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Details:

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Criminal Justice (AC-CJ)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Assembly

Record of Committee Proceedings

Committee on Criminal Justice

Assembly Bill 365

Relating to: admitting prior testimony of a felony victim at a probation, parole, or extended supervision revocation hearing.

By Representatives Barca, Hixson, Turner, Seidel, Hraychuck, A. Williams, Gundrum, Berceau, Kleefisch, Wood, M. Williams, Gunderson and Petrowski; cosponsored by Senators Plale, Wirch, Hansen, Lassa and A. Lasee.

August 06, 2009 Referred to Committee on Criminal Justice.

September 3, 2009 **PUBLIC HEARING HELD**

Present: (9) Representatives Turner, Staskunas, Hraychuck, Soletski, Pasch, Kleefisch, Kramer, Brooks and Ripp.

Absent: (2) Representatives Kessler and Friske.

Appearances For

- Peter Barca, Madison — State Representative
- Sandra Bertelle, Kenosha — Kenosha County Victim-Witness Program

Appearances Against

- None.

Appearances for Information Only

- None.

Registrations For

- Casey Perry, Green Bay — Wisconsin Trooper's Association
- Jeff Plale, Madison — State Senator

Registrations Against

- None.

Registrations for Information Only


- None.

October 1, 2009 **EXECUTIVE SESSION HELD**

Present: (10) Representatives Turner, Kessler, Staskunas,
Hraychuck, Soletski, Pasch, Kleefisch, Friske,
Kramer, Brooks.
Absent: (1) Representative Ripp.

April 22, 2010

Failed to pass pursuant to Senate Joint Resolution 1.



Nancy McAdams
Committee Clerk



Milwaukee POLICE Association

Local #21 IUPA-AFL-CIO



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Michael V. Crivello

Troy K. Jankowski

July 29, 2009

Representative Peter Barca
State Capitol
Room 107N
PO Box 8952
Madison, WI 53708

Dear Representative Barca:

On behalf of the approximately 1,700 law enforcement officers in the Milwaukee Police Association (MPA) please accept this correspondence as support for LRB2255, which would allow for a felony victim's testimony from a preliminary hearing where probable cause is found to be reused as a probation, parole or extended supervision hearing for a defendant who was already serving a previous sentence.

Currently the victim of a felony offense has to testify at a preliminary hearing and within a few weeks has to testify at the same suspect's revocation hearing. In the County of Milwaukee the hearings are usually held in the Secure Detention Facility. This means that the victim is sitting in a 6'x8' room, just a few feet from the suspect that committed the offense against them. This bill would reduce the trauma of the victim, and avoid having the victim repeat their testimony again and again.

The MPA supports this legislation for the above stated reasons. We believe that this legislation would benefit the victim of serious and sometimes sensitive criminal offenses from unnecessarily testifying multiply times.

Sincerely,

Milwaukee Police Association

Thomas E. Fischer
Vice President
MPA, Local #21, IUPA, AFL-CIO

TEF/lg

AB 365



George, Lorna

From: Egerer, Matt
Sent: Friday, July 31, 2009 4:45 PM
To: George, Lorna
Subject: Victim Witness Bill to Criminal Justice

AB 365

Lorna,
We have been told by the Speaker's office that the Victim Witness bill, LRB 2255, will be referred to your committee. Peter asked me to ask your office when it may be possible to get the bill scheduled for a public hearing. Please let me know what Bob's thoughts are on this.

Thanks,

Matt Egerer
Office of Representative Peter Barca
608.266.5504

Bob, 8/10
New bill.
FYI.

N

We saw this
score



McAdams, Nancy

From: Egerer, Matt
Sent: Monday, August 10, 2009 4:14 PM
To: McAdams, Nancy
Subject: RE: Meeting with Capitol Police Chief Tubbs

AB 365
Folder

Nancy,

That sounds great. I think Peter wanted to meet with them given Tubbs' local connection to Racine, and also I know that he also has had sort of on-going problems with how parking is handled. Will he be available prior to the hearing, or would the end of the day be better?

