



WISCONSIN LEGISLATIVE COUNCIL

REVIEW OF CRIMES AGAINST CHILDREN

225 Northwest
State Capitol, Madison

December 14, 2006
12:00 p.m. – 2:40 p.m.

[The following is a summary of the December 14, 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

Representative Jeskewitz called the meeting to order. The roll was called and it was determined that a quorum was present. Representative Jeskewitz chaired the meeting. She said that the committee would discuss each of the bill drafts and seek agreement on which drafts to include in the committee's final proposal. The drafts agreed to by the committee will be rolled into one bill draft that the committee will vote on by mail ballot.

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

COMMITTEE MEMBER EXCUSED: Sen. Mary Lazich; Rep. Mark Pocan; and Public Member Debra Davidoski.

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

Approval of the Special Committee's November 15, 2006 Minutes

Mr. Brennan moved, seconded by Mr. Murray, that the minutes of the November 15, 2006 meeting be approved. The minutes were approved by voice vote.

***ATTENTION:** This was the final meeting of the Special Committee on Review of Crimes Against Children. Committee members are requested to send any corrections regarding these Minutes to the Legislative Council staff. After the incorporation of any corrections, these Minutes will be considered approved by the committee.

Description of Materials Distributed

WLC: 0006/2, relating to reconciling 2005 Wisconsin Acts 430, 431, and 437.

Anne Sappenfield described WLC: 0006/2 and the differences between WLC: 0006/2 and WLC: 0006/1. She noted that the Department of Corrections (DOC) had discussed the elimination of the definition of “sexual intercourse” for the offense of first-degree sexual assault of a child with her and had stated that this change would have a large fiscal impact because it would expand the number of persons subject to mandatory minimum prison terms and global positioning system (GPS) tracking requirements.

Mr. Greipp recommended amending the bill draft to apply the separate definition of “sexual intercourse” to the GPS tracking requirements. He said that he did not believe that the fiscal effect would be as great as projected for mandatory minimum prison terms. Mr. Tobin disagreed, saying that the bill draft does expand the population subject to mandatory minimum prison terms and that prosecutors will use these laws.

Mr. Southworth and Representative Owens expressed concern about not requiring GPS tracking for all offenders convicted of the applicable sexual assault of a child offense. Representative Kleefisch said DOC’s fiscal estimates of the costs of GPS tracking are in dispute so should not weigh heavily in the decision whether to expand GPS tracking.

Later in the meeting, committee members raised concerns that the cost effect of expanding GPS tracking may be controversial in the Legislature. Committee members generally agreed that the bill draft be modified so that persons convicted of first-degree sexual assault of a child involving sexual intercourse with a person under 12 years of age or involving sexual intercourse with a child under 16 years of age by use or threat of violence would be subject to GPS tracking if the intercourse met the definition set forth in 2005 Wisconsin Act 430 for the offense of first-degree sexual assault of a child. Representative Kleefisch said that he would work on separate legislation to expand GPS tracking to more individuals.

Larry Konopacki noted that concerns had been raised at the committee’s November meeting concerning the portion of the bill draft setting forth the required jury findings for the offense of engaging in repeated acts of sexual assault of the same child. He said that, as drafted, the provision does not set forth elements of the offense but provides direction to the jury in its decision making. Mr. Tobin said that because the bill draft provides an offense that is cascading, it may be possible to convict a person of a higher penalty even if the jury found less serious conduct than charged.

There was consensus to modify the bill draft to return the jury findings to the finding as required under WLC: 0006/1.

Although Mr. Tobin noted that he does not support all of the provisions of WLC: 0006/2, there was no objection to including WLC: 0006/2, with the modifications agreed to, in the committee’s final proposal.

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

Ms. Sappenfield described WLC: 0011/1. There was no objection to including WLC: 0011/1 in the committee's final proposal.

WLC: 0014/1, relating to soliciting a child for prostitution.

Ms. Sappenfield described WLC: 0014/1. Mr. Brennan said that this change more effectively achieves the intent of the offense of soliciting a child for prostitution and that he believes the offense will be charged more frequently if this bill draft is enacted.

There was no objection to including WLC: 0014/1 in the committee's final proposal.

WLC: 0016/1, relating to sex offender registration.

Mr. Konopacki described WLC: 0016/1. There was no objection to including WLC: 0016/1 in the committee's final proposal.

WLC: 0017/1, relating to the offenses of neglecting a child and leaving a child unattended in a child care vehicle.

Ms. Sappenfield described WLC: 0017/1. Mr. Southworth asked whether the bill draft should require that a person "directly" contributed to the neglect of a child. Concerns were also raised about deleting the requirement that a person "intentionally" contribute to the neglect of a child. After discussion, Mr. Greipp suggested that deleting "intentionally" is controversial and should not be stricken. There was consensus to modify the bill draft so that "intentionally" will not be stricken.

