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Testimony on 2013 Assembly Bill 780 – Repeal of the Voluntary Intoxication Criminal Defense
Representative Steve Nass
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Thank you, Chairman Jim Ott and members of the Assembly Judiciary Committee for the opportunity to testify on AB 780, a bill repealing the voluntary intoxication defense to criminal liability. First, I would ask the committee's indulgence with the fact you will hear testimony today from people who are not lawyers (including myself), but recognize a fundamental flaw in the law being addressed in this legislation.

To begin our discussion, I would quote from the Legislative Reference Bureau's analysis of AB 780:

Under current law, if a person is intoxicated or drugged when he or she is alleged to have committed a crime, the intoxication or drugged condition is a defense to criminal liability if:

- 1) the person was involuntarily intoxicated or drugged at the time of the alleged offense and the person's condition rendered him or her incapable of distinguishing between right and wrong; or*
- 2) the person's condition, whether voluntarily or involuntarily produced, made it impossible for him or her to have had the intent necessary to commit the crime. Voluntary intoxication, however, is generally not a defense in the second situation if the offense charged is based on the person's criminal recklessness.*

This bill eliminates the defense of voluntary intoxication.

The two key statutes affected by AB 780 are ss. 939.24 (3) and ss. 939.42. This particular criminal defense was inserted into law as part of a budget bill in 1988. Research shows that this issue was a matter of debate and scholarly discussions amongst lawyers in Wisconsin going back to at least the 1950's.

However, the fact remains that this particular criminal defense never received a thoughtful legislative review or public input, since it was inserted into a budget bill in 1988. As legislators, we all know of the great risks associated with sticking policy into fiscal legislation and the significant potential for adverse consequences when that policy fails to receive a proper vetting.

The language inserted in 1988, at the request of criminal defense attorneys, has faced four attempts at repeal. Those attempts were:

- A.) 2003 AB 768 – It passed committee 9-5 and passed the Assembly on a voice vote. The State Senate took no action.

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B.) 2005 AB 838 – It passed committee 7-0 and passed the Assembly on a voice vote. The State Senate took no action.

C.) 2007 AB 330 – No action in either the Assembly or State Senate.

D.) 2013 AB 780 – Currently in process and receiving a public hearing.

Prosecutors and law enforcement have regularly raised concerns regarding this statutory criminal defense and its impact in charging those alleged to have committed serious crimes in which voluntary intoxication was a factor. Previously, prosecutors complained of being compelled to consider lesser offenses as part of plea bargains when they fear that the defendant may utilize the voluntary intoxication defense if certain cases went to trial.

However, in the early morning hours of August 19, 2012, the tragic and horrible murders of 21-year old Alisha Bromfield and her unborn child Ava, by the hands of Brian Cooper, in Door County Wisconsin launched a series of events that would ultimately lead to this family being victimized a second time by our flawed state law.

This confessed murderer went to trial in 2013 facing two counts of first-degree intentional homicide and a single count of third-degree sexual assault. The evidence in this case wasn't in dispute including the confessions Brian Cooper made on a 911 call and during interviews with investigators.

According to the jury foreman in a media interview after the initial trial, two members of the jury became confused over the voluntary intoxication defense and the concept of intent leading to a 10-2 vote in favor of convicting Brian Cooper of first-degree intentional homicide. The jury was unable to resolve their differences on those two charges. The jury did convict him of third-degree sexual assault. Cooper will face a re-trial later this year on the two murder charges.

Last year, the family and friends of Alisha and Ava Bromfield turned to the Wisconsin Legislature calling for repeal of the voluntary intoxication defense and seeking a way to have such a change apply retroactively. After months of research, it was deemed unlikely that a route existed to make a change to state law that could legally apply to this tragic case during the re-trial.

However, I ask the members of this committee to consider the vicious crimes that resulted in the extinguishing of two promising futures for Alisha and Ava, the plight of the family and friends in being denied justice in the first trial, and the questionable morality of a law that allows for a poor excuse to be used to avoid or lessen criminal liability. I believe that all of the factors, both moral and legal, support the passage of AB 780 and the removal of the voluntary intoxication defense from our state statutes.

I now ask you to consider the testimony of the family and friends of Alisha and Ava Bromfield.