WISCONSIN STATE LEGISLATURE COMMITTEE HEARING RECORDS

2007-08
(session year)

Assembly
(Assembly, Senate or Joint)

Committee on Corrections and Courts (AC-CC)

(Form Updated: 07/24/2009)

COMMITTEE NOTICES ...

➢ Committee Reports ... CR
**

➢ Executive Sessions ... ES
**

➢ Public Hearings ... PH
**

➢ Record of Comm. Proceedings ... RCP
**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL ...

➢ Appointments ... Appt
**

Name:

➢ Clearinghouse Rules ... CRule
**

➢ Hearing Records ... HR (bills and resolutions)
** **07hr_ab0121_AC-CC_pt01**

➢ Miscellaneous ... Misc
**

( )

Assembly Committee on Corrections and the Courts

DATE
Moved by Owens Seconded by Kestell
AB 121 SB _____ Clearinghouse Rule _____
AJR _____ SJR _____
A _____ SR _____ Other _____
A/S Amdt _____
A/S Amdt _____ to A/S Amdt _____
A/S Sub Amdt _____
A/S Amdt _____ to A/S Sub Amdt _____
A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

AB 121

Be recommended for:

- ☒ Passage
- ☐ Introduction
- ☐ Adoption
- ☐ Rejection
- ☐ Indefinite Postponement
- ☐ Tabling
- ☐ Concurrence
- ☐ Nonconcurrence

	Committee Member	Aye	No	Absent	Not voting
1.	Rep. Garey Bies, chair	1			
2.	Rep. Phil Montgomery, vice-chair	2			
3.	Rep. Dean Kaufert	3			
4.	Rep. Carol Owens	4			
5.	Rep. Steve Kestell	5			
6.	Rep. Daniel LeMahieu	6			
7.	Rep. Joe Parisi		1		
8.	Rep. Mark Pocan		2		
9.	Rep. Sheldon Wasserman		3		
10.	Rep. Sondy Pope-Roberts		4		
11.	Rep. Donna Seidel		5		
	Totals				

MOTION CARRIED ☒ MOTION FAILED ☐

s:\comclerk\rollcall.1


FORWARD

Association of State Prosecutors

W7140 Campfire Road, Shawano, WI 54166
www.wiasp.com

TO: **Members of the State Assembly**
FROM: **Association of State Prosecutors**
DATE: **March 7, 2007**
RE: **Opposition to SB60/AB121 Proposed Change in Standard for Admission of Expert Testimony**

The Association of State Prosecutors strongly opposes SB60/AB121. SB60/AB121 would change the standard for expert witnesses and have a negative impact on prosecutors' ability to successfully prosecute crimes, in particular cases of civil commitment of sexual predators, sexual assault cases and child abuse and domestic violence cases.

The Association of State Prosecutors respectfully asks you to oppose this legislation for the following reasons:

Current law is whether expert testimony is "helpful to the jury." This standard now allows the following types of testimony, which would be eliminated or severely limited under the proposed legislation:

1. Current law allows testimony in "behavior profile" cases – this is evidence that attempts to explain someone's conduct or reactions which is now admitted because it is relevant and helpful to the jury without analysis of whether the "science" that supports it is reliable. Crucial in sexual assault, child abuse, and domestic violence cases. Examples include Child Abuse Syndrome/Battered Woman's Syndrome in which the experts can now tell the jury they have reached a conclusion on these subjects, explaining for example a child victim's recantation of a molestation claim, or a victim's reluctance to come to court and testify against her domestic abuse.

2. Current law allows social workers and practitioners who actually work with sexual assault victims, or domestic violence victims, to testify to the above-listed syndromes and behavior by victims. This allows the prosecutor to use easier to find, inexpensive but compelling expert testimony that can be absolutely crucial to explaining a victim's conduct.

3. Current law allows expert testimony by police officer regarding the results of a field sobriety tests, or expert testimony on alcohol metabolism and extent of impairment resulting from alcohol consumption levels.

