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ROBERT L. COWLES

Wisconsin State Senator
2nd Senate District

JOINT COMMITTEES
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Information Policy and Technology
Transportation Projects Commission

February 20, 2014

Statement on Senate Bill 100

Senate Bill 100 works to address a number of problems with crime prevention such as adequate funding, transparency and management of crime prevention funding. The bill creates a crime prevention funding board and a $20 crime prevention funding board surcharge which would be applied to any misdemeanor or felony conviction, which makes those convicted of crimes to provide payment to support crime prevention efforts.

The crime prevention funding board surcharge revenue must be retained by the county treasurer in a crime prevention fund and be distributed as grants at the direction of a crime prevention funding board, which is created in every county, which consists of significant stakeholders across the county including the county district attorney and the county sheriff, amongst others.

SB 100 is a bill that provides taxpayer relief while remaining cost effective: studies have shown that every dollar spent toward crime prevention saves ten dollars in future costs of incarceration or treatment. This approach is patterned after a Florida law and the successful Brown County Crime Prevention Foundation.

This bill utilizes the ingenuity of local officials to address crime prevention in their own communities. Like the success in Brown County, SB 100 will build on this program and expand this innovative solution to the rest of the state to begin to address funding crime prevention needs.

SB 100 has had considerable input from stakeholders in the law enforcement and judicial community and has received bi-partisan support.

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P.O. Box 8952
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TO: Members of the Senate Committee on Judiciary and Labor

FROM: Representative André Jacque

DATE: February 20, 2014

RE: Senate Bill 100: Community Crime Prevention

Chairman Grothman and Committee Members:

I very much appreciate your willingness to hold this hearing on Senate Bill 100. This broad bi-partisan legislation is has the full endorsement of a strong coalition, including the Badger Sheriffs Association, Wisconsin Chiefs of Police Association, League of Wisconsin Municipalities, Wisconsin Sheriffs and Deputy Sheriffs' Association, Wisconsin Professional Police Association, and Association of Wisconsin School Administrators, in addition to the publicly indicated support of Waukesha County DA Brad Schimel and at least two of the Democratic candidates for Attorney General as well, and I'd like to thank Sen. Cowles for partnering with me in this effort.

The intent of this legislation is to require those convicted of crimes to provide restitution in support of crime prevention efforts. Senate Bill 100 is both a taxpayer relief bill and cost effective: studies have shown that every dollar spent toward crime prevention saves many multiples of those dollars in future costs of incarceration or treatment. The bill creates a $20 crime prevention funding board surcharge which would be applied to any misdemeanor or felony conviction. The surcharge is collected as a last draw surcharge on criminals upon conviction, to be assessed only after an offender pays all other applicable surcharges.

The funds collected would be distributed by a countywide six member Crime Prevention Funding Board (CPFB) made up of the following officials or their designees: the district attorney; the sheriff; the county executive, county administrator, or county board chairperson; the presiding judge of the circuit court the chief elected official of the city, village, or town with the largest population in the county; and a person chosen by a majority vote of the top law enforcement officials of the departments that are located in the county. Under the bill, at least half of the funds distributed must go to one or more private, nonprofit organizations that has as its primary purpose preventing crime, providing a funding source for crime prevention programs, encouraging the public to report crime, or assisting law enforcement agencies in the apprehension of criminal offenders. The board may direct that the rest of the funds be distributed to a law enforcement agency that has a crime prevention fund.

This approach is patterned after Florida law and the successful collaborative makeup of the Brown County Crime Prevention Foundation, and reflects substantial input from stakeholders in the law enforcement and judicial community. The bill requires great transparency in that a CPFB and any entity that receives a grant from a CPFB must submit an annual report to certain specified entities detailing the amounts spent, the purposes for which the grants were spent, and contact information for the entity and the entity's leaders.

This legislation was incorporated into the 2013-'15 biennial budget by the Joint Finance Committee as a stand-alone provision on a 15-1 vote. Although vetoed in the budget, Gov. Walker has indicated that he no longer has concerns and would sign it should it come forward as standalone legislation.

This legislation empowers local decisionmaking and coordination on fighting and preventing crime rather than relying solely on the state to cherrypick communities and programs to fund.

