EVAN GOYKE
STATE REPRESENTATIVE
18th ASSEMBLY DISTRICT

August 2, 2016

To: Members of the Legislative Council Study Committee on Reducing Recidivism and Removing Impediments to Ex-Offender Employment

Dear Committee Members,

I hope this letter finds you well.

As requested, I have submitted as a starting point several bills that I introduced at the end of the 2015-16 legislative session. In total I introduced 28 bills that would reform parts of the justice system. I've focused on six that really target our committee's scope. I've also included one bill introduced by Rep. Nick Milroy regarding expungement, as well as an editorial submission I authored upon introduction of these bills.

I hope these bills provide a starting point for our work. I welcome all feedback and acknowledge that none of these bills are in perfect form. I look forward to working together to find the right language and compromise to forward these ideas should the committee agree to do so.

Thank you.

Sincerely,

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18th Assembly District

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Bills:

Earned Good Time I

LRB-4016 (AB 998): Allowing certain prisoners to earn time toward early release from confinement in prison

Bill link: http://docs.legis.wisconsin.gov/2015/related/proposals/ab998.pdf

Wisconsin's current sentencing laws generally prohibit individuals engaged in rehabilitation from earning a reduction of incarceration. This bill gives determined individuals the ability to earn a reduction in a sentence for the completion of an evidence-based program that reduces the rate of recidivism.

This bill empowers the individual to improve their lives while incarcerated by promoting the completion of programs that are proven to reduce the likelihood of committing a new crime. Our communities benefit from the reduced risk upon release. The individual benefits from the reduced period of incarceration.

Likely programs include educational, vocational, or alcohol or substance abuse programs. These programs reduce crime and should be increased and incentivized.

Under the bill, upon successful completion of a designated program, the individual would receive a reduction of his or her prison sentence, with the term of community supervision extended by the amount of incarceration reduced – ensuring that the individual serves the entirety of the sentence.

Earned Good Time II

LRB-4015 (AB 999): Allowing certain prisoners to earn time toward early release from confinement in prison

Bill link: http://docs.legis.wisconsin.gov/2015/related/proposals/ab999.pdf

Similar to LRB-4016, this bill provides an opportunity for incarcerated individuals to earn reduced incarceration through good behavior.

Under the bill, an individual would earn one day of reduced incarceration for every five days he or she serves without violation of a prison rule or regulation. Like LRB-4016, the individual's term of community supervision would be extended by the amount of incarceration reduced – ensuring that the individual serves the entirety of the sentence.

Earned Community Credit

LRB-3889 (AB 992): Sentencing credit for time served on parole or under extended supervision

Bill link: http://docs.legis.wisconsin.gov/2015/related/proposals/ab992.pdf

One of the major sources fueling Wisconsin's prison population is the re-incarceration of individuals serving community supervision. For example, in 2012, 7,456 individuals were admitted to Wisconsin prisons. Of that number, 4,874 individuals were admitted to prison in 2012 for the revocation of community supervision. The remaining 2,582 individuals were admitted for a new sentence only.

Breaking down the 4,874 revocations of supervision is difficult as criminal prosecutions and revocation proceedings often occur simultaneously. According to the DOC, 879 individuals were revoked and re-incarcerated based on a new sentence for a new crime. That leaves 3,995 individuals re-incarcerated for the revocation of supervision. Many of these individuals may have had overlapping criminal prosecutions pending and the DOC estimates this may be roughly 33% of these individuals. Assuming the 33% rate to be accurate, that leaves 2,677 admissions to prison for the revocation of supervision with no new criminal sentence. This represents 36% of the prison admissions in 2012.

Under current law, when an individual is re-released from incarceration, the time of extended supervision needed to successfully discharge from DOC supervision starts over.

For example, a sentence may be: two years of prison, followed by five years of extended supervision. Under this scenario, the individual serves the full two years and is released under supervision. For three years the individual is compliant with supervision, but then violates the rules and his supervision is revoked. After serving a period of incarceration for the violation, the individual returns to supervision for five years. There is no credit for the three years that the individual served successfully.