Also, I'd been talking with Lorna about this bill, but Peter was also hoping to get a public hearing soon on the Victim Witness Testimony bill that Peter and Bob are authoring – that is LRB 2255 (I don't believe it has a bill number yet). We were promised by the Speaker's office that it would be referred to your committee.

Thanks,

Matt Egerer
Office of Representative Peter Barca
608.266.5504

From: McAdams, Nancy
Sent: Monday, August 10, 2009 1:33 PM
To: Egerer, Matt
Subject: Meeting with Capitol Police Chief Tubbs

Hi Matt,

I spoke with Bob about Peter's request to meet with Bob and Chief Tubbs. Bob said that if the subject matter was the parking ticket problem, that is already taken care of. However, if Peter would like to meet with Bob and Chief Tubbs for a general courtesy call meeting, that would be fine. However, Bob would like to schedule it on a day when he otherwise has to be in Madison. The next day I know he will be here is Thursday, August 20th. He will be chairing a Criminal Justice meeting beginning at 10:00 a.m. that day.

Nancy

Nancy McAdams
Office of State Rep. Robert Turner
223 North Capitol
P.O. Box 8953
Madison, WI 53708-8953
Phone: 608-266-0731
Fax: 608-282-3661



McAdams, Nancy

From: McAdams, Nancy
Sent: Thursday, August 13, 2009 9:33 AM
To: Rep.Barca; Egerer, Matt
Cc: Rep.Turner; George, Lorna
Subject: Victim Witness Bill

Dear Rep. Barca and Matt:

I just wanted to let you know that Bob is planning on having a hearing on September 3 for this bill (AB 365), if that works for you. It is the Thursday before Labor Day weekend, but the other day the Committee is scheduled to meet in September is Thursday, the 17th, and we may be in session that day. Please let me know if this date is ok and we will notice the hearing shortly after our August 20th hearing. Thank you!

Nancy McAdams
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AUG 17 2009

SCHWARTZ, TOFTE & NIELSEN, LTD.
ATTORNEYS & COUNSELORS

THOMAS P. TOFTE
CERTIFIED CIVIL LAW ADVOCATE
MARK F. NIELSEN
CERTIFIED CRIMINAL LAW ADVOCATE
CIRCUIT COURT COMMISSIONER

Representative Robert Turner
State Capital, Room 223 North
P.O. Box 8953
Madison, WI 53708

August 14, 2009

AB 365
Folder

Dear Representative Turner,

I read with some concern that you are proposing legislation to allow preliminary hearing testimony to be admitted at probation hearings in lieu of the testimony of the live witness. I appreciate your desire to accommodate the concerns as expressed by the Kenosha District Attorney's victim unit. However, I wonder if you are aware of two critical defects with preliminary hearing testimony:

First, cross examination at the preliminary hearing is conducted "blind," with minimal opportunity for preparation. The defendant has no access to discovery (police reports and witness statements) prior to a preliminary hearing. This means that he or she has no idea of whether the witness is contradicting or varying from previously given statements, nor what the context of the case is (for instance, what other witnesses say they observed). Further, the preliminary hearing on someone with a probation hold will be held within ten days of the issuance of charges. This means there is no opportunity to do private investigation.

Second, credibility is not an issue at a preliminary hearing. A defendant who attempts to ask a witness questions designed to show bias, prejudice or interest (fundamental questions at a hearing on the merits) will be ruled out of order at a preliminary hearing. This restriction applies to preventing the defendant from asking such more mundane matters as whether the witness was intoxicated at the time of the observations or perhaps not wearing necessary corrective lenses.

It certainly is inconvenient to be a witness in a criminal proceeding and related supervision proceedings. However, it must always be remembered that the price of a strict approach to criminal punishment is a principled adherence to fair procedures in determining guilt or innocence on the violation. Perhaps your bill should require that in order to use the preliminary hearing examination as later evidence, the DA should have to file of notice of the intention to do so and be required then to provide prehearing discovery with broader cross examination rights at the preliminary hearing.

