



WISCONSIN LEGISLATIVE COUNCIL

REVIEW OF CRIMES AGAINST CHILDREN

225 Northwest
State Capitol, Madison

November 15, 2006
10:00 a.m. - 3:00 p.m.

[The following is a summary of the November 15, 2006 meeting of the Special Committee on Review of Crimes Against Children. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

Call to Order and Roll Call

Chair Darling called the meeting to order. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Sen. Alberta Darling, Chair; Sen. Mary Lazich; Reps. Suzanne Jeskewitz, Dean Kaufert, Carol Owens, and Mark Pocan; and Public Members Michael Brennan, Debra Davidoski, Jeff Greipp, Michael Murray, Scott Southworth, and Michael Tobin.

COMMITTEE MEMBER EXCUSED: Rep. Joel Kleefisch.

COUNCIL STAFF PRESENT: Anne Sappenfield Senior Staff Attorney, and Larry Konopacki, Staff Attorney.

APPEARANCE: Dr. Anna Salter, Department of Corrections (DOC); Tony Streveler, Policy Initiative Advisor, Office of the Secretary, DOC; Melissa Roberts, Director of Sex Offender Programs, DOC, and Bill Grosshans, Assistant Administrator, Division of Community Corrections, DOC; and Thomas Fallon, Assistant Attorney General, Department of Justice (DOJ).

Approval of the Special Committee's October 4, 2006 Minutes

Mr. Greipp moved, seconded by Mr. Murray, that the minutes of the October 4, 2006 meeting be approved. The minutes were approved by voice vote.

Presentations by Invited Speakers

Dr. Anna Salter, DOC

Dr. Anna Salter, a psychologist who is employed by the DOC, spoke to the committee about child sex offenders. Dr. Salter showed a slideshow presentation which can be viewed at <http://www.legis.state.wi.us/lc>.

In her presentation, Dr. Salter described the three main types of child sex offenders. She said the first group, which has the highest risk of recidivism, is offenders who have a deviant arousal pattern and are attracted to young children. The second group has an antisocial motivation, and the third group is motivated by loneliness.

Dr. Salter said that data from several studies shows that 51 to 62% of child sex offenders have a low risk of reoffending and 7 to 12% have a high risk of reoffending. She described how an offender's risk is assessed using various assessment tools. She described the Rapid Risk Assessment of Sexual Offense Recidivism (RRASOR) risk assessment tool, which is commonly used. Under this assessment tool, a young offender who had male victims, had more than one conviction or incident of sexually assaultive behavior, and who molested a stranger are identified as the highest risk for re-offending.

Dr. Salter also discussed sex offender treatment and stated that effective treatment appears to reduce recidivism rates by 40%. She said that the only group for whom treatment is ineffective is psychopaths. She also stated that incarceration without treatment has been shown to increase recidivism.

In response to Chair Darling's request for suggestions and recommendations, Dr. Salter said that it is best to focus resources on the 10% of offenders who are at the highest risk to reoffend because these few individuals commit the majority of offenses. She said that the strength of the ch. 980, Stats., commitment process is that it focuses on the highest-risk individuals. For individuals not yet subject to severe sanctions like ch. 980 commitment, Dr. Salter recommends more treatment and assessment resources. She also cautioned against getting too specific in statute and preventing treatment and assessment methods from evolving with scientific understanding.

In response to a question from Representative Jeskewitz, Dr. Salter said that new research indicates that sex offender treatment works equally well if provided in prison or in the community and works equally well on adults and adolescents. She said, ideally, an offender would receive treatment in prison followed by a coordinated treatment and supervision program in the community.

Representative Pocan asked Dr. Salter and Tony Streveler to speak to the specific resource needs. Mr. Streveler explained that no one tool is a magic bullet. He said that DOC uses assessments, polygraph testing, GPS tracking, treatment, and other tools as needed on a case-by-case basis. The best way to maximize the return on resources is to allow a case-specific plan to be designed for each offender.

Tony Streveler, Policy Initiative Advisor, Office of the Secretary, DOC

Mr. Streveler provided the committee with a handout entitled, "Child Sex Offenders: General and Child Sexual Recidivism Rates for Offenders on Community Supervision 1980-2002." This

handout provides details on recidivism rates for both child sex-related crimes and other crimes. This analysis shows that child sex offense recidivism rates are much lower than general recidivism rates.

Committee members inquired about the relative rates of recidivism for types of crimes other than child sex crimes, female sex offenders, and the type of treatment offenders receive in prisons that are not specialized to house sex offenders. Chair Darling noted that legislators need to be informed about how the state allocates its resources based upon what is working and what is not. The DOC staff explained that it is difficult to determine what changes impact trends in recidivism, since many efforts overlap. Dr. Salter noted that cost-benefit analyses have been conducted to determine how best to apply resources, and that she can make these available to the committee.