Thank you again for your time and for your consideration of Senate Bill 100.

Supreme Court of Wisconsin

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Chief Justice

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A. John Voelker
Director of State Courts

Testimony
Of
Nancy Rottier
Legislative Liaison

In Opposition to

2013 Senate Bill 100

Committee on Judiciary and Labor
Senator Glenn Grothman, Chair
February 20, 2014

Thank you, Chairperson Grothman and members of the Committee. I am Nancy Rottier, the Legislative Liaison for the Director of State Courts. On behalf of the Legislative Committee of the Judicial Conference and our Committee of Chief Judges, I want to express our opposition to Senate Bill 100, relating to the funding of crime prevention organizations through the increase in the crime victim and witness assistance surcharge.

The Committee of Chief Judges, made up of the ten circuit court judges appointed by the Supreme Court to handle the administrative details of the circuit courts, has a long history, going back to the mid-1990s, of attempting to properly implement the previous crime prevention organization (CPO) statute. One set of legislative reforms that we advocated was adopted in 1999 Wisconsin Act 58. I have attached a March 9, 2000 letter from the Director of State Courts to Governor Tommy Thompson, urging him to sign the bill and outlining the various reforms to the CPO process that were contained in it.

Despite the enactment of these reforms of the CPO process, problems continued and the Chief Judges once again took an in-depth look at it. Due to continuing administrative problems and the inherent ethical conflict that the previous statute posed for judges, the Chief Judges sought to repeal it. That was successfully done in 2007 Wisconsin Act 84.

Our efforts to pass 2007 Act 84 should not be seen as a judgment about the worthiness of CPOs in general or any organization in particular. Most of the non-profit organizations that received funding were extremely worthwhile organizations. But after extensive study of the previous CPO process, the Committee of Chief Judges concluded the most appropriate public policy was to eliminate the CPO surcharge.

Last session, there was a bill introduced would have reinstated the exact provisions that were repealed by 2007 Act 84. We strongly opposed reinstatement of the CPO legislation. We urge you to reject the alternative approach that is before you today.

We recognize that SB 100 does eliminate one of our main objections to the previous CPO legislative scheme: the discretion it gave judges to impose the CPO surcharge. Our objection then was that it was inappropriate to have the court system serve as a "fund-raising mechanism" for nonprofit organizations. Judges had found themselves being lobbied by various groups that were seeking funds, asking the judges to impose the CPO surcharge in order to help the groups raise money. Judges are strictly forbidden from fundraising for any organization on their own time under the Code of Judicial Conduct, and it certainly appeared questionable that they could use their role as judicial officers to be involved in fundraising for CPOs. In addition, it created the perception that those with the ability to pay the contribution were treated differently.

SB 100, while taking a different approach to funding crime prevention organizations, comes with its own difficulties. The bill provides a seat for the presiding judge of the circuit court or his or her designee on the new Crime Prevention Funding Board (CPFB). We are concerned that this participation creates the same kind of ethical conflict for the presiding judge that existed under the old CPO statutory scheme. The judge is placed in the situation of being lobbied by organizations and others for a favorable funding decision.

Besides the inherent ethical conflict for judges, SB 100 presents some of the same practical difficulties that were present in the old CPO statutory scheme. These include the following:

- The definition of a crime prevention organization has never been fully clarified. It has always been difficult to clearly identify what constitutes a "crime prevention organization." The lack of clarity in the statute led to litigation challenging some CPO contributions. In 2005 we requested an opinion from the Attorney General about this and other issues. I would be happy to supply committee members with a copy of the opinion. The opinion outlines some of the definitional and practical problems of CPOs.
- The collection process in most counties is already strained from efforts to collect the statutorily-mandated restitution, fines, forfeitures and surcharges. As the Chief Justice has noted in past budget presentations, the continued proliferation of surcharges jeopardizes access to the court system and significantly increases the amount of money a violator must pay. The statutes already contain 35 different court-imposed surcharges, 24 of which are applicable in criminal cases.
- The Legislative Audit Bureau (LAB) recently completed an audit of the crime victim and witness assistance surcharge revenue because questions were raised regarding the reasons surcharge revenue has declined despite a $7.00 increase to the surcharge. The LAB report noted that trends in the number of convictions, the extent of unpaid surcharges, and statewide economic trends help explain the decline. An additional $20.00 would make it more difficult for individuals to pay.
- The potential for abuse or questionable practices involving CPOs can be avoided. We have been fortunate that no major abuses of the previous CPO process were uncovered,

but we did find questionable expenditures as we studied that system. These problematic situations were enough to convince the Committee of Chief Judges that the CPO process was seriously flawed.

