

Senate Committee on Judiciary and Public Safety Public Hearing
Written Testimony on Senate Bill 199
~~February~~ 2021

Chairman Wanggaard, Vice-Chair Wimberger and members of the Senate Committee on Judiciary and Public Safety, thank you for the opportunity to have a public hearing on SB 199, relating to sexual contact by a law enforcement officer with a person in detainment or custody and providing a penalty.

The journey to this moment has been nearly 3 years in the making. It all started with a news story that appeared on a morning talk show in 2018. It was over a cup of coffee that I learned the story of and 18-year old young woman named Anna Chambers.

In 2017, Chambers was riding in a car with two male friends in New York. The trio were pulled over by two New York police detectives, detectives Eddie Martins and Richard Hall. After speaking with the passengers in the car, the officers removed Chambers from the vehicle and let the driver and his male rider leave the scene. Chambers was handcuffed and placed in the back of a police van that Martins and Hall were driving.

According to Chambers, the two police detectives took turns sexually assaulting her, while the other drove the van around. Chambers, who had never met these detectives before, pleaded with them to stop. For a little over an hour, they continued to rape her. After they were done, they pulled within one block of a police station and put her out of the police van.

A distraught Chambers called her mother, who picked her up and took her to a nearby hospital. She and her mother then went to the police station to report the assault. Video surveillance retrieved from the police department showed the officers release Chambers from the police van, a mere block from the police station. Later, the hospital rape kit collected the semen of detectives Eddie Martin and Richard Hall. When confronted with the DNA results of the rape kit, the two detectives admitted that they had sex with Chambers.

The officers resigned from the NYPD, and in October 2017, they were charged with 43 crimes, including rape and kidnapping. This was going to be a slam dunk case right? Witnesses saw them take Chambers from her friend's car. The police department's surveillance video captured Chambers exiting the police van, just as she said. The rape kit found the DNA of the two detectives.

However, the prosecutors in the case came up against a defense they weren't expecting. The two detectives claimed that their sex with Chambers had been consensual. At the time of their arrests, it was not illegal for a law enforcement officer to have sex with a person in their custody. Ultimately, the rape charges were dropped, and Martins and Hall received probation for an unrelated case of taking bribes and official misconduct.

After hearing this story, my office immediately contacted our legislative reference bureau. We found that like New York, in Wisconsin it is not illegal for a law enforcement officer to have sex with an individual in their custody. I first introduced this bill in 2018.

Since that time, New York has changed their law. Bottom line, you can not consent to sexual contact with a law enforcement officer, while in their custody. There is an inherent imbalance of power in that situation. Wisconsin law doesn't currently allow correctional officers or parole agents to have sex with detainees or people in their custody. It only makes sense, that all members of law enforcement would be subject to the same laws.

I am thankful for the law enforcement agencies that have agreed with this legislation. I appreciate my colleagues that have helped to champion its merits. The bill will help protect everyone involved, officers and detainees. It should be a no-brainer and quite frankly, I was surprised to learn at the time of Ms. Chambers' assault, this loophole existed in 35 states. It's time to close it in Wisconsin. I ask for your support of SB 199. Thank you.



WISCONSIN COALITION AGAINST SEXUAL ASSAULT

Testimony

To: Members of the Assembly Committee on Criminal Justice and Public Safety
From: Ian Henderson, Policy and Systems Director (WCASA)
Date: June 17, 2021
Re: Assembly Bill 127
Position: Support

The Wisconsin Coalition Against Sexual Assault (WCASA) appreciates the opportunity to offer this written testimony for your consideration. WCASA is a hybrid organization: functioning both to support member Sexual Assault Service Providers (SASPs), while advancing the anti-sexual assault movement in the state and nationally.

WCASA thanks Committee Chair Spiros for holding a public hearing on this bill today. We also thank Senators Taylor and Wanggaard and Representatives Thiesfeldt and Anderson for their leadership on this legislation in both houses.

Sexual misconduct is the second most frequently reported form of police misconduct after excessive force¹. Additionally, Black, Indigenous and People of Color (BIPOC), LGBTQ people, and people in the sex trade are more likely to be victims of sexual assault perpetrated by law enforcement officers because they are less likely to be believed if they report².

However, there is currently 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 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 can 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.³

¹ Cato Institute. Cited at https://www.washingtonpost.com/outlook/how-some-cops-use-the-badge-to-commit-sex-crimes/2018/01/11/5606fb26-eff3-11e7-b390-a36dc3fa2842_story.html

² The Daniel Holtzclaw Trial and the Systematic Silencing of Black Women - Rewire News Group.

³ 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).

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.⁴ When the assault was reported by the survivor, the law enforcement officers claimed the sex was consensual.⁵ As a result, New York and other states have passed laws similar to SB 199.⁶ 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 our sexual assault 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://www.nytimes.com/2017/10/30/nyregion/nypd-detectives-rape-kidnapping-charges.html?rref=collection%2Fsectioncollection%2Fnyregion>

⁵ *Id.*

⁶ <https://thehill.com/homenews/state-watch/381093-new-york-closes-loop-hole-allowing-police-to-have-sex-with-people-in>