There was no objection to including WLC: 0017/1, as modified, in the committee's final proposal.

WLC: 0018/1, relating to intentionally causing great bodily harm to a child.

Mr. Konopacki described WLC: 0018/1. There was no objection to including WLC: 0018/1 in the committee's final proposal.

WLC: 0022/1, relating to possession of child pornography.

Ms. Sappenfield described WLC: 0022/1. Joell Schigur, Department of Justice, said that the bill draft would violate the federal Adam Walsh Child Protection and Safety Act of 2006.

There was consensus to not include WLC: 0022/1 in the committee's final proposal.

WLC: 0023/1, relating to sexual intercourse with a child age 16 or older.

Mr. Konopacki described WLC: 0023/1 and the two options set forth in the bill draft. Mr. Tobin said that approximately 36 states have laws similar to what is proposed in the bill draft. He said that the advantage of applying the offense of sexual intercourse with a child age 16 or older only to persons 21 years of age or older is that the age is a static element. On the other hand, he said using an age difference would be better if there is any disagreement as to the exact date an offense occurred.

Mr. Brennan said he could not support the bill draft because, in Milwaukee County, a lot of offenders charged with second-degree sexual assault of a child plead to this crime. He said that he would like that negotiation between the defendant and the prosecution to continue. He also said it is a big step to decriminalize sexual intercourse between children. Mr. Murray said that the issue should be deliberated more thoroughly before any change is made.

The majority of the committee members agreed not to include WLC: 0023/1 in the committee's final proposal.

WLC: 0024/1, relating to possession of child pornography.

Mr. Konopacki described WLC: 0024/1. Mr. Greipp asked Mr. Brennan his opinion as to whether the bill draft would allow multiple charges for a person possessing multiple images. Mr. Brennan said that there was a good argument that it would, but that it was not clear. Representative Jeskewitz said that when she was drafting the legislation that became 2005 Wisconsin Act 433, she was advised to maintain the current language relating to pornographic material because it provided more flexibility to prosecutors.

There was consensus to not include WLC: 0024/1 in the committee's final proposal.

WLC: 0025/1, relating to presentence investigation and risk assessment for certain sex-related crimes against children.

Mr. Konopacki described WLC: 0025/1. Mr. Brennan suggested inserting "requiring sex offender registration listed under" before "301.45 (1d) (b)." He also suggested inserting "report" after "presentence investigation" on line 6. Mr. Konopacki suggested replacing "including" on line 6 with "that includes." Finally, Mr. Brennan said that a description of the type of risk assessment should be included. He suggested replacing "risk assessment" with "an assessment of the risk of the defendant committing another sex-related crime against a child." There was consensus to make these changes.

Ms. Sappenfield noted that she had received information from DOC concerning the fiscal effect of this bill draft. She said that DOC estimates that the bill draft may have a fiscal effect of approximately \$1 million. She said that DOC raised the possibility of limiting the requirement to convictions for first- or second-degree sexual assault of a child and engaging in repeated acts of sexual assault of the same child. Mr. Brennan said that he would not support this change because the presentence investigation will likely be useful for many defendants who would not be covered with that change. The committee agreed not to make that change.

There was no objection to including WLC: 0025/1, as modified, in the committee's final proposal.

WLC: 0026/1, relating to violations charged in the same action with a charge of engaging in repeated acts of sexual assault of the same child.

Mr. Konopacki described WLC: 0026/1. Mr. Tobin said that he opposes the bill draft because actions may potentially be tried together and that the actions will be very complicated and confusing for jurors. Mr. Greipp said that he views the bill draft as very important because he has had cases in which he charges a person with repeated acts of sexual assault, and the person denies those charges but admits

to possessing child pornography. Under this scenario, he said he feels he must first charge sexual assault and then later charge possession of child pornography if the person is found not guilty of sexual assault. He said that the cases are very long and hard on victims.

Mr. Konopacki asked whether s. 948.10, Stats. (exposing genital or pubic area), should not be stricken. There was consensus to make this change.

There was no objection to including WLC: 0026/1, as modified, in the committee's final proposal.

Discussion of Committee Assignment

Representative Jeskewitz asked for agreement to include WLC: 0006/2, as modified; WLC: 0011/1; WLC: 0014/1; WLC: 0016/1; WLC: 0017/1, as modified; WLC: 0018/1; WLC: 0025/1, as modified; and WLC: 0026/1, as modified, in a final bill draft to be voted on by mail ballot by committee members. There was agreement. Mr. Tobin said that he did not necessarily agree but would not object to the bill drafts being included in the final proposal.

Other Business

There was no other business brought before the committee.

Adjournment

The meeting was adjourned at 2:40 p.m.

AS:ksm