Senator Lazich asked about how minor offenses are weighed as indicators of possible future serious offenses. The DOC speakers explained that while some minor offenders move on to more serious offenses, no way to accurately predict which ones will do this has been identified at this time. Mr. Southworth asked how and when treatment is provided to inmates after incarceration. The DOC staff explained that it depends on available resources, the length of a sentence, whether an individual opts to accept treatment, and other factors.

**Bill Grosshans, Assistant Administrator, Division of Community Corrections, DOC, and
Melissa Roberts, Director of Sex Offender Programs, DOC**

Melissa Roberts and Bill Grosshans noted that the sex-offender placement program in Wisconsin is often looked upon by other states as a national model. They showed a slideshow presentation for the committee. This presentation provided statistics on the number of offenders in Wisconsin at various stages of supervision, supervision strategies, assessment of offenders, case management and tools, registration of offenders, noncompliance with registration, and other issues.

Committee members expressed interest in the use of pre-sentencing investigations (PSI) for sex offenders. Ms. Roberts noted that a PSI can be a very helpful tool in cases where it is ordered by the court.

In response to a question from Mr. Tobin, Mr. Streveler stated that an increasingly aging population in prison, especially among sex offenders, is costly due to factors such as increased health care costs.

Thomas Fallon, Assistant Attorney General, DOJ

Mr. Fallon discussed statistics collected by the Department of Health and Family Services that show that, in 2004, while approximately 20% of child abuse or neglect reports were substantiated, approximately 2/3 of reports of child sexual abuse were substantiated. In 2004, in 78 to 82% of the cases of child abuse or neglect, the child knew the offender.

Mr. Fallon suggested that the committee consider requiring a PSI for all sex offenses, not only to provide information for the sentencing process, but also for DOC to determine the offender's treatment needs. Mr. Fallon made additional suggestions for the committee's consideration, including the following:

1. Modify s. 948.08, Stats., soliciting a child for prostitution, to penalize intentionally soliciting, or causing a child to engage in an act of prostitution. Current law requires a person to solicit or cause a child to practice prostitution.
2. Allow a higher penalty for possession of multiple images of child pornography under s. 948.12, Stats., and provide an exception for possession of pornography for limited purposes such as treatment, assessment, and police or judicial system use. Representative Owens noted that she has tried to make such a change in prior legislative sessions. Mr. Greipp later commented that the committee should be careful not to increase harm to victims of the pornography, and that possession of these images could be treated the same as possession of other types of evidence that are illegal to possess such as narcotics.
3. Modify the child neglect statute to remove the element of “intent” and to provide a “chronic” neglect category.
4. Create a crime to protect drug-endangered children. Mr. Fallon said that CA, CO, and WY have laws or have considered legislation to penalize the gamut of behaviors that a child of a chronic drug user is exposed to that result in child neglect.

Finally, Mr. Fallon discussed the issue of Internet offenders. Mr. Fallon reported that Wisconsin is one of the national leaders in number of arrests, officers trained, forensic exams, and victims identified for Internet offenses despite somewhat limited resources. Mr. Fallon said that the state could do more with increased resources.

Description of Materials Distributed

WLC: 0011/1, relating to time to prosecute a crime that is related to a sexual assault

Anne Sappenfield presented WLC: 0011/1, relating to statutes of limitations (SOL) for crimes related to a sexual assault. This draft reconciles inconsistencies in two acts passed during the 2005-06 Legislative Session. As drafted, this draft allows prosecution of crimes related to a sexual assault of a child to be commenced within a year after DNA evidence is matched to a suspect and adds cross-references for consistency. The committee agreed that this draft is consistent with its discussion on October 4.

WLC: 0013/1, relating to repeated acts of sexual assault of the same child

Larry Konopacki presented WLC: 0013/1, a redraft of s. 948.025 (1) and (2), Stats. This draft removes language requiring the prosecutor to charge the most severe type of repeated acts of sexual assault of the same child, that the facts can support, and simplifies the necessary jury findings in cases brought under this section. Mr. Greipp said that he would like to seek additional input from prosecutors on the draft.

