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ATTORNEYS AT LAW

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File

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GEOFFREY J. DOWSE
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Representative Peter Barca
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RE: Assembly Bill 365

Dear Mr. Barca:

We are defense attorneys in Kenosha County. We understand that you have introduced AB 365 in the Assembly. We understand that the bill provides that, if the Department of Corrections initiates proceedings to revoke a person's probation, parole, or extended supervision because the person has allegedly committed a new felony, the alleged victim's testimony from the preliminary examination regarding the felony would be admissible at the hearing on revocation of probation, parole, or extended supervision. We further understand that the bill provides that if the alleged victim testified at a preliminary examination regarding the felony and if a record of the testimony is available, the defendant would not be permitted to subpoena the alleged victim to appear at the revocation hearing unless the parties showed good cause for requiring the alleged victim's appearance.

We believe that this bill changes the burden of proof at a revocation hearing to probable cause. We believe this because the purpose of a preliminary examination in court is to determine whether probable cause exists to believe that the defendant committed a felony. It is not a trial nor a mini-trial. It is a hearing where one or several witnesses may testify as to probable cause. The defendant does not present evidence in the typical case.

We believe that this Bill runs contrary to the constitutional rights of a person accused of a new felony offense which is forming the basis for revocation. You should know that defense questioning at a preliminary hearing in court is strictly limited and cannot get into credibility issues. This bill would permit people to have their probation revoked without a full examination of the facts alleged by the alleged victim and would deny a person his or her due process rights.

The minimum due process requirements under Gagnon v. Scarpelli, 411 US 778 (1973) include the right to confront and cross examine adverse witnesses (unless the hearing examiner specifically finds good cause for not allowing confrontation). We believe this bill would violate the due process requirements of the United States and the Wisconsin Constitutions. This is a very bad idea.

We oppose this bill.

Very truly yours,

Geoffrey Dowse Frederick L. Zievers Donald Bielski Glenn Blise Karin Anderson Riccio

[Handwritten signatures of Geoffrey Dowse, Frederick L. Zievers, Donald Bielski, Glenn Blise, and Karin Anderson Riccio]
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