4. Current law allows expert to testify to otherwise "inadmissible" evidence in support of the expert's conclusion. Under 907.03 the expert may rely upon otherwise inadmissible evidence as long as experts in the field of a type regularly use it. This is especially important in Chapter 980 cases, which consist almost exclusively of expert testimony at trial, with experts being free to describe all of the factors they relied upon in coming to their conclusion about whether the offender is a sexually violent person. These include the offender's history, criminal records, treatment progress and interviews with the offender as well as other kinds of hearsay evidence. Almost all this information would be severely limited or eliminated under the proposed legislation. In addition, the field of evaluating sexually violent persons for their risk level is a new one, and there is very little agreement by the limited number of experts in the field as to what the "science" underlying their opinions might be. There would be extensive litigation on this issue.

5. Proposed legislation has been used in federal courts almost exclusively against the plaintiff. "Plaintiffs generally will want to avoid the Daubert burdens of federal courts; defendants will want to take advantage of them. That is for two reasons: 1) plaintiffs bear the burden of proof; and 2) the most vulnerable expert testimony is generally that of plaintiffs.... The federal courts have used Daubert almost exclusively against plaintiff's experts." WI Lawyer March 2000, Volume 73, No. 3: Guarding the Gates, by Robert M. Whitney. www.wisbar.org/wislawmag/2000/03/gates2.html. There is no reason to believe that the effect will be any different on prosecutors, who also bear the burden of proof and have the most vulnerable expert testimony. In fact, it will likely be worse as the defense in criminal cases has the "right to put on a case" and the judges may well err on the side of allowing in defense experts but not prosecution experts.

6. Change in the standards would require re-litigation in all cases for the testimony of experts commonly used today in our cases. Finger prints, ballistics, child sexual abuse accommodation syndrome, shaken baby, post traumatic stress disorder, actuarial risk assessment methodology etc. The list is endless. This would be time-consuming and would result in many appeals, which would also be very time-consuming and expensive in terms of time spent briefing and deciding the matters. It would take years to come to resolution on many of these expert admissibility issues.

7. The current system allows courts enough freedom to limit expert testimony that is not helpful to the jury in making its decision. Courts can use 907.02 and 907.03 to so limit the expert testimony.


FORWARD

TED KANAVAS

STATE SENATOR

Testimony on Assembly Bill 121
Thursday, March 8, 2007
Assembly Committee on Corrections and the Courts

Chairman Bies and members of the Assembly Committee on Corrections and the Courts, I greatly appreciate the opportunity to submit testimony in support of Assembly Bill 121 (AB 121), which relates to evidence of lay and expert witnesses. I have a companion bill to Representative Suder's moving through the process in the Senate.

This legislation is based on the U.S. Supreme Court *Daubert* decision. It says that testimony must be based on scientific data and a product of reliable principles and methods.

Currently, Wisconsin State Courts have lax rules regarding the admissibility of expert testimony. AB 121 will ensure that our State courts follow the same guidelines for admitting expert testimony that are used in 33 states and federal courts, including those federal courts sitting in Madison, Milwaukee and Green Bay by adopting Federal Rules of Evidence 701, 702 and 703.

AB 121 will guaranty that any expert opinion testimony admitted into evidence in a Wisconsin state court is a product of a reliable and sound analytical method, in addition to being proffered by a genuine expert in his or her field. Moreover, by adopting this standard, this bill will prevent forum shopping, and the commensurate overburdening of state courts with cases based on "junk science" that cannot pass muster in Federal Court.

Passage of this bill will put Wisconsin in line with both federal courts and the vast majority of state courts in determining appropriate expert testimony in civil litigation.

Again, thank you for your consideration of this very important piece of legislation. This legislation is part of my economic development agenda, Invest Wisconsin 2.0. I therefore ask for your support of AB 121.

