

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)

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Name:

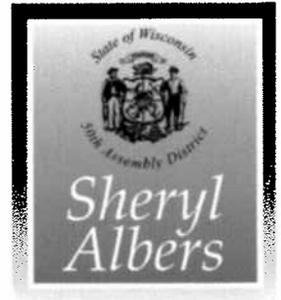
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April 2, 2007

Representative Garey Bies
Chair, Assembly Committee on Corrections and Courts
Room 125 West
State Capitol

Dear Representative Bies;

I am writing today to respectfully request that you hold a public hearing on Assembly Bill 92. AB 92 relates to battery occurring during a riot. This is an important piece of legislation that will provide District Attorneys one more tool to use in prosecuting violent crimes in which state prison employees become victims.

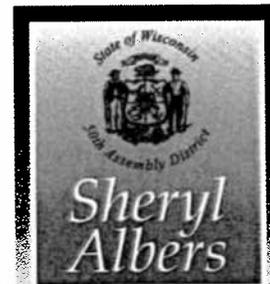
Thank you for your attention to this matter. Please feel free to contact me with any questions you may have regarding AB 92.

Sincerely,

Sheryl K. Albers
State Representative

/tg





Testimony of Rep. Sheryl Albers
AB 92 – Battery during a prison riot
Assembly Committee on Corrections and Courts
May 3, 2007

Good morning Chairman Bies and Committee Members. Thank you for holding a public hearing on Assembly Bill 92 relating to committing battery during a riot.

In 2004 a tragedy occurred at the New Lisbon State Prison the magnitude of which is still impacting state corrections officers, some of whom you will hear from today. To describe the 2004 riot as tragic is simply not enough. State employees were seriously injured and still suffer from physical injuries, from Post Traumatic Stress Syndrome, and one is now deceased. State employees who work the halls of our state prison facilities live with the knowledge that a riot can, and likely will, occur at any given moment. A strong dose of stress faces these state employees every minute of their shift. Over the years we know of numerous disturbance and riot type activity in our state prison facilities – and these disturbances occur for a host of reasons – you may recall one of the worst events at Waupun in 1983 where hostages were taken and serious injuries to state employees occurred. And in the 90's we dealt with disturbances again in Waupun, Green Bay, and Jackson and certainly other minor disturbance occur more frequently.

Assembly Bill 92 is an effort to strengthen current law. It is a crime for a prisoner to cause bodily harm intentionally - to commit battery - against an

officer and others employed, residing in or visiting within a prison or other type of detention facility. We have stiff penalties on the books right now, but we don't address the situation of a riot specifically and we must include this in our law.

The prison riot that occurred in New Lisbon prompted new safety measures to be put in place in the state prison system. The attacks on state correctional officers by six prisoners who put locks from their personal possession boxes in their socks, and collectively pursued a takeover of an area in the prison prompted this legislation.

In this bill any person who commits an offense as part of a riot – which is defined as any disruptive behavior causing a risk of injury or death to any person or damage to property – will be subject to a minimum term of three years in prison. This punishment will run consecutively [in addition] to any prison term already being served.

As I have been preparing testimony for this hearing today several individuals have contacted me regarding the language we drafted in AB 92. It is evident that we have an important aspect of this proposal that must be added and I will be working with the drafter to craft an amendment to clarify that “an inmate attempting to incite others to participate in an action contrary to institution order will suffer the same penalty as those actually committing the crime”. In other words if an inmate starts the chatter with fellow inmates, plants the seeds of opportunity to riot in the minds of others, even if

they are not the ones slinging the locks in the socks – or whatever horrible device they choose to invoke, they too will suffer the penalty of this law. I think, after lengthy discussion that it is imperative that we address this portion of the bill and fortunately the legislative process allows for contemplative effort by its members so as to provide the strongest policy possible.

Committing battery is a horrible crime. Committing battery during a prison riot and causing bodily harm to state employees and others within the prison facility – despite strong statutory language against such acts – is unconscionable.

I am appreciative of the state employees who have come today to testify in support of AB 92 and I want each of you to know that I will continue to work to see that we have as strong a bill as possible when we are finished with this process; thank you for being here today.

