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JOINT REVIEW COMMITTEE ON CRIMINAL PENALTIES

COMMITTEE REPORT - 2009 ASSEMBLY BILL 413

[Introduced by Representatives Van Akkeren, Turner, Mason, Van Roy, Townsend, Bies, Berceau, Gunderson, Smith and Spanbauer; cosponsored by Senators Coggs, Leibham and Hopper.]

Background

AB 413 was introduced in the Assembly on September 4, 2009 and referred to the Assembly Committee on Criminal Justice. AB 413 creates a penalty enhancer that allows a judge to increase the maximum period of imprisonment by up to five years if a person who is licensed or certified to provide day care commits a sexual assault against, or intentionally or recklessly causes bodily harm to, a child for whom the person provides day care.

AB 413 was recommended for passage by the Assembly Committee on Criminal Penalties by a vote of 9-1. Assembly Speaker Mike Sheridan requested a report of the Joint Review Committee on Criminal Penalties on the bill pursuant to s. 13.525(5)(a) & (b). This section of statutes requires a report to be prepared concerning all of the following:

1. The costs that are likely to be incurred or saved by the department of corrections, the department of justice, the state public defender, the courts, district attorneys, and other state and local government agencies if the bill is enacted.
2. The consistency of penalties proposed in the bill with existing criminal penalties.
3. Alternative language needed, if any, to conform penalties proposed in the bill to penalties in existing criminal statutes.
4. Whether acts prohibited under the bill are prohibited under existing criminal statutes.

This report addresses these statutory points regarding AB 413.

Costs or savings

No fiscal estimates have been submitted by any state agencies regarding the potential costs or savings of AB 413. For additional information, please see the attached letter from Wisconsin State Court system, which predicts that AB 413 will likely have a minimal fiscal impact on state courts.

The increased penalties would result in higher costs for the State Public Defender in two respects. First, additional costs would result from increased attorney time and ancillary case-related expenses in

cases in which clients would be in jeopardy of longer imprisonment. Second, the increased penalties would indirectly result in additional proceedings in which the Department of Corrections would seek to revoke supervision and in which the State Public Defender would appoint attorneys.

The committee received no other testimony or information regarding the potential costs or savings of AB 413.

Consistency of penalties

AB 413 creates a penalty enhancer of up to five years imprisonment for certain crimes committed against children. This proposed penalty enhancer is consistent with other penalty enhancers in state statute. See s. 939.63, s. 939.632, and s. 939.645.

However, the proposed penalty enhancer is arguably inconsistent with the approach recommended by the Criminal Penalties Study Committee (Barland Committee), which recommended that in general, aggravating factors should be considered in the context of the range of sentences already provided in the underlying criminal statute (see Duplication in Statutes, below).

Alternative suggestions

The committee did not discuss alternative suggestions to AB 413, but did express concerns regarding whether the penalty enhancer was duplicative of existing criminal penalties for crimes against children. These concerns are discussed in the following section of the report.

Duplication in statutes

In reviewing the statutes, members of the committee and written testimony from the Wisconsin State Court system indicated that the proposed penalty enhancer in AB 413 duplicates the existing aggravating sentencing factor contained in s. 973.017(6), which requires the sentencing court to consider as an aggravating factor whether the offender was a person responsible for the welfare of the child victim. The existing aggravating factor statute was previously a separate penalty enhancer before the enactment of 2001 Wisconsin Act 109. The Legislature specifically adopted the Criminal Penalties Study Committee's 1999 report recommendation that the penalty enhancer be re-codified as a statutory sentencing aggravator.

Findings of the committee

The Joint Review Committee on Criminal Penalties finds that AB 413 will likely result in an

indeterminate increase in costs in the state's criminal justice system. Members of the committee and the Wisconsin State Court system did express concerns that the proposed penalty enhancer in AB 413 duplicates existing aggravating factors that courts currently must consider at sentencing.



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A. John Voelker
Director of State Courts

TO: Joint Review Committee on Criminal Penalties

FROM: John Voelker, Director of State Courts

RE: AB 413 Relating to a Penalty Enhancer if a Crime Against a Child is Committed by a Day Care Provider

DATE: February 1, 2010

Your committee has requested comments about AB 413 that is the subject of an informational hearing before the Joint Review Committee on Criminal Penalties today. AB 413 would create a penalty enhancer of up to five years if certain crimes against children were committed by a day care provider. Please accept these written comments about the bill.

(1) Costs Likely to be Incurred

AB 413 will have only a minimal fiscal impact on the court system. It does not expand the number of cases that may be brought before the courts, but rather expands the range of penalties that may be imposed in certain cases.

(2) Consistency of Penalties

There are few penalty enhancers of this type in the current statutes. There are five-year enhancers contained in s. 939.63 (1)(b), Stats., for use of a dangerous weapon in a serious felony case, and in s. 939.632 (2)(a), Stats., for commitment of a felony in a school zone.

(3) Alternative Suggestions

We do not have any alternative language to suggest.

(4) Duplication in Statutes

A similar penalty enhancer existed in Wisconsin's criminal code before the enactment of 2001 Wisconsin Act 109. See, for instance, Wis. Stat. ss. 948.02 (3m) and 948.025 (2m) (1999-2000) (repealed 2002). Both statutory sections contained a 5-year penalty enhancer if the defendant was "responsible for the welfare of the child."

The Criminal Penalties Study Committee, in its report of August 31, 1999, recommended that these and other penalty enhancers be recast as statutory sentencing aggravators. The committee noted that, at the time, Chapter 939 contained 17 enhancers. The Legislature adopted the committee's recommendation relating to limiting penalty enhancers and sentencing aggravators.

Currently, s. 973.017 (6), Stats. contains the following provision as a sentencing factor:

(6) AGGRAVATING FACTORS; CHILD SEXUAL ASSAULT OR CHILD ABUSE BY CERTAIN PERSONS. (a) In this subsection, "person responsible for the welfare of the child" includes the child's parent, stepparent, guardian, foster parent, or treatment foster parent; an employee of a public or private residential home, institution, or agency; any other person legally responsible for the child's welfare in a residential setting; or a person employed by one who is legally responsible for the child's welfare to exercise temporary control or care for the child.

(b) When making a sentencing decision concerning a person convicted of a violation of s. 948.02 (1) or (2), 948.025 (1), 948.03 (2) or (3), or 948.051, the court shall consider as an aggravating factor the fact that the person was a person responsible for the welfare of the child who was the victim of the violation.

I hope this information is helpful to the committee in fulfilling its assignment.

JV:NMR