I appreciate your willingness to consider my views on this matter.

Sincerely,
SCHWARTZ, TOFTE & NIELSEN, LTD.

Mark F. Nielsen

MFN/bl





Robert Turner

STATE REPRESENTATIVE
TO THE 61ST ASSEMBLY DISTRICT

August 19, 2009

Mr. Mark F. Nielsen
Schwartz, Tofte & Nielsen, Ltd.
704 Park Avenue
Racine, WI 53403-1234

Dear Mark:

Thank you for your letter regarding Assembly Bill 365, relating to admitting prior testimony of a felony victim at a probation, parole, or extended supervision revocation hearing. This bill is co-authored by Representative Peter Barca and Senator Jeff Plale, and I am a co-sponsor of Assembly Bill 365.

I appreciate the salient points you have raised in your letter, and I wanted you to know I will distribute a copy of your letter to the Criminal Justice committee members on September 3rd, when the Committee will be hearing this bill. I also invite you to attend the hearing and testify in person, so that committee members will have the opportunity to ask questions and that may be generated by the discussion on this legislation.

Again, thank you for your valuable input on this bill.

Sincerely,

Robert L. Turner
STATE REPRESENTATIVE
Chair, Assembly Criminal Justice Committee

RLT/nam

Cc: Rep. Peter Barca
Sen. Jeff Plale







Wisconsin Troopers' Association

Casey Perry – Executive Director

Glen Jones – President

2099 Ironwood Drive, Green Bay, Wisconsin 54304-1972

Phone: (Toll Free: 1-800-232-1392) Fax: (Toll Free: 1-800-232-1392)

<http://www.wi-troopers.org/>

TO: Representative Bob Turner, Chair
Members, Assembly Committee on Criminal Justice

FR: Casey Perry, Executive Director
Wisconsin Troopers' Association

DA: September 3, 2009

RE: Support for AB 365, legislation admitting prior testimony of a felony victim at a probation, parole, or extended supervision revocation hearing.

On behalf of the nearly 500 members of the Wisconsin Troopers' Association (WTA), thank you for the opportunity to submit this letter of support for AB 365. We are grateful to Representative Barca for his leadership in bringing this issue forward on behalf of victims of criminal offenses.

The WTA supports this legislation which would allow for felony victim testimony from a preliminary hearing to be reused at a subsequent probation, parole, or extended supervision hearing for a defendant who was already serving a previous sentence.

Current law requires a victim to testify at a preliminary hearing regarding the felony and then, within a short time period, must testify again at the revocation hearing. By reusing recorded testimony, victims are shielded from the trauma of having to recount the actions of the offender any more than absolutely necessary. It will also help prevent the possibility of having to face or be in close proximity to their offender.

The WTA fully supports AB 365, common-sense legislation that adheres to the priority of protecting victims in all circumstances.

Feel free to contact Annie Early at 414-405-1050 with any questions or concerns about our position. Thank you.





September 3, 2009

Assembly Committee on Criminal Justice

Assembly Bill 365

Representative Peter Barca

Chairman Turner and members of the Assembly Committee on Criminal Justice, thank you for holding a public hearing on Assembly Bill 365, which would protect felony victims by limiting their exposure to the accused during certain criminal proceedings by allowing testimony to be readmitted at later hearings.

Throughout the course of criminal proceedings, a victim of a crime is often required to testify multiple times against the accused. In many instances, rather than simply readmitting the previously delivered testimony, the victim must also testify at a revocation hearing because the accused person was already on probation, parole, or extended supervision.

This proposal would allow for testimony taken from a felony victim at a preliminary hearing to be used in a subsequent revocation hearing in cases where the defendant was already serving a previous sentence. Under the bill, if a party can show good cause for requiring the victim to appear, the victim could still be forced to testify again.