STATE CAPITOL
P.O. BOX 7882 • MADISON, WISCONSIN 53707-7882
(608) 266-9174 • (800) 863-8883 • FAX: (608) 264-6914


FORWARD

March 8, 2007

Corrections and Courts Assembly Chairman Representative Garey Bies,
Committee Members of the Corrections and Courts Committee
State Capitol
Madison, WI 53578

Subject: Proposed 2007 Assembly Bill 121

Dear Corrections and Courts Assembly Members,

I'm opposed to proposed 2007 Assembly Bill 121 for various reasons. My main reason of my opposition is that this Bill would limit knowledge of knowledge of scientific, technical, or other specialized knowledge provided in a court case as testimony. In my opinion, this repeat of an attempted Bill in the past is really an attempt to limit free speech.

This Bill limits free speech and is anti-citizenship in limiting the research a citizen may have performed, or who has first hand knowledge, of real concerns that could be brought up in a case. Is limiting knowledge in any way an act of public interest?

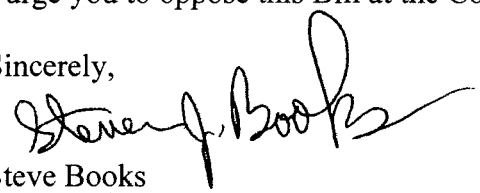
As a person who has recently been an intervener in the Public Service Commission "Waunakee Line" (docket # 137-CE-139) case regarding a power line in the Waunakee area, I believe that any and all pertinent information a concerned citizen may submit as an informed citizen regarding the case subject, whatever it may be, should be allowed for the factor of public safety.

Another issue with the proposed Bill is unintended consequences that the Bill could render in not allowing certain testimony to be allowed into a public record. Safety first and foremost is a matter of public interest and must be upheld.

Today at the Public Hearing, Representative Scott Suder mentioned that the Bill could prevent "Junk Science" from being allowed in Wisconsin, and Wisconsin becoming a haven for "Junk Science" if this Bill was not passed. I disagree with Rep. Suder on that statement.

I urge you to oppose this Bill at the Committee level.

Sincerely,



Steve Books
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FORWARD

WECA A Division of the Wisconsin Federation of Cooperatives

131 West Wilson Street, Suite 400 • Madison, WI 53703 • Phone (608) 258-4400 • FAX (608) 258-4407

Statement on AB 121

David Jenkins, Electric Division Manager
Wisconsin Federation of Cooperatives

March 8, 2007

Assembly Committee on Corrections and Courts

Mr. Chairman and Members:

Our association represents Wisconsin's 24 consumer-owned electric cooperatives serving nearly 10% of the state's retail electric customers.

We strongly support AB 121 and thank Rep. Suder and the other representatives and senators who co-sponsored this legislation.

Junk science is raising the cost of delivering electric power to our members.

According to our insurance company, Federated Rural Electric Insurance Exchange, which is a company electric cooperatives across the country own, their costs of defending stray voltage lawsuits—which usually end up with no finding of liability on the part of our members—is $2,000,000 a year.

At the heart of these lawsuits is always "expert testimony" by consultants who, in my opinion, do not in any manner prepare their testimony according to scientific principles or methods. This is costing our nearly 240,000 consumer-owners money in the form of higher electric rates.

We must stop this abuse of the judicial system.

Why are the State Bar and the Academy of Trial Lawyers afraid of using scientific principles and methods in our courts? Why do they oppose the provision in this bill that would prohibit witnesses from being compensated based on the outcome of the case?

We urge the committee to again pass this legislation. It is fair to both parties in cases and will professionalize our judicial process.


FORWARD

LEAGUE OF WOMEN VOTERS®
OF WISCONSIN, INC.
122 State Street, #405 Phone: (608) 256-0827 http://www.lwvwi.org
Madison, WI 53703-2500 Fax: (608) 256-1761 lwvwisconsin@lwvwi.org

Opposing AB 121, Evidence of Lay and Expert Witnesses
Before the Assembly Committee on Corrections and Courts
Testimony by Caryl Terrell, LWVWI Legislative Committee
March 8, 2007

The League of Women Voters of Wisconsin promotes an open governmental system that is representative, accountable and responsive. Active citizens play an essential role in this government structure. We value protecting citizen's right to know and facilitating citizen participation in government decision making and the judicial system. The bill before you today works against these goals.

