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JOINT REVIEW COMMITTEE ON CRIMINAL PENALTIES

COMMITTEE REPORT -- 2009 SENATE BILL 344

[Introduced by Senators Taylor and Vinehout; cosponsored by Representatives Parisi, Pasch, Roys, Black, Berceau, Turner, Shilling, Dexter, Grigsby and Smith]

Background

SB 344 was introduced in the Senate on October 12, 2009 and referred to the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing. SB 344 makes crimes based on the gender of a victim subject to a penalty enhancer.

The bill was reported from the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing on January 7, 2010 on a 4-1 vote. Senator Lena C. Taylor, chair of the standing committee to which the bill was referred, 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 SB 344.

Costs or savings

For a description of the cost and savings analysis of SB 344, please see the attached fiscal estimates from the Department of Administration that describe the potential fiscal impact the legislation could have for district attorneys, the Department of Corrections, the Department of Justice, and the State Public Defender.

In addition to the above mentioned fiscal estimates, the Joint Review Committee on Criminal Penalties received testimony from Nancy Rottier, representing the Wisconsin Court System, which indicated that

the Wisconsin Court System has no cost concerns regarding the bill and took no stance on the substance of the bill.

Members of the Joint Review Committee on Criminal Penalties did not provide any further information or comments regarding SB 344.

Consistency of penalties

SB 344 provides an enhanced penalty for certain crimes if the person committing the crime intentionally selects the victim based on his or her belief or perception of the victim's gender. Current law provides an enhanced penalty for certain crimes if the person committing the crime intentionally selects the victim based on his or her belief or perception of the victim's race, religion, color, disability, sexual orientation, national origin, or ancestry. The penalty enhancer for SB 344 is identical to the existing penalty enhancer for other "bias-motivated" or "hate crimes."

Alternative suggestions

The Committee did not discuss or recommend any alternative suggestions to the penalty enhancer contained in SB 344.

Duplication in statutes

In reviewing the statutes, there is no duplicative penalty enhancer statute for gender motivated crimes. Current Wisconsin law does provide for numerous felony and misdemeanor criminal statutes regarding sexual assault and domestic violence to which the proposed penalty enhancer contained in SB 344 could potentially apply. However, experience in other states with similar penalty enhancers would suggest that the SB 344 penalty enhancer would be infrequently applied to such cases (see attached Anti-Defamation League testimony to the Assembly Committee on Corrections and the Courts).

Findings of the committee

The Joint Review Committee on Criminal Penalties finds that, consistent with the fiscal estimates submitted by the Department of Administration and testimony provided by the Wisconsin Court System, SB 344 will likely have an indeterminate, but small fiscal impact. However, the fiscal impact of this legislation could be greater than anticipated if district attorneys elect to charge the SB 344 penalty enhancer more than anticipated, especially if the underlying offense is a Class A Misdemeanor that would be increased to a felony under the penalty enhancer.

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December 9, 2009

Members of the House Committee on Criminal Justice
328 Northwest, State Capitol
Madison, WI 53708

Members of the House Committee on Criminal Justice:

On behalf of the Anti-Defamation League (ADL), we write to express strong support for 2009 Assembly Bill 481. This bill would amend Wisconsin's bias crime law to provide penalty enhancements for crimes motivated by the victim's gender.

ADL is a national civil rights and human relations agency that has long been at the forefront of national, state and local efforts to deter and counteract bias-motivated criminal activity. In 1981, ADL drafted a model penalty-enhancement statute for bias-motivated crimes. That model served as a basis for many of the bias-crime laws that have been adopted by 45 states and the District of Columbia. ADL also trains law enforcement to prevent bias-motivated crimes and to apprehend extremists and others who commit those crimes.

Regrettably, gender-bias motivated crimes do occur. For example, in 2002, when Darell David Rice brutally murdered two women who were camping in Shenandoah National Park, he told prosecutors that he had intentionally selected the victims because he believed that women are more vulnerable and because he enjoys intimidating and assaulting women. Another horrific example of gender-motivated bias crime occurred in 2006, when Charles Roberts infiltrated an Amish schoolhouse in Pennsylvania, separated the boys from the girls, and shot a number of the girls in the back of the head. Local law enforcement reported that Roberts "wanted to exact revenge against female victims." It is because of crimes like these that twenty-seven states and the United States currently include gender as a protected status in their hate crime statutes.

Wisconsin should join the United States and the twenty-seven states that label gender-motivated crimes as bias crimes. Doing so would communicate a new resolve to deter the victimization of girls, boys, women, or men who are attacked because of gender. A.B. 481's recognition of gender-motivated crimes as bias crimes would provide additional comfort to the victims of these crimes and would better equip local law enforcement to address gender-motivated crimes.



Critics of A.B. 481 argue that this bill will render every rape and domestic violence case a "hate crime." We respectfully disagree. Hate crimes occur because of the perpetrator's bias or animus against the victim on the basis of actual or perceived status – the victim's race, religion, national origin, gender, or sexual orientation is the *reason* for the crime. Not all crimes against women meet this definition -- rape and domestic violence often have different, more personal motivations. Importantly, the twenty-seven states that include gender in their hate crime statutes have not been overwhelmed by rape and domestic violence hate crime charges. Moreover, this concern was not an impediment to the recent passage of the federal Hate Crime Prevention Act, signed by President Obama into law in October 2009, which also includes gender as a protected category under federal law.

Every individual in Wisconsin deserves protection from bias-motivated criminal activity. While bigotry cannot – and should not -- be outlawed, A.B. 481 would demonstrate a renewed commitment by Wisconsin's legislators to eradicate bias-motivated crime. ADL strongly urges the House Committee on Criminal Justice to vote in favor of this important bill.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Lonnie Nasatir".

Lonnie Nasatir
Regional Director
Greater Chicago/Upper Midwest Region
Anti-Defamation League

A handwritten signature in black ink, appearing to read "Clare Pinkert".

Clare Pinkert
Midwest Area Civil Rights Counsel
Anti-Defamation League