This example is not uncommon and can occur multiple times with the same individuals. The revolving door that is supervision-incarceration-supervision-incarceration can result in individuals serving the maximum allowable incarceration, devouring major resources, and not improving outcomes or community safety.

This bill gives credit for successful time in the community. Under the example above, the individual would return to supervision to finish two years of supervision instead of returning to repeat the original five years.

Swift and Certain Sanctions II

LRB-3839 (AB 1002): maximum period of imprisonment following revocation of extended supervision or probation

Bill link: http://docs.legis.wisconsin.gov/2015/related/proposals/ab1002.pdf

Cited above, in 2012, Wisconsin admitted 4,874 individuals back into prison as a revocation of supervision. That number is further broken down with roughly 2,600 individuals not necessarily accused of committing a new crime, but a violation of a rule of supervision and still facing re-incarceration.

To address the problems associated with the revocation process, the Legislature passed 2013 Wisconsin Act 192, which created the idea of "swift and certain sanctions" for individuals on community supervision. The idea is simple and compelling: respond to negative behavior with quick, fair, and proportionate consequences. Act 192 was bi-partisan and a great first step. I proudly voted for it.

Building on the reform of Act 192, this bill establishes a boundary of the DOC's power to re-incarcerate when the allegations leading to revocation of supervision are non-criminal. Under the bill, the DOC may not incarcerate an individual for longer than 90 days unless there are allegations of the individual committing a new crime.

Under the bill there are three important exceptions: First, if the individual is ordered as a condition of supervision to have no contact with the victim and violates that condition the incarceration may exceed 90 days. Second, if the individual absconds from supervision, the incarceration may exceed 90 days. Third, if the individual is required to register as a sex offender as a condition of supervision this bill would not apply.

The government's power to take the liberty of an individual must be reserved to those violations that endanger our community. This bill maintains that power, yet establishes a boundary that ensures individuals aren't incarcerated for excessive periods of time for non-criminal behavior.

Expungement Reform I

LRB-1075 (AB 1008): Expunging a court record of certain offenses a person committed before he or she reached the age of 25

Bill link: http://docs.legis.wisconsin.gov/2015/related/proposals/ab1008.pdf

Current law allows for certain individuals, under 25 years old and generally convicted of low-level offenses, to apply for the expungement of the criminal record upon successful completion of the sentence. The concept is simple and appropriate, yet current law contains a procedural problem. The relevant statute, Wis. Stat. 973.015 contains the following language:

973.015(1)(a) When a person is under the age of 25 at the time of the commission of an offense for which the person has been found guilty in a court for violation of a law for which the maximum period of imprisonment is 6 years or less, the court may order at the time of sentencing that the record be expunged upon successful completion of the sentence is the court determines the person will benefit and society will not be harmed by this disposition... (emphasis added)

As shown above, the decision of whether an individual may even be eligible for expungement must be made at the sentencing hearing by the circuit court judge.

The sentencing hearing is not the appropriate time for this decision, as it requires the judge to guess whether the individual will benefit or society will not be harmed. The better approach would be to allow the individual to apply for expungement following the successful completion of the sentence and prove through his or her actions how he or she would benefit and society would not be harmed. This post-completion approach is used in the juvenile system under Wis. Stat. 938.355(4m) and should be used for adults as well.

The Supreme Court of Wisconsin recently exposed the limits of our current expungement procedures in the case of State v. Matasek, 2014 WI 27. Addressing this exact point, the Court held that the language of Wis. Stat. 973.015 limits the decision of expungement to the sentencing hearing, despite the recognition that it may not be the best public policy. Writing for a unanimous Court, Justice Abrahamson wrote:

We agree with the defendant, as did the circuit court, that there are policy reasons for permitting the circuit court to decide on expunction after the offender completes his or her sentence rather than at the time of sentencing. The circuit court will probably be better positioned to weigh the benefit to the offender and the harm to society after (rather than before) the offender has successfully completed the sentence. Matasek at ¶41

This bill makes the simple change of moving the court's decision regarding expungement from the "time of sentencing" to after the individual's successful completion of his or her sentence. This bill maintains the age restriction and crime restrictions under current law.