AB 121 limits evidence of lay and expert witnesses by unnecessarily restricting testimony in science and technical based court cases. AB 121 has a chilling impact, intimidating public testimony.

By barring valuable layperson testimony, AB 121 discredits the specialized experiences and knowledge of our citizens. Documented observations, surveys and trends analysis by a layperson should continue to be welcomed by the courts. They often provide the local context for scientific knowledge. Informed lay testimony can be very valuable to decision-makers and should not be barred.

There is no justification for departing from traditional procedure. Under existing procedures, opposing counsel is already able to discredit testimony that is on the fringe of what is considered mainstream research or experience.

AB 121 would also prohibit courts from hearing evidence arising out of emerging sciences. Informed lay testimony can be especially valuable in such cases.

The League urges the Committee on Corrections and Courts to oppose AB 121.


FORWARD

Wisconsin Coalition for Civil Justice

TO: Members, Assembly Committee on Corrections & Courts
FROM: Jim Hough, Legislative Director & Bill Smith, President

DATE: March 8, 2007

RE **Support for AB 121**

The Wisconsin Coalition for Civil Justice (WCCJ) has been at the forefront of seeking civil justice reform since the mid 1980's. The Coalition's broad based membership has as its goals a fair and equitable civil justice system in which "neither side" is advantaged by the "rules of the game" and a system that maximizes the ability to find the truth and resolve factual disputes.

Assembly Bill 121 is excellent legislation that fits into those goals and also brings Wisconsin in line with the federal system and the vast majority of states. This "common sense" expert opinion evidence bill will ensure that testimony admitted into evidence in Wisconsin will be credible and reliable; will be based on sound principles and methods; and will be presented by a true expert in his/her field.

The following are key points in support of passage of AB121:

- The standards incorporated in the bill are in effect in the entire federal system and 33 states.
- Expert opinion admitted into evidence under this bill would be reliable and based on a sound, analytical method.
- Such evidence would be required to be presented by a genuine expert.
- Adoption of this bill will prevent forum shopping; i.e. will discourage cases of questionable merit from being brought in Wisconsin because of weaker expert opinion evidence standards.
- Adoption of this bill will help to prevent overburdening Wisconsin state courts with cases based on "junk science."

WCCJ respectfully urges support for passage of AB 121.


FORWARD

WISCONSIN ECONOMIC DEVELOPMENT ASSOCIATION

TO: Members, Assembly Committee on Corrections & Courts

FROM: WEDA Board of Directors
Andy Lisak, President & Peter Thillman, James Otterstein,
Rob Kleman, Legislative Co-Chairs
Jim Hough, Legislative Director

DATE: March 8, 2007

RE: **Support for AB 121**

The Wisconsin Economic Development Association (WEDA) is a statewide association of approximately 400 economic development professionals whose primary focus is the support of policies that create a climate conducive to the retention, expansion and attraction of businesses in and to Wisconsin.

A state's liability system has a significant impact on its economic development. Economic growth is greatly affected by the kind of legal environment in which businesses must operate. Our litigation atmosphere in Wisconsin has diminished in recent years due, in part, to failure to enact changes such as those embodied in AB 121.

For those reasons, WEDA continues its long advocacy of civil justice reform that establishes a framework for resolving disputes that is fair to all litigants and discourages frivolous and costly litigation that is aimed at "finding someone to pay" rather than fairly finding the truth.

Wisconsin is currently among a distinct minority of states which do not require expert testimony to be reliable. This has led to some high profile cases being brought in Wisconsin because of the increased likelihood of obtaining a favorable verdict through the use of "junk science" and/or questionable "expert" credentials. This does not help our desire to promote a positive legal environment.

Assembly Bill 121 would correct this problem by joining the majority of the states in this country and the entire federal system in ensuring that expert testimony is the product of a reliable and sound analytical method and offered by a genuine expert in his or her field.