Thank you for holding this hearing; I look forward to working with the committee to make some positive changes to this bill and then to move it on for full assembly consideration this month.



Nowlan, Andrew

From: Griffiths, Terri
Sent: Wednesday, May 09, 2007 11:17 AM
To: Nowlan, Andrew
Subject: Alvin Kenny PSI, 05-CF-143

Andrew,

Rep. Albers thought this information might be interesting for committee members to have in support of AB 92.

Terri

-----Original Message-----

From: Southworth, Scott - DAIT
Sent: Friday, May 04, 2007 4:13 PM
To: Fitzgerald, Chasity R - DOC
Cc: Armentrout, Paula C - DOC; Frank, Matthew J - DOC; Raemisch, Rick F - DOC; Albers, Sheryl; Lundquist, Timothy C - DOC
Subject: PRINTED- Alvin Kenny PSI, 05-CF-143

Agent Fitzgerald:

I just received a copy of the PSI for Alvin Kenney, 05-CF-143, and can only say I am shocked and disappointed that you only recommend 2 years of initial confinement time followed by 1 year of extended supervision. This recommendation reflects only 1/2 of the time available for one of the four counts of Battery by Prisoners for which he was convicted. He has never - ever - accepted responsibility for his role in the violent riot at the New Lisbon Correctional Facility, which injured many of your staff members. Kenney also forced the State to go through a three-day jury trial at an extraordinary expense to Juneau County - a poor county struggling to make ends meet with very few resources.

I would expect this type of a recommendation for a prison fight between two inmates, but not for such a brutal attack on DOC staff. The bottom line? This defendant - with a long and violent record - deserved a recommendation for the maximum sentence of 3 years IC x 3 years ES on at least one count.

My office worked extremely hard to obtain convictions and tough sentences for the prison riot cases. Two of the co-defendants - Benard Treadwell and Jamie Vest, received sentences of 18 and 16.5 years of consecutive prison time, respectively, based upon plea agreements without any PSI. One defendant - Lawrence Williams - was just sentenced (joint sentencing recommendation) to 2 years prison (1 IC x 1 ES) for taking a swing at a corrections officer at the end of the riot (i.e. he never actually hit anyone). Kenney was observed stomping on DOC officers - even you acknowledge that Kenney was viewed "beating and kicking" someone - yet, you and your supervisor apparently decided that this level of violence warrants only two years of confinement? That's an incredibly weak message to other inmates and the staff who work at our institutions. I'm now relieved that we did not go to trial on the other cases, as I suspect the likely recommendation from the DOC would have garnered far less prison time than I negotiated.

It just shocks me that the DOC would slap its own employees in the face with such a light sentencing recommendation. If the efforts of my office to hold inmates at NLCI accountable for riots against DOC staff members is going to result in this type of recommendaiton, I can only hope the Legislature will soon enact tough, mandatory minimum sentences for prison riots and eliminate the DOC's discretion in making recommendations for these types of cases.

Sincerely,

Scott Harold Southworth
District Attorney

Juneau County





Memorandum

To: Members, Assembly Corrections and the Courts Committee

From: Rep. Garey Bies, Chair

Date: October 2, 2007

Re: AB 92

Attached to this memo, please find a copy of an amendment to AB 92 that will be considered in executive action on Thursday, October 4.

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





Memorandum

To: Members, Assembly Corrections and the Courts Committee

From: Rep. Garey Bies, Chair

Date: October 4, 2007

Re: AB 92

This memo is to let committee members know that at the request of the author, the committee will not take action on Assembly Bill 92 today. The author intends to make further changes to the bill through a substitute amendment, a copy of which is attached to this memo. Also attached please find a copy of emails from the author's office relating to the sub. AB 92 will be scheduled for executive action at a subsequent committee meeting.