Earlier this year, the Legislature added a new CPO surcharge to the proposed state budget. We agree with Governor Walker's reason for vetoing this provision:

> I am vetoing these sections because I object to the creation of an additional surcharge and an additional board, which may have no demonstrated effectiveness. There are already numerous surcharges on felony and misdemeanor convictions, and adding an additional surcharge will detract surcharge revenue from many other proven and worthwhile crime victim services and law enforcement programs.

To give you more information on the cumulative effect of creating these numerous surcharges, I have attached a table that our office prepared and that is made available to judges and clerks. It shows the various surcharges that are added into every criminal case and some of the other surcharges that are added in particular cases.

For example, look at a situation with a $100.00 fine. That might include misdemeanor cases like petty theft, bad checks or disorderly conduct. With the surcharges, the defendant would be ordered to pay a total of $579.00, a $100.00 fine and $479.00 of surcharges and costs. Here's the distribution of these dollars:

$100.00 fine – to the common school fund
$163.00 clerks fee -- $9.99 to the county and $153.01 to the state general fund
$ 26.00 penalty surcharge – to Department of Justice (DOJ) for law enforcement training
$ 10.00 jail surcharge – to the county to maintain its jail
$ 13.00 crime lab and drug surcharge – to DOJ for the crime lab
$ 67.00 crime victim and witness surcharge – to DOJ to support victim-witness services
$200.00 DNA surcharge – to DOJ to support the DNA database

Assuming all of these funds are collected by the Clerk of Circuit Courts office, only $19.99 stays with the county government -- $10.00 for the jail and $9.99 for the county treasury. The county supplies the staff and office to collect the funds but keeps only 3.4% of the funds collected.

Two large portions of these surcharges and costs are relatively new. In 2009 Wisconsin Act 100, the Legislature added $143.00 to the clerk's fee to fund prosecution of and services for operating while intoxicated (drunk driving). Those funds go to the state general fund. In this most recent state budget, the Legislature added the DNA surcharge of $200.00 for each misdemeanor and $250.00 for each felony. Those funds go to DOJ.

Finally, on a technical note, we recognize the state budget, 2013 Wisconsin Act 20, contained provisions affecting the crime victim and witness assistance surcharge that may require changes to SB 100. We acknowledge that the authors of the Assembly companion bill, AB 74, have introduced some changes to accommodate the Act 20 changes. Without seeing any changes to SB 100, however, we have directed our comments to the bill as originally introduced.

For these policy and administrative reasons, we urge you to reject SB 100. We would be happy to discuss more of the history of our experience with the previous CPO statutory scheme, and our reasons for questioning the new approach taken by this bill. Thank you.

Attachments

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J. Denis Moran
Director of State Courts

March 9, 2000

Governor Tommy G. Thompson
125 South, State Capitol
Madison, WI 53702

Dear Governor Thompson:

I write to urge you to sign and enact into law 1999 AB 211.

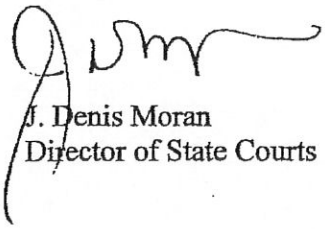
AB 211 was introduced at the request of this office after a study by the Committee of Chief Judges found that questionable practices had grown up with respect to the collection and disbursement of crime prevention organization donations from criminal defendants. Statutes that allow circuit and municipal courts to collect these funds are vague with respect to how and by whom these funds should be collected and how they should be accounted for. Several concerns were raised including: 1) the perception that a donation could have an impact on what charge, if any, is brought by a prosecutor and the severity of the penalty; 2) the potential loss of revenue to the state and the county when crime prevention donations are ordered in lieu of fines and forfeitures, and 3) ethical considerations when judges select specific organizations to receive donations and, as a consequence, appear to be raising funds for them.