WEDA strongly supports AB 121 and respectfully urges recommendation for passage.


FORWARD

Civil Trial Counsel of Wisconsin CTCW

TO: Members, Assembly Committee on Corrections and Courts

FROM: CTCW Board of Directors
John Slein, President, & Mike Crooks, Immediate Past-President–
Jim Hough, Legislative Director

DATE: March 8, 2007

RE: **Support for AB 121**

The Civil Trial Counsel of Wisconsin (CTCW) is a statewide association of trial lawyers who specialize in the defense of civil litigation. CTCW members are strong believers in our civil just system and support legislation and changes in that system only where those changes promote fairness and equity.

Assembly Bill 121 is extremely important legislation that would achieve both fairness and equity for Wisconsin litigants. In 1993, the United States Supreme Court issued a monumental decision in the case of *Daubert v. Merrell Dow Pharmaceuticals.* The *Daubert* standards/principles articulated by the Court put an end to unreliable, unfounded expert testimony in the federal courts, and, subsequently, the courts of 33 states.

Unfortunately and ironically, Wisconsin is not among the states that have embraced and adopted the *Daubert* standards for expert opinion evidence. Unfortunate, because "expert opinion evidence" and "experts" in Wisconsin are not guaranteed to be either accurate or legitimate. Ironic, because Wisconsin's rules of procedure and evidence are based substantially on the federal rules. In fact, Wisconsin was the first state to adopt a Code of Evidence, based on the then "proposed" federal rules.

To insure fair and equitable trials and results, Wisconsin deserves no less than the standards articulated in *Daubert* and embodied in AB 121 that: 1) testimony be based on sufficient facts and data; 2) such testimony is a product of reliable principles and methods; and, 3) the principles and methods can be properly applied to the facts of the case.

CTCW respectfully urges you to recommend passage of AB 121.


FORWARD

WISCONSIN LAWYERS
STATE BAR of WISCONSIN® | EXPERT ADVISERS. SERVING YOU.

MEMORANDUM

To: Members of the Assembly Committee on Corrections and the Courts

From: State Bar of Wisconsin

Date: March 8, 2007

Re: Assembly Bill 121, relating to evidence of lay and expert witnesses-OPPOSE

The State Bar of Wisconsin urges you to **oppose** Assembly Bill 121, changing the Wisconsin Rules of Evidence to mirror the Federal Rules of Evidence.

Under state law, expert witness testimony is generally admissible if: (1) it is relevant (2) the witness is qualified as an expert and (3) the evidence will assist the jury in determining an issue of fact. The reliability of the evidence is a weight and credibility issue for the jury, and any reliability challenges are made through cross-examination or other means of impeachment.

By contrast, our federal trial courts assume a significant "gatekeeper" function in keeping from the jury scientific evidence that they determine is not reliable. The federal evidentiary reliability standard requires trial judges to become amateur scientists to rule on the admissibility of expert witness testimony. It demands an understanding by judges of the principles and methods that underlie scientific studies and the reasoning on which expert evidence is based. This is a task for which few judges are adequately prepared without a background in the sciences.

While Wisconsin courts do not make a direct determination as to the reliability of the scientific principles on which the evidence is based, they do play a limited gatekeeper function. Under state law, our courts may exclude relevant evidence on the grounds of prejudice, confusion or waste of time.

There is no evidence of a problem in Wisconsin with so-called "junk science." Injecting the federal rules on expert witness testimony into our state court system could have a profound impact on many areas of practice including family, environmental, labor and litigation. It also may dramatically affect criminal prosecutions. State prosecutors may find it more difficult to introduce testimony relying on the disciplines of psychiatry, DNA testing, fingerprinting and forensics.

Instituting the federal rules may also impair the efficient administration of justice and consume valuable judicial time and resources. Inevitably, Assembly Bill 121 would make trials more time-consuming and expensive, a serious consideration in light of the state's tough budget times and an uncertain economy.

