



LENA C. TAYLOR

Wisconsin State Senator • 4th District

HERE TO SERVE YOU!

Assembly Committee on Criminal Justice and Public Safety

Public Hearing AB 171

Testimony of State Senator Lena C. Taylor

May 30, 2019

Chairman Spiros, Vice-Chair Sortwell, and Members of the Committee, thank you for providing me the opportunity to submit written testimony on Assembly Bill 171, relating to sexual contact by a law enforcement officer with a person in his or her custody and providing a penalty.

Let me start by saying, that this is a bill proposal that I had no idea would actually be necessary. That all changed when I watched a news story in 2018, regarding the case of Anna Chambers.

On September 15, 2017, an 18 year-old passenger in a car, Anna Chambers, was detained after a traffic stop in Brooklyn, New York. She was taken into custody by two plainclothes NYPD detectives, after the male driver and another male passenger were told to leave the scene.

According to Ms. Chambers, she was handcuffed, placed in the back of an unmarked police van, and repeatedly raped by the detectives. After driving her around for an hour, the officers dropped the teen off less than a quarter of a mile from a police station. The detectives filed no paperwork or report regarding their contact with the teen.

Anna made it home, told her mother and was taken to the hospital. A rape kit collected the semen of detectives Eddie Martin and Richard Hall. Further, there was surveillance footage supporting Anna's claim of where the detectives dropped her off. It should have been a cut and dry case. It wasn't.

Under New York law, it is not illegal for a police officer to have sex with an individual in their custody. As a result, the detectives were able to argue in court that the sex was consensual. Consent can be the difference between a rape conviction and an acquittal at trial, and experts say that allowing police to have consensual sex with those in their custody — an inherently off-balance relationship — makes it nearly impossible to determine whether someone consented or instead went along with the sexual contact out of fear or because they believed it was their only option.

The detectives claimed that the sex with Chambers was consensual, even though they admitted they did not know her prior to the act or had any prior relationship with her in the past. Both of the officers, Eddie Martins and Richard Hall had faced up to 25 years in prison on the original rape and kidnapping charges, but they had all those charges dropped. They were ultimately charged with bribery and official misconduct. At the end of the day, they didn't serve a single day in jail for what was done to Anna Chambers.



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The fact that law enforcement officers had intercourse with a person in their custody was not, in and of itself, illegal. Immediately, I questioned Wisconsin's laws around such conduct. Current law does not contain a criminal prohibition on sexual contact between a law enforcement officer and a person in his or her custody.

I learned that Wisconsin and New York are just two of 35 states in which this loophole currently exists.

Wisconsin does have laws that prohibit parole officers and prison guards from engaging in sexual behavior with individuals in their custody. New York has since passed a law to fix this loophole in the law and I am asking that we do the same.

This is a logical next step.

AB 171/SB 104 bill provides a Class C felony, the equivalent of second-degree sexual assault, for the act of a law enforcement officer having sexual contact or intercourse with someone in their custody. For the purposes of the crime created in this bill, consent is not an issue. The same statutory rules already apply to both parole officers and prison guards.

Under this bill, the new offense of sexual contact between a law enforcement officer and a person in his or her custody would be subject to sex offender registration, if determined by a judge to be in the best interest of public safety.

I know that this is not a bill that we would ever like to think is necessary when we think of the exemplary work done by the overwhelming members of our states law enforcement community. However, the Anna Chambers incident was not an isolated one and we are not immune from such issues in Wisconsin. I am hopeful you will see the merits in AB 171 and SB 104 and support this bill. Thank you for your attention.



WISCONSIN COALITION AGAINST SEXUAL ASSAULT

Testimony

To: Members of the State Assembly Committee on Criminal Justice and Public Safety
From: Wisconsin Coalition Against Sexual Assault (WCASA)
Date: May 30, 2019
Re: Assembly Bill 171
Position: Support

The Wisconsin Coalition Against Sexual Assault (WCASA) appreciates the opportunity to offer this written testimony for your consideration. WCASA is a statewide membership agency comprised of organizations and individuals working to end sexual violence in Wisconsin. Among these are the 60 sexual assault service providers located throughout the state that offer support, advocacy and information to survivors of sexual assault and their families.

WCASA thanks Chairman Spiros for bringing this important piece of legislation forward for a hearing today. We also thank the leading sponsors of the bill, Representatives Thiesfeldt and Representative LaKeshia Myers and Senators Taylor and Wanggaard for their leadership on this legislation in both houses.

AB 171 closes an important loophole in Wisconsin's sexual assault laws. Currently, there is no prohibition on a law enforcement officer having sexual contact or intercourse with a person in their custody. As a result, in cases where a law enforcement officer sexually assaults someone in their custody, the prosecution is required to prove the sexual contact/intercourse was not consensual. Under current law, a correctional staff member cannot have sexual contact or intercourse with a person who is confined in a correctional institution, and consent is not an element of this crime. This crime, along with others prohibiting sexual contact by probation agents and employees of certain community-based residential facilities, recognize the imbalance of power between these individuals means actual consent to sexual contact is not possible. We believe this legislation is a logical extension of these existing crimes under Wisconsin's sexual assault laws.

Law enforcement officers have a significant amount of power in our society, which means they have the ability to influence the actions and choices of people in their custody. As a result, an individual who is in the custody of a law enforcement officer may not feel comfortable saying no to sex, or they may fear negative consequences for not agreeing to sexual contact. Either way, consent is never possible when someone feels they do not have a choice.¹

This legislation follows in the wake of a high-profile case in New York, in which two law enforcement officers sexually assaulted an 18 year old in their custody.² When the assault was reported by the survivor, the law enforcement officers claimed the sex was consensual.³ As a result, New York and

¹ National Sexual Violence Resource Center. *I Ask How Power Impacts Consent*. Available at: https://www.nsvrc.org/sites/default/files/publications/2019-01/Power%20Dynamics%20Handout_508.pdf (2019).

² <https://www.nytimes.com/2017/10/30/nyregion/nypd-detectives-rape-kidnapping-charges.html?rref=collection%2Fsectioncollection%2Fnyregion>

³ *Ibid.*

other states have passed laws similar to AB 171.⁴ Similar legislation has been introduced at the federal level as well. WCASA believes Wisconsin should join the ranks of the other states who have passed this common-sense reform to consent laws.

We thank you for your attention to this matter and for your continued efforts to improve system responses for sexual assault survivors. If you have any questions, you can reach me at ianh@wcasa.org.

⁴ <https://thehill.com/homenews/state-watch/381093-new-york-closes-loophole-allowing-police-to-have-sex-with-people-in>