



# TODD NOVAK

STATE REPRESENTATIVE • 51<sup>ST</sup> ASSEMBLY DISTRICT

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October 8, 2015

Thank you Mr. Chairman for allowing me to testify on AB357. Currently under state statutes, anyone who throws or expels a bodily fluid substance at or toward an emergency medical technician, a first responder, a law enforcement officer, a fire fighter, or a person operating or staffing an ambulance is guilty of a Class I felony. AB357 would also add a district attorney, a deputy district attorney, an assistant district attorney or a special prosecutor who is appointed, to the bodily fluid statute.

I authored this bill because of concerns I was hearing from district attorneys about a problem that is becoming more and more common in the courtroom, the problem being that some defendants are spitting at prosecutors in the heat of the moment when they are in court. Under current law the most someone can be charged with is a disorderly conduct charge under these circumstances.

This bill really brings prosecutors in line with other public safety officials. They are on the frontlines just like those others facing some of the most dangerous and vile criminals. As a result they are a target for this disgusting activity. It is a common sense proposal that recognizes we won't tolerate this type of misconduct against prosecutors just like we do for others under current law.

I've heard stories from prosecutors; such as a district attorney who in his first three years in office was spit at three times, or another district attorney who said he was spit on by a defendant as he was getting on the elevator after court. These instances are becoming more and more common.

Dodge County District Attorney Kurt Klomberg who is here, will also be testifying for this bill and he has even more specific situations that he has been involved in. Kurt has been on the forefront of pushing for this bill on behalf of district attorneys across the state. Our prosecutors have a tough enough job and deal with all types of people and they should have added protection in these situations. This bill addresses that by making it a felony to spit on a prosecutor instead of a simple disorderly conduct charge.

AB357 has the support of the Attorney General and Department of Justice along with the Wisconsin Chiefs of Police Association, Association for State Prosecutors and the Wisconsin District Attorneys Association. I ask for the support of this committee on what I feel is a common sense bill to address a disgusting offense.

Thank you.

Representative Todd Novak  
51<sup>st</sup> Assembly District

# OFFICE OF THE DISTRICT ATTORNEY

Kurt F. Klomberg, District Attorney

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October 07, 2015

Wisconsin Assembly Committee on  
Criminal Justice and Public Safety  
Rep. Joel Kleefisch, Chair

**RE: 2015AB357 Throwing or Expelling a Bodily Fluid on a Prosecutor**

Representatives:

I am writing in support of 2015AB357. As of the writing of this letter, the Association of State Prosecutors, the Wisconsin Chief's Association and the Wisconsin District Attorney's Association have all registered in favor of the bill. As a District Attorney in a county with several adult corrections institutions I see the need for this protection.

Dodge County has 4 adult institutions (Waupun Correctional, Dodge Correctional, Fox Lake Correctional and the Burke Center). Inmates are repeatedly assaulting guards at these institutions by throwing or expelling a bodily substance on the guards. Most of these incidents occur at the 2 maximum security institutions in Dodge County (Waupun Correctional and Dodge Correctional). Such an assault is prosecuted under 946.43(2m). Section 946.43(2m) only protects officers, employees, visitors and inmates of institutions. Its protections are not applicable to prosecutors handling criminal cases.

Since 1/1/2010, Dodge County has filed 70 cases under 946.43(2m), several of those cases involved multiple victims. Most of these cases involved numerous court hearings. Those hearings necessitate close contact between the inmate and prosecutor. The prosecutor is very vulnerable to as spitting or other discharging attack during court proceedings.

In 2007 in Dodge County, while waiting for his hearing to begin, an inmate covered his body in his own feces. The guards warned that he was likely to spit feces in court if not placed in a spit mask. Had the defense attorney not alerted the court to the situation, no precautions would have been taken.

This year another inmate being prosecuted in 5 separate cases involving throwing urine, feces and saliva on guards (7 total victims) repeatedly acted out in court. During the prosecutor's closing argument to the jury (in the 2<sup>nd</sup> trial), the inmate spit repeatedly

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... onto a piece of paper and threw it at the prosecutor striking him in the shoulder. This inmate will have three more trials early next year.

The proposed change adding protections for prosecutors under the law enforcement throwing or expelling bodily substances protections is simple, and necessary. Prosecutors are extremely vulnerable to these kind of attacks in the court room and often cannot maintain the situational awareness necessary to reduce the potential while maintaining appropriate focus on the litigation at hand.

The existing protections to public safety workers and prison guards under the existing statutes was born out of a realization that many of the potentially offending individuals have communicable diseases that can be passed through saliva and other bodily substances. While being spat upon is immediately disturbing and revolting, the potential long-term consequences for prosecutors and their families more than justifies this smart and simple change in the law.

I respectfully recommend that you support this important protection for Wisconsin's prosecutors.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kurt F. Klomberg', with a long horizontal flourish extending to the right.

Kurt F. Klomberg  
Dodge County District Attorney