Expungement Reform II

LRB-1355 (AB 1009): Expunging a court record of certain offenses ten years after completion of a sentence

Bill link: http://docs.legis.wisconsin.gov/2015/related/proposals/ab1009.pdf

The change to our expungement law in LRB-1075 is important, but is limited to individuals convicted of a crime moving forward. There are thousands of individuals that were convicted before Wisconsin's expungement law was created (1975 and was limited to age 21 or younger and only applied to misdemeanors until 2009) and thousands more convicted under the inefficient procedure outlined above.

Under current law, if a determination of eligibility for expungement was not made at the time of sentencing, the individual cannot get his or her conviction expunged. The only option available to thousands of Wisconsinites is a pardon from the Governor.

How long should a low-level criminal conviction stay on your record?

Under this bill, any individual, regardless of age or date of the conviction, may apply for the expungement of his or her criminal conviction so long as:

1) The conviction is one currently eligible for expungement under Wis. Stat. 973.015; and

2) 10 years have lapsed since the individual successfully completed his or her sentence and the individual has not been convicted of any subsequent crime.

This bill would give an opportunity to thousands of Wisconsinites to show that they have been rehabilitated. The bill does not require that expungement be granted, only that if the individual meets the conditions in the bill that he or she may apply and the court may determine, if the individual will benefit and society will not be harmed, to expunge the criminal conviction.

Rep. Milroy's Expungement Bill

AB 1005 - http://docs.legis.wisconsin.gov/2015/proposals/ab1005

Editorial Submission

Roadmap for Smart-on-Crime Reform

State Legislatures throughout America are addressing the problem of mass incarceration. Budget constraints and poor outcomes have inspired bi-partisan efforts in both conservative and liberal legislatures. Wisconsin is no different and several important steps have been made in recent years to address problems within our criminal justice system, yet serious work remains.

Without bold reform, Wisconsin will continue to spend more general fund dollars on prisons than colleges and maintain our unacceptable distinction as America's leader in the racial disparity between the incarceration rates of African Americans compared to whites. Neither is defensible nor sustainable.

Public debate surrounding criminal justice reform is often difficult. Victimization is real and should not be ignored, nor undervalued. The powerful emotions that criminal justice policies invokes inspired successful political campaigns from both sides of the aisle, leading to "tough on crime" politics and policy. That era is dying. The truth is that "tough on crime" doesn't make us safer; it only makes us feel safer. Smart justice reform can make our communities safer while creating a more efficient and effective system.

Here's how:

First, who we target matters. A small percentage of people are responsible for a large percentage of crime. Reduce the rate of reoffending among this population and the crime rate will go down. The decision regarding who we target is a calculation of risk, needs, and victim input. Given these basic inputs, the justice system should look to apply an intervention that, based on evidence of success, will have the greatest likelihood of ending the person's criminal behavior. Less repeat offenders equals less crime, which equals safer communities.

Second, how much we intervene matters. Most people self-correct. Age, family, education, and employment tend to result in general law-abiding behaviors. Most people that commit a crime do not go on to commit more crime. The same calculation of risk, needs, and victim input should inform the application of the appropriate intervention, based on evidence of success that will have the greatest likelihood of ending the person's criminal behavior. Over-intervention can have adverse effects. Placing low-risk and high-risk offenders together, like in a prison or jail, can make low-risk offenders more likely to reoffend. Again, less repeat offenders equals less crime, which equals safer communities.

The failing of our criminal justice system is a lack of time, information, and flexibility. Our responses must be better-individualized and informed through the use of evidence-based decision making, increased objectivity, and a relentless commitment to intervening in a way most likely to reduce crime. More time and attention must be spent on the early decision of whether to arrest and prosecute. Getting these decisions right is critical because stopping or even slowing down the criminal justice system once it starts is incredibly difficult and expensive.

The Smart-on-Crime Reform package of bills totals over 25 individual proposals. Some bills are simple, cheap, and could be adopted quickly to make our justice system function better tomorrow. Some bills are complex and require serious investment and long-term structural changes. The bills are grouped into three packages; the first package involves "pre-conviction reforms;" the next "post-conviction reforms;" and the final package of bills relate to "collateral" reforms outside of the structure of a criminal prosecution.

These bills can be first steps in a process of increasing efficiency, fairness and safety.