

From: Attorney General Brad Schimel

Date: September 10, 2015

Subject: Opposition to Violent Offender Provisions in Assembly Bill 52

Thank you Chairman Hutton and committee members for the opportunity to present you with written testimony on Assembly Bill 52.

The Department of Justice (DOJ) appreciates the efforts by the Legislative Council Study Committee on Problem-Solving Courts, Alternatives, and Diversions on this bill including the provisions that codify the Wisconsin Criminal Justice Coordinating Council (CJCC). The CJCC brings together a multidisciplinary group that does important work to improve how Wisconsin provides public safety and criminal justice services.

While there are positives in the bill, DOJ has serious concerns with Assembly Bill 52. In particular, the provisions that permit violent offenders to participate in Treatment Alternative and Diversion (TAD) programs, including specifically including individuals charged with a homicide, violent act of domestic violence, or serious sex offense.

Most individuals who will most benefit from evidence-based services provided by TAD programs will be guilty of status offenses, drug possession, or property crimes. We believe it would be detrimental to include both violent and non-violent offenders together in the same program. It may also be more difficult to attract qualified case managers if they are required to meet with known violent offenders, including serious sex offenders. DOJ supports the current protections that prohibit violent offenders from participating in TAD programs.

The legislation makes steps in the right direction towards protecting crime victims. However, it simply does not go far enough. TAD programs should be required to ensure that all constitutional and statutory victim rights are protected and enforced. The legislation should specify that if a defendant's case is diverted to a TAD program, victims are guaranteed the same rights as they would enjoy if the case were to proceed to sentencing. For example, the prosecutor and court must ensure that if a TAD program is utilized, the victims are informed of their right to confer with the prosecutor and afforded the right to make a statement at disposition, and, importantly, the opportunity of victims to exercise their rights must be strictly enforced.

We are willing to work with interested legislators to improve the language of Assembly Bill 52 to modify the aspects of the "violent offender" provision but we cannot support the bill as written.

We appreciate your thoughtful consideration of our concerns and welcome the opportunity to discuss any other concerns.



STATE REPRESENTATIVE
18th ASSEMBLY DISTRICT



September 10, 2015
Public Testimony of State Representative Evan Goyke
Re: Assembly Bill 51 and Assembly Bill 52

Good Morning Chairman Hutton and committee members. Thank you for holding this public hearing and the opportunity to testify in support of these important pieces of legislation.

Last year I was honored to serve as Vice-Chair of the Legislative Study Committee on Problem-Solving Courts, Alternatives, and Diversions.

The Study Committee consisted of five Representatives, one Senator, and 10 public members. The public members were professionals from across the state who are involved with various aspects of treatment courts, including judges, an assistant district attorney, the State Public Defender, a sheriff, treatment court professionals, alcohol and drug treatment service providers, and a domestic violence advocate.

I am proud of this committee and the work its members put into the legislation before you today. I would like to thank them once again for their time, expertise, and devotion to our State and judicial system.

The committee met five times from June to October 2014. The committee received testimony from a number of treatment court professionals and judges from across the state who provided information about OWI treatment courts, drug and alcohol treatment courts, veterans' courts, and mental health courts.

Our task was to review the 50+ problem solving courts currently in operation in Wisconsin, the effect they have on recidivism, and the fiscal impact of these courts. Problem solving courts include veteran's courts, drug and alcohol courts, mental health courts, and drunk driving courts. We reviewed the effectiveness of existing problem-solving courts in Wisconsin and their ability to reduce recidivism. Other topics such as program administration costs, savings, best practices, and ideas on how these courts could serve multiple jurisdictions were all discussed and examined.

Both pieces of legislation were overwhelmingly supported by the members of the Study Committee and the Joint Legislative Council.

Before I begin my explanation of the bills I want to personally thank former State Representative Garey Bies for his hard work and commitment while serving as Chairman of this Study Committee and leading on this issue during his legislative career. It was a pleasure serving alongside him.

I also have sitting next to me Melissa Schmidt from Legislative Counsel who served as the study committee's staff attorney. I would also like to thank her for her hard work.