This bill requires all crime prevention donations to be made to the clerk of court and that all organizations that receive funds file an annual report with the court identifying its officers, the amount of money received, spent and remaining and the nature of the expenditures made. In addition, prosecutors are prohibited from reducing or dismissing a charge in return for a crime prevention donation. If a court imposes a donation in lieu of a fine or forfeiture it must state on the record the reasons why it did so.

The enactment of this bill is important to dispel any appearance that a defendant's ability to pay can result in a reduction or a dismissal of the charges against that person. While some may assert that the accounting and procedural requirements of this bill will make it more burdensome to collect donations for these organizations, the perception or reality that criminal defendants who can afford to make donations are treated differently than those who can't is unacceptable and cannot be allowed to continue.

Thank you for your consideration of this important issue.

Sincerely,



J. Denis Moran
Director of State Courts

TABLE 3: CRIMINAL FINES, WISCONSIN CIRCUIT COURTS

Effective January 1, 2014

											ADD APPLICABLE SURCHARGE AMOUNTS TO TOTAL					
	Clerk's Fee	Penalty Surcharge	Jail Surch	Crime Lab & Drug	Victim-Witness		DNA Analysis		TOTAL		Driver Improve	Drug Abuse	Drug Diversion	Domestic Abuse	Natural Resources, Unins. Empl, Weapons	Environmental Surcharge
FINE	$163	26%	$10	$13	MIS	FEL	MIS	FEL	MIS	FEL	$435	75% (F+PEN)	$10	$100	75% Fine	20% Fine
0	$163	0%	0	13	67	92	200	250	**443.00**	**518.00**		0.00	10	100	0.00	0.00
10	163	2.60	10	13	67	92	200	250	**465.60**	**540.60**		9.45	10	100	7.50	2.00
25	163	6.50	10	13	67	92	200	250	**484.50**	**559.50**		23.63	10	100	18.75	5.00
50	163	13.00	10	13	67	92	200	250	**516.00**	**591.00**		47.25	10	100	37.50	10.00
75	163	19.50	10	13	67	92	200	250	**547.50**	**622.50**		70.88	10	100	56.25	15.00
100	163	26.00	10	13	67	92	200	250	**579.00**	**654.00**		94.50	10	100	75.00	20.00
150	163	39.00	10	13	67	92	200	250	**642.00**	**717.00**	435	141.75	10	100	112.50	30.00
200	163	52.00	10	13	67	92	200	250	**705.00**	**780.00**	435	189.00	10	100	150.00	40.00
250	163	65.00	10	13	67	92	200	250	**768.00**	**843.00**	435	236.25	10	100	187.50	50.00
300	163	78.00	10	13	67	92	200	250	**831.00**	**906.00**	435	283.50	10	100	225.00	60.00
350	163	91.00	10	13	67	92	200	250	**894.00**	**969.00**	435	330.75	10	100	262.50	70.00
400	163	104.00	10	13	67	92	200	250	**957.00**	**1032.00**	435	378.00	10	100	300.00	80.00
450	163	117.00	10	13	67	92	200	250	**1020.00**	**1095.00**	435	425.25	10	100	337.50	90.00
500	163	130.00	10	13	67	92	200	250	**1083.00**	**1158.00**	435	472.50	10	100	375.00	100.00
550	163	143.00	10	13	67	92	200	250	**1146.00**	**1221.00**	435	519.75	10	100	412.50	110.00
600	163	156.00	10	13	67	92	200	250	**1209.00**	**1284.00**	435	567.00	10	100	450.00	120.00
650	163	169.00	10	13	67	92	200	250	**1272.00**	**1347.00**	435	614.25	10	100	487.50	130.00
700	163	182.00	10	13	67	92	200	250	**1335.00**	**1410.00**	435	661.50	10	100	525.00	140.00
750	163	195.00	10	13	67	92	200	250	**1398.00**	**1473.00**	435	708.75	10	100	562.50	150.00
800	163	208.00	10	13	67	92	200	250	**1461.00**	**1536.00**	435	756.00	10	100	600.00	160.00
900	163	234.00	10	13	67	92	200	250	**1587.00**	**1662.00**	435	850.50	10	100	675.00	180.00
1000	163	260.00	10	13	67	92	200	250	**1713.00**	**1788.00**	435	945.00	10	100	750.00	200.00
1100	163	286.00	11	13	67	92	200	250	**1840.00**	**1915.00**	435	1039.50	10	100	825.00	220.00
1200	163	312.00	12	13	67	92	200	250	**1967.00**	**2042.00**	435	1134.00	10	100	900.00	240.00
1300	163	338.00	13	13	67	92	200	250	**2094.00**	**2169.00**	435	1228.50	10	100	975.00	260.00
1400	163	364.00	14	13	67	92	200	250	**2221.00**	**2296.00**	435	1323.00	10	100	1050.00	280.00
1500	163	390.00	15	13	67	92	200	250	**2348.00**	**2423.00**	435	1417.50	10	100	1125.00	300.00
1600	163	416.00	16	13	67	92	200	250	**2475.00**	**2550.00**	435	1512.00	10	100	1200.00	320.00
1700	163	442.00	17	13	67	92	200	250	**2602.00**	**2677.00**	435	1606.50	10	100	1275.00	340.00
1800	163	468.00	18	13	67	92	200	250	**2729.00**	**2804.00**	435	1701.00	10	100	1350.00	360.00
1900	163	494.00	19	13	67	92	200	250	**2856.00**	**2931.00**	435	1795.50	10	100	1425.00	380.00
2000	163	520.00	20	13	67	92	200	250	**2983.00**	**3058.00**	435	1890.00	10	100	1500.00	400.00