The State Bar of Wisconsin believes the wide-ranging implications of this legislation are best weighed by our Wisconsin Supreme Court through its rule-making process. Our state's highest court, to which our state constitution gives superintending and administrative authority over all state courts, is the appropriate forum for considering the wisdom of following the present federal rules on experts or some other variant.

For these reasons, the State Bar of Wisconsin urges members of the committee to oppose AB 121.

State Bar of Wisconsin
5302 Eastpark Blvd. ◆ P.O. Box 7158 ◆ Madison, WI 53707-7158
(800) 728-7788 ◆ (608) 257-3838 ◆ Fax (608) 257-5502 ◆ Internet: www.wisbar.org ◆ Email: service@wisbar.org

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If you have any questions, please feel free to contact Lisa Roys, Public Affairs Director for the State Bar of Wisconsin, at (608) 250-6128.

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FORWARD

TED KANAVAS
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Passage of this bill will put Wisconsin in line with both federal courts and the vast majority of state courts in determining appropriate expert testimony in civil litigation.

Again, thank you for your consideration of this very important piece of legislation. This legislation is part of my economic development agenda, Invest Wisconsin 2.0. I therefore ask for your support of AB 121.

STATE CAPITOL
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FORWARD

Keeping Wisconsin Families Safe
www.watl.org

EXECUTIVE DIRECTOR
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Madison, Wisconsin 53703-2897
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Email: contact@watl.org

Testimony of Paul E. Sicula
on behalf of the
Wisconsin Academy of Trial Lawyers
before the
Assembly Courts and Corrections Committee
Rep. Garey Bies, Chair
on
2007 Assembly Bill 121
March 8, 2007

Good morning, Representative Bies and members of the Committee. My name is Paul E. Sicula, the legislative representative of the Wisconsin Academy of Trial Lawyers (Academy). On behalf of the Academy, I thank you for the opportunity to appear today to testify in opposition to Assembly Bill 121.

The Academy, established as a voluntary trial bar, is a non-profit corporation with approximately 1,000 members located throughout the state. The objectives and goals of the Academy are the preservation of the civil jury trial system, the improvement of the administration of justice, the provision of facts and information for legislative action, and the training of lawyers in all fields and phases of advocacy.

The Academy is devoted to advocating for the rights of the seriously injured in the State of Wisconsin. Its members are committed to insuring justice in the administration of tort law through the fair and efficient application of the Rules of Civil Procedure and the Rules of Evidence in Wisconsin courts. Assembly Bill 121 (AB 121) raises a serious issue with respect to the Rules of Evidence which is of great concern to members of the Academy and all those interested in

insuring that our courts are able to dispense justice efficiently and at a reasonable cost.

Wisconsin law stands firmly behind the principle of assisting the trier of fact and manifests abiding faith in the adversary system of justice. The admissibility of expert testimony in Wisconsin courts turns on three prime considerations: (1) the relevancy of the testimony, (2) the witness's qualifications, and (3) the helpfulness of the expert's testimony in determining a fact in issue. The "reliability" of the expert's evidence is itself an issue for the trier of fact and not a precondition of admissibility. Wisconsin judges, as "limited gatekeepers," have the power to exclude expert testimony when it is unhelpful or its probative value is substantially outweighed by other considerations. This relevancy-assistance standard has been used for twenty years.

AB 121 represents a sea change in the Wisconsin Rules of Evidence. Judges replace jurors in determining reliability of experts, becoming "gatekeepers" and "amateur scientists," triggering expensive, time-consuming, and confusing hearings on the admissibility of evidence.

Proponents raise the specter of "junk science" being introduced. What examples can the proponents of this legislation bring before Wisconsin's lawmakers of unreliable "junk science" that has been embraced by a Wisconsin jury when reaching its ultimate verdict? Those advocating for change in the evidentiary rules governing expert testimony have the burden of demonstrating a compelling need for such change and the superiority of proposed new measures. Further, they have a responsibility to convincingly explain why the legislative process, rather than the judicial rule making process, should be the forum for the consideration of these proposed changes.