Memo No. 2, Options for Legislative Changes Recommended for the Special Committee on Review of Crimes Against Children

Ms. Sappenfield and Mr. Konopacki presented Memo No. 2. This Memo provides information and options for legislation on topics raised as issues by the committee at the October 4 meeting. This Memo included the following issues:

1. **Great Bodily Harm.** The committee discussed the courts' interpretation of the phrase "great bodily harm" and whether it was appropriate as a threshold of injury for the most aggravated form of first-degree sexual assault of a child, and agreed that it is appropriate. There was consensus that staff prepare a bill draft modifying s. 948.02 (1) (a), Stats., to clarify that great bodily harm need not result from the actual sexual intercourse or contact to trigger an increased penalty.
2. **Definition of "Sexual Intercourse."** The committee asked staff to prepare draft legislation that repeals the separate definition of "sexual intercourse" for the offense of first-degree sexual assault of a child. The committee members noted that this will provide consistency in ch. 948, Stats.

In discussion as to whether concerns that were possibly being addressed by the separate definition could be addressed in other aspects of the offense of first-degree sexual assault of a child, there was also consensus to prepare a bill draft modifying the mandatory minimum prison term for certain child sex offenders so that it only apply to offenses committed when the offender was 18 years of age or older.

3. **Repeat Offenders.** The committee discussed the general repeater penalty enhancements, the two strikes law for repeat child sex offenses, and the three strikes law for repeat serious felonies. The committee decided that these penalty enhancers are sufficient under current law.
4. **Neglecting a Child.** The committee requested that staff prepare a bill draft that creates two middle-range types of child neglect under s. 948.21, Stats., for neglect causing bodily harm and neglect causing great bodily harm. It was suggested that these be classified as Class F and Class H felonies, respectively, and that the crime of leaving a child unattended in a child care vehicle be similarly modified to add these middle categories. The committee asked that this draft also delete the required showing that neglect was done intentionally.
5. **Physical Abuse of a Child.** There was consensus to have staff prepare a bill draft increasing the penalty for intentionally causing great bodily harm to a child from a Class E to a Class C felony. The committee decided not to pursue legislation to address prosecution of fights between children due to concerns relating to gang activity and teen parents.
6. **Possession of Child Pornography.** Mr. Greipp noted in the previous meeting that typical child pornography offenses involve more images of pornography than in the past, largely due to the availability of material on the Internet. This results in inefficiencies and inconsistencies in prosecuting these offenders. Mr. Greipp suggested that the committee create an aggravated child pornography offense for offenders who possess a certain number of images.

The committee expressed reluctance to create this new offense at a more severe penalty class than the current Class D felony under s. 948.12, Stats., and was also reluctant to reduce the penalty for the existing offense. The committee directed Mr. Greipp to work with staff to create a suggestion for the committee to consider at the next meeting.

7. **Sex Offender Registry Offenses.** The committee requested a bill draft to remove the following offenses from the list of crimes which require sex offender registration: (1) child enticement with intent to cause bodily or mental harm [s. 948.07 (5), Stats.]; and (2) child enticement with intent to give or sell a controlled substance or analog to the child [s. 948.07 (6), Stats.] because these crimes are not necessarily sexually motivated.
8. **Statute of Limitations for Juvenile Offenders.** Because the committee had agreed to draft legislation to limit mandatory minimum prison terms for first-degree sexual assault of a child to persons committing the offense at the age of 18 or older, the committee agreed not to change the SOL for prosecution of those offenses.

Memo No. 3, Statutes of Limitations for Prosecution of Sexual Assault of a Child in Other States

Mr. Konopacki briefly summarized the SOL for child-related sex crimes in states neighboring Wisconsin.

Discussion of Committee Assignment

Representative Pocan expressed an interest in redefining the way that the state approaches incarceration of sex offenders, with a new focus on utilizing emerging research like that presented by the DOC in order to direct resources where they can provide the most benefit.

Ms. Sappenfield asked committee members whether staff should prepare bill drafts based upon Mr. Fallon's suggestions. There was consensus to draft legislation based upon his suggestion regarding the offense of soliciting a child for prostitution. Chair Darling asked staff to consult with Mr. Greipp, Mr. Murray, Judge Brennan, and Mr. Southworth to create a proposal requiring PSIs or other assessments of child sex offenders during a criminal proceeding. Mr. Greipp suggested, and committee members agreed, that staff prepare a bill draft providing that a person who possesses child pornography received through discovery in a criminal prosecution or civil action may not be charged with possession of pornography if the pornography is returned or destroyed at the end of the proceeding.

Mr. Greipp asked staff to research the origin of s. 948.025 (3), Stats., which prohibits prosecution of other offenses when prosecuting a person for engaging in repeated acts of sexual assault of the same child.

Other Business

There was no other business brought before the committee.

Plans for Future Meetings

The next meeting of the Special Committee will be *Thursday, December 14, 2006, at 10:00 a.m., in Room 225 Northwest, State Capitol.*

Adjournment

The meeting was adjourned at 3:00 p.m.

LK:ksm