Assembly Bill 365 comes at the urging and request of the Kenosha County Victim Witness coordinators and the Kenosha District Attorney's Office. Based on their hands-on experience assisting crime victims through this difficult process, they believe that this change would extend an important additional protection for victims during a very challenging time.

Revocation hearings are far less formal than a traditional courtroom setting and held in close confines. The accused sits only a few feet across the table from the victim. Being forced to offer the same testimony can be traumatic for victims of more sensitive crimes, as they are asked to publicly relive the details of the event once again. This will be especially helpful in protecting victims that are children.

If a state court has already established 'probable cause' based on the victim's sworn testimony, it should be sufficient to be introduced as evidence in a later administrative hearing before the Department of Corrections. This proposal is a very reasonable attempt to relieve some of the burden of repeating painful testimony that has already been deemed credible.

With this bill, we can avoid re-victimizing the victim by reducing the injured person's exposure to his or her attacker. The opportunity to avoid unnecessarily forcing victims to retell their story under such trying conditions represents a significant step towards protecting victims.

Identical legislation to Assembly Bill 365 passed the Assembly in the previous session with the support of the Wisconsin Sheriffs and Deputy Sheriffs Association, the Wisconsin Troopers Association, and the Milwaukee Police Association.

Thank you for your time today and I would appreciate your support when Assembly Bill 365 comes for a vote before this committee.



Bob, FYI

McAdams, Nancy

From: McAdams, Nancy
Sent: Wednesday, September 16, 2009 4:32 PM
To: Egerer, Matt
Subject: RE: Assembly Bill 365

Thanks Matt. I'll give this info to Bob and he can get in touch with Peter if he wants more assurances. Thank you for getting back to me.

Nancy

From: Egerer, Matt
Sent: Wednesday, September 16, 2009 4:29 PM
To: McAdams, Nancy
Subject: RE: Assembly Bill 365

I'm sorry I don't have a final answer yet - Peter was polling members on the floor; I'll try to get his attention to get a final result. But we are fairly confident the votes are there - Kessler and Staskunas voted it out of the Judiciary Committee in 2006; you, and Hraychuck, and Kleefisch are co-sponsors, we believe all the republicans will vote for it, and we have no reason to believe the other dems will vote against it. Worst case scenario it should pass with 2 dems and 5 gop.

But if you want a final tally I will try to get that to you ASAP.

Matt Egerer
Office of Representative Peter Barca
608.266.5504

From: McAdams, Nancy
Sent: Wednesday, September 16, 2009 3:57 PM
To: Egerer, Matt
Subject: Assembly Bill 365

Hi Matt,

I know you're very busy today, but I would like to get the exectutive session notice out tomorrow for the above bill. Have either you or Peter talked to any of the committee members about their votes on this bill?

Nancy

Nancy McAdams
Office of State Rep. Robert Turner
223 North Capitol
P.O. Box 8953
Madison, WI 53708-8953
Phone: 608-266-0731
Fax: 608-282-3661



McAdams, Nancy

From: Egerer, Matt
Sent: Wednesday, September 30, 2009 9:18 AM
To: McAdams, Nancy
Subject: AB 365

Hi Nancy,

Peter wants to pull AB 365 off of the exec on Thursday. We are working on alternatives and hoping we can find something the Senate will like more. We just need a little more time, and Thursday is looming too close.

Thanks for all of your help on this,

Matt Egerer
Office of Representative Peter Barca
608.266.5504



McAdams, Nancy

From: Ramirez, Adrienne
Sent: Wednesday, September 30, 2009 11:19 AM
To: McAdams, Nancy
Subject: FW: LRB 09s0136 Topic: Testimony of victim at revocation hearing

Attachments: LRB s0136_1

Nancy –

ASA 1
to AB 365

Rep. Staskunas has an amendment to AB 365 for tomorrow's Executive Session.
I have attached a copy of the amendment for distribution to the committee members and Leg Council.

Adrienne
Office of Rep. Tony Staskunas

From: Basford, Sarah
Sent: Wednesday, September 30, 2009 8:10 AM
To: Rep.Staskunas
Subject: LRB 09s0136 Topic: Testimony of victim at revocation hearing

The attached proposal has been jacketed for introduction.