Proponents have failed to meet their burden. We urge Representatives to reject AB 121 for the following reasons:

1. Its proponents have presented no evidence that Wisconsin's existing rules governing the admissibility of expert testimony, which are the product of 150 years of considered jurisprudence in this state, produce unfair or illogical results. If it isn't broke, don't try to fix it!!
2. Requests for change in evidentiary rules should be addressed by the Wisconsin Supreme Court under its rule-making authority, as they have in the past. As a separate and co-equal branch of government, the

judicial branch is charged with implementing the Rules of Evidence. Because they are supposed to be neutral in their application and impact, evidentiary rules are appropriately considered and established by the courts. They should not be politicized or become a proxy for so-called tort "reform."

3. Wisconsin courts have wisely considered and rejected the so-called *Daubert* standard [*Daubert v. Merrell Dow Pharmaceuticals,* 509 U.S. 579, 125 L.Ed.2d 469, 113 S.Ct. 2786 (1993)] adopted by the federal courts for determining the admissibility of expert testimony. Far from leading to greater efficiency and less expense, the federal approach has spawned days-long mini-trials on the admissibility of expert testimony, absorbing precious judicial resources and significantly increasing the cost of litigation.

4. All aspects of the legal system will be affected by this change. Criminal trials regularly use physicians, DNA analysts, and terminal ballistics specialists. Psychologists and social workers also regularly lecture juries on how sexual assault or physical abuse affects victims, defendants, and witnesses. While this measure seems targeted to personal injury lawsuits, commercial cases, environmental and family law all feature experts and will be impacted.

There are no discernable problems or anomalies that warrant wholesale reconsideration of a standard that has worked well for several decades. The standard for the admissibility of expert testimony in Wisconsin has worked effectively because it places the final determination of reliability where it belongs: in the hands of a jury of 12 impartial citizens as required by our State and Federal Constitutions.

The Wisconsin Academy of Trial Lawyers urges you to oppose AB 121.


FORWARD

STATE REPRESENTATIVE
Garey Bies
1ST ASSEMBLY DISTRICT
COMMITTEE ON CORRECTIONS AND THE COURTS

Memorandum

To: Members, Assembly Corrections and the Courts Committee

From: Rep. Garey Bies, Chair

Date: March 15, 2007

Re: Additional Testimony

Attached to this memo please find copies of additional comments submitted on Assembly Bills 57 and 121.

First for Wisconsin!

Capitol: P.O. 8952, Madison, WI 53708-8952 • (608) 266-5350 • Fax: (608) 282-3601
Toll-Free: (888) 482-0001 • Rep.Bies@legis.state.wi.us

Home: 2590 Settlement Road, Sister Bay, WI 54234 • (920) 854-2811

March 8, 2007

Corrections and Courts Assembly Chairman Representative Garey Bies,
Committee Members of the Corrections and Courts Committee
State Capitol
Madison, WI 53578

Subject: Proposed 2007 Assembly Bill 121

Dear Corrections and Courts Assembly Members,

I'm opposed to proposed 2007 Assembly Bill 121 for various reasons. My main reason of my opposition is that this Bill would limit knowledge of knowledge of scientific, technical, or other specialized knowledge provided in a court case as testimony. In my opinion, this repeat of an attempted Bill in the past is really an attempt to limit free speech.

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I urge you to oppose this Bill at the Committee level.

Sincerely,

Steve Books
211 S. 2nd St.
Mount Horeb, WI 53572
(608) 437-5478
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FORWARD

STATE REPRESENTATIVE
Garey Bies
1ST ASSEMBLY DISTRICT
COMMITTEE ON CORRECTIONS AND THE COURTS

Memorandum

To: Members, Assembly Corrections and the Courts Committee

From: Rep. Garey Bies, Chair

Date: March 29, 2007

Re: AB 121

Attached to this memo please find information for Assembly Bill 121 from the office of Rep. Suder about the *Daubert* case.

First for Wisconsin!