Assembly Bill 51

Assembly Bill 51 creates a grant-making program for problem solving courts within the Department of Children and Families. The form and function of this program is similar to the Treatment, Alternatives, and Diversion (TAD) program, which is limited to the adult criminal justice system and correctly administered by the Department of Justice.

AB 51 would create a program that would not apply to criminal behavior, but to child welfare actions under Chapter 48 and juvenile delinquency actions under Chapter 938. While in many ways these cases appear similar to adult criminal cases, they are not. Thus, the Study Committee felt the Department of Children and Families (DCF) should oversee the creation of the grant-making program because DCF is the primary state agency staffing and supporting these cases and courts.

There is no appropriation in AB 51. Any decision to appropriate additional funds to DCF for qualified problem solving courts is a future decision, but one only made possible first by establishing the Department's ability to make such a grant and establishing the appropriate, evidence-based criteria to warrant the State's investment.

Grants under AB 51 would enable counties to establish and operate problem-solving courts beyond the adult criminal justice system. This recognizes the power and effectiveness of treatment and close court supervision to solve complex issues that trigger court intervention and evidence suggests that these courts may be as effective (or even more effective) as problem-solving courts in the adult criminal justice system.

After meeting with DCF and several additional stakeholders, it has become apparent that Assembly Bill 51 may need an adjustment of language.

The bill specifically limits grants to be made for problem solving courts related to “mental illness or to substance abuse.” New and promising problem-solving courts within the jurisdiction of family courts, sometimes called safe-baby or well-baby courts, may need a wider definition to receive state funding because they do not center specifically or solely on mental illness or substance abuse.

I hope this Committee considers the wisdom of crafting an amendment that allows the Department of Children and Families the discretion to award grants to evidence-based problem solving courts with greater flexibility than contained in AB 51 today. I know members of the Study Committee are open to help in this pursuit and welcome the opportunity to work with Committee members in any way we can.

Thank you and I am happy to answer any questions regarding AB 51.

Assembly Bill 52

Before addressing the changes to the TAD statute within AB 52, I’d like to make two important points.

First, ten years ago TAD was new. When it was created, we didn’t know exactly how it would work and compromises were made to pass the original TAD statute after the first attempt failed. No substantial changes have been made since.

Second, one of the most important components of TAD is the required data collection and reporting. This has allowed external evaluators to review whether TAD is an effective program. This data has led to our most recent evidence of TAD’s effectiveness. For every \$1.00 spent on TAD programming, Wisconsinites save \$1.96 on avoided costs.

Since its creation, TAD has been as accountable as any state program, giving the Study Committee ample evidence to craft the updates within AB 52.

AB 52 would achieve several important changes:

- o Expands TAD eligible programs to include participants who need treatment beyond substance abuse, including mental illness.
- o Codifies the Wisconsin Criminal Justice Coordinating Council (CJCC).

- o Allows local control to determine whether the program may include participants charged with certain violent offenses.
- o Clarifies that both counties and Tribes may qualify for TAD grants and may jointly administer a TAD program.
- o Allows, but does not require, eligible programs to require program participants to pay an amount toward treatment.
- o Requires the monthly submission of data requested by DOJ

In addition to the changes to the TAD statute, AB 52 authorizes the use of home detention for probationers sentenced on a crime that requires a mandatory jail sentence. Most commonly, this pertains to repeated drunk driving offenses. Several Wisconsin counties have created alcohol treatment courts and the Joint Study Committee reviewed the impact of mandatory incarceration on the effectiveness of mandatory jail incarceration for program participants in these courts.

AB 52 extends the authority to order home confinement in place of jail confinement to treatment courts. Currently, only a county sheriff or jail administrator has this authority.

AB 52 may need some changes. Since the Joint Study Committee's conclusion and introduction of AB 52, the Governor has signed a new Executive Order that will require this Committee's attention. The CJCC was created by Executive Order and an amendment to AB 52 may be necessary to ensure consistent language between the statute and the Executive Order.