TABLE 3: CRIMINAL FINES, WISCONSIN CIRCUIT COURTS **Effective January 1, 2014**

											ADD APPLICABLE SURCHARGE AMOUNTS TO TOTAL					
	Clerk's Fee	Penalty Surcharge	Jail Surch	Crime Lab & Drug	Victim-Witness		DNA Analysis		TOTAL		Driver Improve	Drug Abuse	Drug Diversion	Domestic Abuse	Natural Resources, Unins. Empl, Weapons	Environmental Surcharge
FINE	$163	26%	$10	$13	MIS	FEL	MIS	FEL	MIS	FEL	$435	75% (F+PEN)	$10	$100	75% Fine	20% Fine
2250	163	585.00	22.50	13	67	92	200	250	**3300.50**	**3375.50**	435	2126.25	10	100	1687.50	450.00
2500	163	650.00	25	13	67	92	200	250	**3618.00**	**3693.00**	435	2362.50	10	100	1875.00	500.00
2750	163	715.00	27.50	13	67	92	200	250	**3935.50**	**4010.50**	435	2598.75	10	100	2062.50	550.00
3000	163	780.00	30	13	67	92	200	250	**4253.00**	**4328.00**	435	2835.00	10	100	2250.00	600.00
3250	163	845.00	32.50	13	67	92	200	250	**4570.50**	**4645.50**	435	3071.25	10	100	2437.50	650.00
3500	163	910.00	35	13	67	92	200	250	**4888.00**	**4963.00**	435	3307.50	10	100	2625.00	700.00
3750	163	975.00	37.50	13	67	92	200	250	**5205.50**	**5280.50**	435	3543.75	10	100	2812.50	750.00
4000	163	1040.00	40	13	67	92	200	250	**5523.00**	**5598.00**	435	3780.00	10	100	3000.00	800.00
4250	163	1105.00	42.50	13	67	92	200	250	**5840.50**	**5915.50**	435	4016.25	10	100	3187.50	850.00
4500	163	1170.00	45	13	67	92	200	250	**6158.00**	**6233.00**	435	4252.50	10	100	3375.00	900.00
4750	163	1235.00	47.50	13	67	92	200	250	**6475.50**	**6550.50**	435	4488.75	10	100	3562.50	950.00
5000	163	1300.00	50	13	67	92	200	250	**6793.00**	**6868.00**	435	4725.00	10	100	3750.00	1000.00