Capitol: P.O. 8952, Madison, WI 53708-8952 • (608) 266-5350 • Fax: (608) 282-3601
Toll-Free: (888) 482-0001 • Rep.Bies@legis.state.wi.us

Home: 2590 Settlement Road, Sister Bay, WI 54234 • (920) 854-2811

In *Daubert*, the Supreme Court ordered federal trial judges to become the "gatekeepers" of scientific evidence. Trial judges now must evaluate proffered expert witnesses to determine whether their testimony is both "relevant" and "reliable"; a two-pronged test of admissibility.

- The relevancy prong: The relevancy of a testimony refers to whether or not the expert's evidence "fit" the facts of the case. For example, you may invite an astronomer to tell the jury if it was a full moon on the night of a crime. However, the astronomer would not be allowed to testify if the fact that the moon was full was not relevant to the issue at hand in the trial.

- The reliability prong: The Supreme Court explained that in order for expert testimony to be considered reliable, the expert must have derived his or her conclusions from the scientific method. The Court offered "general observations" of whether proffered evidence was based on the scientific method, although the list was not intended to be used as an exacting checklist:
    - Empirical testing: the theory or technique must be falsifiable, refutable, and testable.
    - Subjected to peer review and publication.
    - Known or potential error rate.
    - Whether there are standards controlling the technique's operations.
    - Whether the theory and technique is generally accepted by a relevant scientific community.

Although trial judges have always had the authority to exclude inappropriate testimony, previous to *Daubert*, trial courts often preferred to let juries hear evidence proffered by both sides.[1] Once certain evidence has been excluded by a *Daubert* motion because it fails to meet the relevancy and reliability standard, it will likely be challenged when introduced again in another trial. Even though a *Daubert* motion is not binding to other courts of law, if something was found not trustworthy, other judges may choose to follow that precedent.

In *Daubert*, the Supreme Court ordered federal trial judges to become the "gatekeepers" of scientific evidence. Trial judges now must evaluate proffered expert witnesses to determine whether their testimony is both "relevant" and "reliable"; a two-pronged test of admissibility.

- The relevancy prong: The relevancy of a testimony refers to whether or not the expert's evidence "fit" the facts of the case. For example, you may invite an astronomer to tell the jury if it was a full moon on the night of a crime. However, the astronomer would not be allowed to testify if the fact that the moon was full was not relevant to the issue at hand in the trial.

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SIERRA CLUB
FOUNDED 1892

John Muir Chapter

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Testimony before the Assembly Committee on Corrections and Courts
Carla Klein, Chapter Director, Sierra Club – John Muir Chapter
OPPOSE AB 121

No Date

AB 121 Unfairly Limits Lay Testimony that Could Protect Clean Air and Water, Human Health and Safety, and Property Values

Expert Testimony:

By barring valuable layperson testimony, AB 121 discredits the specialized experiences and knowledge of Wisconsin citizens. There is no justification for this departure from traditional procedures, since under existing procedures opposing counsel are already able to discredit expert testimony that is on the fringe of what is considered mainstream research or experience.

AB 121 would also deter community involvement in administrative hearings that involve the public interest. Citizens often testify at these hearings about the localized impacts of a particular project, but AB 121 allows lawyers an opportunity to make continual objections to the citizen testimony. Not only will this serve to chill civic involvement, it will also add additional layers to administrative and court proceedings thus driving up the costs for everyone involved, including the agencies and courts.

The Sierra Club urges the Assembly Committee on Corrections and Courts to vote in opposition to AB 121.

Respectfully Submitted,

Carla Klein

Carla Klein, Chapter Director
Wisconsin Sierra Club


FORWARD

Weaker standard than [redacted] 33 other states.

—

Bring to meet federal standards

—

Have juries decide merits of case rather than the the question of witness credibility.

—

Not necessary, no citations of cases at circuit court level or supreme court level where junk science was included.

—

Insure that judicial system is relying on established scientific fact.

Found In AB 121 Folder

No Date

Amendment to remove criminal proceedings.