Additionally, AB 52 includes the creation and appropriation for the creation of a statewide treatment court coordinator within the office of the Director of State Courts. This position was created in the most recent state budget and is no longer needed in AB 52.

As with AB 51, members of the Joint Study Committee are open and willing to assist this Committee in any way that we can to ensure these important changes move forward.

Thank you very much for your time and consideration. I am happy to answer any questions.

September 10, 2015

Dear Chairman Hutton and Members of the Corrections Committee:

I write to you today in support of Assembly Bills 51 and 52. These bills were introduced after the extensive work of the Legislative Council Study Committee on Problem-Solving Courts, Alternatives, and Diversions, which I had the pleasure of co-chairing with Representative Goyke during the fall of 2014.

The Committee was charged with reviewing the effectiveness of the 50+ specialty courts operating in Wisconsin. The bills before you had overwhelming bipartisan support from the 16 members of the committee, which included legislators, judges, prosecutors, treatment providers and mental health advocates.

Assembly Bill 51 would create a grant program to help counties screen for families that have come into contact with either children's court or juvenile court and could greatly benefit from alternative programs. These efforts can help keep families together by getting them the help they need to address a family members problems related to mental health or substance abuse.

Assembly Bill 52 would expand the successful TAD program, mandating that accepted programs must be evidence-based and designed to reduce prosecution and incarceration costs, reduce recidivism, and enhance justice and public safety. The bill also gives each project the ability to include violent offenders, where research has shown it can have the biggest impact.

I firmly believe these bills will have a large influence on improving our criminal justice system and reducing recidivism. In addition to helping an individual turn their life in a positive direction, these bills will benefit the State of Wisconsin, treatment court systems, and save taxpayers money.

Thank you for your positive support of Assembly Bills 51 and 52.

Sincerely,

A handwritten signature in black ink that reads "Garey Bies". The signature is written in a cursive, flowing style.

Garey Bies
Study Committee on Problem-Solving Courts, Alternatives, and Diversions, Co-Chair
Assembly Committee on Corrections, Former-Chair

Testimony to the Assembly Committee on Corrections

Shel Gross, Director of Public Policy

Mental Health America of Wisconsin

AB51/AB52

Mental Health America of Wisconsin (MHA) urges your support for both AB51 and AB52 which were forwarded to the Legislature by the Legislative Council Study Committee on Problem-Solving Courts, Alternatives and Diversion. MHA recognizes that people with mental illnesses are over-represented in the criminal justice system, often due to a lack of treatment options for them in the community. For individuals whose criminal justice involvement is secondary to the symptoms of their mental illness, incarceration is often not helpful and can, in fact, be detrimental. The evidence shows that individuals who come into contact with the criminal justice system and who can be diverted to appropriate services and supports are much less likely to reoffend. However, some of the rules associated with the Treatment Alternative and Diversion program (TAD) have limited the number of people with mental illnesses who are able to participate in these programs. The recommendations from the study committee make reasonable modifications to these rules and will facilitate the program serving additional individuals who can benefit from it. Specifically:

- AB51 provides new dispositional alternatives for families who have come under the jurisdiction of the juvenile court due to parental problems related to mental illness or substance abuse. MHA operates a program called Strong Families/Healthy Homes, which works specifically with families where the primary caregiver has a mental illness (usually accompanied by a substance use disorder). We have worked with the Bureau of Milwaukee Child Welfare to successfully reunify such caretakers with their children, who had previously been removed from the home. Unfortunately, the juvenile court system has lacked the ability to promptly address the needs of such caretakers.
- AB52 expands who may participate in TAD programs. Specifically it allows a project to specify whether or not certain violent offenders will be allowed to participate. In the past violent offenders were not allowed to participate in the program, although evidence shows they are able to benefit. Certain individuals with mental health disorders have been excluded as a result. Additionally the bill requires each project to use evidence-based eligibility criteria to determine who may participate in the project and to tailor its services to the needs of each participant or target population. We understand this to include individuals who have only a mental illness without a co-occurring substance use disorder. Again, such individuals are currently excluded from participation despite the fact that they have been successfully served in similar problem-solving courts.

Thank you for your consideration.