

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3551/1dn

RLR:rs:jf

September 18, 2001

Representative Suder:

This bill may violate the privileges and immunities clause of the 14th Amendment to the United States Constitution, which prohibits a state from making or enforcing any law that abridges the privileges and immunities of citizens of the United States. One of the privileges of a United States citizen is the right to travel freely to all of the states. Certainly this right to travel may be restricted if a person is arrested for or charged with a crime, but it is possible that the provision of this bill, criminalizing the act of fleeing to Wisconsin with the intent to avoid prosecution, impermissibly violates the privileges and immunities clause, because it chills the right of a person who has not been arrested or charged with a crime to travel to Wisconsin.

Perhaps the element of the crime requiring that a person have intent to avoid prosecution is sufficient to uphold the restriction on the right to travel freely between the states. However, courts may find that the purpose of the bill, presumably to protect public safety, is insufficient to restrict the right to travel, because both the state of origin and the receiving state already have sufficient means for protecting public safety. The uniform law on extradition allows Wisconsin to arrest and extradite any person who has been charged with committing a crime in another state upon the request of the other state. Furthermore, the intent to avoid prosecution may be only a secondary motivation for a person to come to Wisconsin. This bill would penalize a person who has not been charged with a crime in another state from coming to Wisconsin for employment, if part of the person's motivation for coming to Wisconsin is to avoid prosecution for a sex offense.

This bill is a redraft of 1999 Senate Bill 29, which in turn was a redraft of 1997 Senate Bill 515. 1997 Senate Bill 515 was based on a California statute (section 289.5). I have not found any case law that addresses the constitutionality of the California law.

To address the possible violation of the privileges and immunities clause, this bill could instead be drafted to limit the application of the bill to persons who have been arrested for or charged with a serious sex offense in another jurisdiction. However, if your intent is to cover flight during a criminal investigation, or even before law enforcement is aware that a crime has been committed, then I suspect that you will find this solution too narrowing.

As a practical matter, the prohibition against coming to Wisconsin or staying in Wisconsin with the intent to avoid prosecution may not be a useful tool to prosecutors,

because a person can be prosecuted under this prohibition only if the state where the person is charged declines to have the person extradited. If the other state does not find it worthwhile to extradite the person for a sex offense, the reason might be that the other state does not have a sufficient case against the person. This might make it difficult for Wisconsin to prove that the person came to Wisconsin to avoid prosecution.

Robin Ryan
Legislative Attorney
Phone: (608) 261-6927
E-mail: robin.ryan@legis.state.wi.us