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

W: substitute amendment

Griffiths, Terri

From: skalbers [skalbers@rucls.net]
Sent: Thursday, October 04, 2007 12:26 AM
To: scott.southworth@us.army.mil
Cc: Simatic, Kurt; Griffiths, Terri
Subject: RE: substitute amendment

heryl,

he substitute amendment looks great - it's easy to read, easy to understand and it's clear that we won't tolerate prison riots in Wisconsin. Somebody could try to argue that it's not germane because it includes someone who participates in a riot but does not actually harm anyone (Party to the Crime or directly). However, the substitute addresses prison riots and the penalties for participating in a riot - the express nature of the original bill.

Note that the drafter upgraded the definition of "riot" in the substitute based upon my expressed concerns over ensuring prisons were actually covered. Even if the substitute itself doesn't pass, the definition from the substitute should be the one used in the final version of the bill.

Griffiths, Terri

From: Hurley, Peggy
Sent: Wednesday, October 03, 2007 3:06 PM
To: Griffiths, Terri
Subject: RE: LRB 07s0142 Topic: Participating in a prison riot

I'm not sure what you mean. Are you asking if your substitute amendment is germane to your bill? I believe it will be, although the scope and focus are different. The underlying bill's relating to clause is "relating to battery that occurs during a riot" and the substitute amendment creates a bill that prohibits participating in a riot and lays out penalties for battery that occurs during a riot.

From: Griffiths, Terri
Sent: Wednesday, October 03, 2007 3:02 PM
To: Hurley, Peggy
Subject: FW: LRB 07s0142 Topic: Participating in a prison riot

Peggy,

Is this germane to the bill?

From: Basford, Sarah
Sent: Tuesday, October 02, 2007 3:08 PM
To: Rep.Albers
Subject: LRB 07s0142 Topic: Participating in a prison riot

The attached proposal has been jacketed for introduction.

A copy has also been sent to:

<< File: LRB s0142_1 >>



JUNEAU COUNTY DISTRICT ATTORNEY'S OFFICE

Juneau County Justice Center
200 Oak Street
Mauston, WI 53948
Phone (608)847-9314 / Fax (608)847-9320

District Attorney
SCOTT HAROLD SOUTHWORTH
Victim / Witness Coordinator
MICHELE MEHNE

Assistant District Attorneys
JOHN NEWTON
STACY A. SMITH

October 26, 2007

BY U.S. MAIL AND E-MAIL

State Representative Garey Bies
1st Assembly District
P.O. Box 8952
Madison, WI 53708

State Representative Joseph Parisi
48th Assembly District
P.O. Box 8953
Madison, WI 53708

Re: Inmate Riot Legislation – 2007 AB 92

Dear Representative Bies and Representative Parisi:

On November 11, 2004, several inmates at the New Lisbon Correctional Institution engaged in a riot that ultimately injured numerous staff members. Several inmates were charged with criminal offenses as a result. I ultimately dismissed charges against one of the inmates for lack of evidence, but the rest were all found guilty of various offenses, one after an extensive three-day jury trial earlier this year. Unfortunately, the prosecutions revealed the absence of a statutory provision to effectively hold inmates of state and county institutions accountable for a riot and its attendant consequences.

In response to the need to criminalize inmate riots, Representative Sheryl Albers drafted 2007 AB 92. I reviewed the bill and the proposed amendment to eliminate the mandatory minimum sentence (LRBa0728/1), expressed my concerns and provided suggestions on how to better provide prosecutors and judges with the tools they need in order to address inmate riots. Representative Albers then drafted a substitute amendment encompassing those suggestions – LRBS0142/1. I understand that the legislation is now before the Committee on Corrections and Courts for consideration.

My concern with AB 92, in conjunction with LRBa0728/1, is three-fold. First, while it would provide for a consecutive sentence in cases where an inmate batters another inmate or a staff member at an institution, that change in the law is unnecessary and provides no deterrent effect. Any judge that would sentence an inmate who batters an institution staff member during an inmate riot to a term of imprisonment that doesn't increase the length of the defendant's sentence would be remiss. Moreover, a clear, additional penalty needs to exist for there to be any deterrent effect on inmates in our institutions contemplating participation in a riot.

