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Representative Samantha Kerkman
State Capital
P.O. Box 8952
Madison, WI 53708

RE: AB 365

Dear Representative Kerkman:

We have been monitoring Assembly Bill 365 concerning the attendance of victim-witnesses at probation and parole hearings. Thus far, our dialogue has been with Representative Barca, and we now include your office.

While we understand that it may be good politics to promote a bill of this sort, it represents "bad law" and almost certainly an unconstitutional piece of legislation.

While the district attorney may be promoting this bill out of a stated sense of "sensitivity" for felony victims, it is almost certainly unworkable in its present format.

Where your bill seems to lack in understanding is that most preliminary hearings are exercises in almost tortured brevity ministered by the magistrate. A defendant's right to meaningful cross examination in a preliminary hearing is restricted to what may or may not be "plausible". Credibility is specifically not an issue in a preliminary hearing. Credibility is almost always an issue in a revocation process. To make a legal effort to combine the utility of the preliminary proceeding and the final revocation hearing is a legislative attempt to graft together parts of two different species. They simply are incompatible and the process is virtually doomed to failure from the outset. If it was to have any value as a means of protecting a complaining witness, combined with making it a legal "due process" component of an individual's right at a revocation hearing, the rights of the individual at the preliminary hearing must be greatly broadened to include full cross-examination, a step we are confident the district attorney has no desire to accommodate, nor court commissioners to endorse.

The U.S. Supreme Court in Morrissey v. Brewer, 408 U.S. 471 (1972), while recognizing the relative informality of the revocation setting, nonetheless did articulate a minimum of due process. The opinion specifically delineates the right to confrontation and cross-examination unless the hearing officer specifically finds "good cause" to not allow confrontation.

This legislation effectively removes a defendant's mandated right and puts the "good cause" onus on the defendant to restore it. Inquire of the Kenosha District Attorney how one gets around Morrissey, especially in light of the recent recognition and expansion of confrontation rights articulated in Crawford v. Washington, 541 U.S. 36 (2004).

While we understand the politics of these kinds of bills, we must comment that they are wholly impractical and logically unconstitutional in their ultimate embodiment.

Thank you for your consideration of these matters.

Very truly yours,

Geoffrey Dowse	Donald Bielski	Glenn Blise	Karin Anderson Riccio
Attorney at Law	Attorney at Law	Attorney at Law	Attorney at Law

DJB/me