A copy has also been sent to:



09s01361.pdf (27 KB)



McAdams, Nancy

From: McAdams, Nancy
Sent: Tuesday, October 06, 2009 2:30 PM
To: Egerer, Matt
Subject: RE: AB 365

Sounds like a plan. I will let Bob know.

Nancy

From: Egerer, Matt
Sent: Tuesday, October 06, 2009 2:29 PM
To: McAdams, Nancy
Subject: RE: AB 365

Thanks Nancy, we are in the midst of trying to figure out an amendment that can make everyone happy, but unfortunately I don't know that we will be ready that soon. I think we will hold off for now, and we will let you know when we are ready with our amendment

Thanks again,

Matt Egerer
Office of Representative Peter Barca
608.266.5504

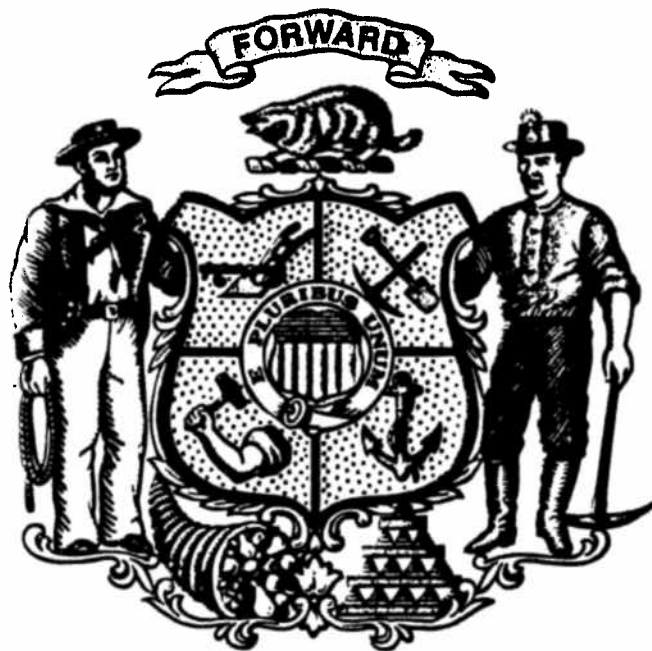
From: McAdams, Nancy
Sent: Tuesday, October 06, 2009 2:26 PM
To: Egerer, Matt
Subject: AB 365

Hi Matt:

I just wanted to let you know that the Criminal Justice Committee is holding another executive session on October 15th. Bob is willing to add Peter's bill if you are ready to do so. I would like to know by Friday, October 9th, at the latest. Otherwise it may be at least a month or so until the next Criminal Justice Committee meeting.

Nancy

Nancy McAdams
Office of State Rep. Robert Turner
223 North Capitol
P.O. Box 8953
Madison, WI 53708-8953
Phone: 608-266-0731
Fax: 608-282-3661



1/4 Bob, FYI. N.

McAdams, Nancy

From: Egerer, Matt
Sent: Wednesday, December 30, 2009 10:08 AM
To: McAdams, Nancy
Subject: RE: AB 365

Nancy,

We have reached out to the state prosecutors and various defense attorneys for other ways to approach this that Sen. Taylor could support. The bill will not be ready in time for a Jan. 21 hearing as we continue to work on this.

I'll let you know when we reach some consensus.

Thanks,

Matt Egerer
Office of Representative Peter Barca
608.266.5504

From: McAdams, Nancy
Sent: Monday, December 28, 2009 11:26 AM
To: Egerer, Matt
Subject: AB 365

Matt,

Could you please get me up to speed on the negotiations with this bill? The Criminal Justice Committee will be holding an exec sometime in January and I just wondered if Rep. Barca would be interested in having his bill on the agenda. The most likely date is January 21st. If we are in session that day, we will hold it early, before session starts.

Nancy

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