Second, we need straightforward legislation, and the legislative analysis of AB 92 is lengthy and confusing. As written, it references three different statutory crimes relating to inmate assaults, none of which relate directly to participation in a riot:

1) **Battery by a Prisoner [940.20(1)]**

This is a good and oft-used statute, but it should be used when inmates batter another inmate or a staff member as an *individual*. In other words, participation in a riot is a very different context than when one individual inmate strikes another inmate or staff member. The maximum penalty for an inmate under this statute is only *three years* of initial confinement, and cannot be charged if an inmate participates in a riot that does not involve harming a staff member or another inmate.

2) **Assaults by Prisoners – Throwing of Bodily Substances [946.43(2m)]**

This statute already requires a consecutive sentence. Thus, AB 92 actually creates a redundancy in the statutes. I would urge the Legislature to simply leave this statute alone.

3) **Assaults by Prisoners – Apprehension of Bodily Harm or Death [946.43(1m)]**

This statute is extremely convoluted and difficult to utilize. Specifically, it requires the State to prove that the officer assaulted was placed "in apprehension of an immediate battery likely to cause death or great bodily harm." In other words, the State would have to prove that an officer was actually afraid during the assault *and* that the assault was likely to cause death or great bodily harm. The New Lisbon prison riot demonstrated the problem with these two elements: If, as happened in New Lisbon, an officer is knocked unconscious after being clubbed from behind without prior knowledge of the impending assault, the officer obviously has no "fear" of being harmed at the point of being attacked. The State could charge the offender with Battery by a Prisoner; however, the penalty for actually striking the officer (Class H Felony) is *lower* than the penalty for making the officer *afraid* of being struck (Class F Felony). This current statutory construction makes no practical sense, and attempting to amend this statute could make things even more confusing.

Third, Wisconsin needs a substantive, stand-alone inmate riot statute, and AB 92 does not provide that in its original form. This is elucidated if we take an inmate riot scenario involving the response of a well-trained and experienced officer who is not "apprehensive" of being killed or badly injured. With that fact, we could not charge an inmate who participates in the riot with Assaults by Prisoners – Apprehension of Bodily Harm or Death. If that same officer takes control of the situation without anyone incurring any injury, we cannot charge the inmate with Battery by a Prisoner. If the inmate *attempts* to strike the officer, we could charge Attempted Battery by a Prisoner, but that carries a maximum sentence of only 18 months initial confinement. **However – and this is key – if the officer is *not* apprehensive of being killed or suffering great bodily harm, does *not* suffer any physical harm and the inmate himself does *not* attempt to strike the officer, the State could only charge the inmate with Disorderly Conduct – a misdemeanor offense carrying a maximum penalty of a fine and 90 days jail.**

Wisconsin needs a straightforward legislation that criminalizes participation in an inmate riot and provides a deterrent effect. To do that, I recommend creating a crime for participating in a riot, then using statutory definitions already in place for causing injury to another person (definitions

prosecutors commonly use) in order to create rational penalties that gradually increase depending on the actions of the offender:

- **Participation** in a prison riot..... **Class F Felony**
- Causing **bodily harm** during a riot
(simple battery) **Class E Felony**
 - Reference §939.22(4), Wis. Stats.
- Causing **substantial bodily harm** during
a riot (substantial battery) **Class D Felony**
 - Reference §939.22(38), Wis. Stats.
- Causing **great bodily harm** during
a riot (aggravated battery) **Class C Felony**
 - Reference §939.22(14), Wis. Stats.

The Wisconsin Statutes already allow for a charge of Attempted First Degree Intentional Homicide (Class B Felony) and First Degree Intentional Homicide (Class A Felony), so the upward step of penalties would be consistent from an F Felony to an A Felony with the substitute amendment and current law.

The substitute amendment (LRBs0142/1) also accomplishes the goal of providing Wisconsin with substantive inmate riot penalties without tying the hands of judges with unnecessary mandatory minimums or new sentencing requirements. Because the maximum penalties reflected in the substitute amendment are designed to account for varying degrees of inmate culpability, sentencing courts can rely upon judicial guidelines and an inmate's specific actions during a prison riot in order to fashion an appropriate sentence.

Finally, I became aware of Assembly Amendment 1 (AA1 - LRBa0378/1) after I suggested what became the substitute amendment. AA1 would make the provisions of AB 92 applicable to sexual predators housed at facilities like the Sand Ridge Secure Treatment Center (SRSTC) under Chapter 980 of the Wisconsin Statutes. As you are aware, the SRSTC is also located in Juneau County, and I certainly support inclusion of this proposal in the final language of the bill.

I've enclosed the substitute amendment (LRBs0142/1). I would be happy to speak to you at your convenience regarding the legislation, and sincerely thank you for considering my suggestions. You may call me at (608) 847-9314 or e-mail me at southworth.scott@mail.da.state.wi.us.

Enclosure

Sincerely,

//s//

Scott Harold Southworth
District Attorney

CF:
State Representative Sheryl K. Albers
Susan McMurray, AFSCME

JUNEAU COUNTY DISTRICT ATTORNEY'S OFFICE

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October 26, 2007

BY U.S. MAIL AND E-MAIL

State Representative Garey Bies
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P.O. Box 8952
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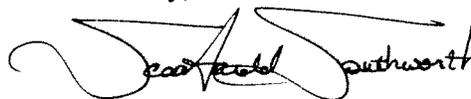
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Enclosure

Sincerely,



Scott Harold Southworth
District Attorney

CF:
State Representative Sheryl K. Albers
Susan McMurray, AFSCME





Date: Tuesday, January 15, 2008
To: Members, Assembly Committee on Corrections and Courts
From: Susan McMurray, AFSCME legislative representative
Re: Tuesday's executive session on AB 92

AFSCME asks you to support Assembly Substitute Amendment 1 to AB 92, which would create penalties for participating in a riot in a correctional or a 980 (sex offender) institution.

Rep. Albers and Sen. Schultz introduced this bill after several inmates instigated a riot at New Lisbon Correctional Institution in which numerous staff members suffered physical injuries and countless others experienced trauma. The riot at NLCI is still fresh in the memory of our members, who strongly support Assembly Bill 92. Indeed, all of our members who work in corrections are paying close attention to what happens with AB 92.

The NLCI incident brought to light that prosecutors need additional penalties to deal with inmates who riots in correctional settings, and that correctional staff want assurances that penalties on the books will be strong enough to deter inmates who might be tempted to cause trouble in overcrowded, understaffed prison settings.

The original version of the bill would have imposed a mandatory minimum sentence of three years on inmates who participate in a riot at a correctional institution. Several committee members expressed concerns about a mandatory minimum sentence. We worked with Rep. Albers and her staff, Terri Griffiths, to find a better way to write the bill.

Juneau County District Attorney Scott Southworth, who handled case against the state inmates, came forth with a set of recommendations for penalties that he argues would make for a strong bill while avoiding the mandatory minimum issue. The second attachment in this email contains a letter from DA Southworth. Rep. Albers took the DA's recommendations and incorporated them into ASA 1. She also made sure that the proposal covers riots the chapter 980 facilities (Sand Ridge).

AFSCME supports Rep. Albers' substitute amendment and we strongly urge you to vote "yes" on this bill to move it on to a vote in the full Assembly as quickly as possible.

Thank you for your support. Please call me at 279-9697 if you have any questions or concerns regarding our position on this bill.



~~Penalty~~

Found In
AB 92 Folder

no date

Penalties specific to a participant in, or party to disturbances in prisons.

Dit of State Courts

Opposes. ~~Just~~

* Don't like mandatory min

Don't like term "riot" ^{too} broad

Albers - Amend to tighten down language for applicability.

Apply to just state prisons

The mandatory minimums can keep the "fringe" person out of it. - corrections worker.

- Inmates believe no consequences.

Children & Families

- concerned about applying to damage to property
- concerned that it not apply to juveniles.

Serving the Seventy-Ninth. New ideas for a new future...

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District: 1261 LaFollette Road • Mt. Horeb, WI 53572 • (608) 832-4843