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Wisconsin State Senator

Statement on Senate Bill 82- the Criminal Procedure Code Rewrite

This afternoon, I scheduled Senate Bill 82, which was the completion of 23 years of work updating the criminal procedure code to reflect case law and current practice, for an executive session. Unfortunately, I had to pull the bill from the vote because lack of support.

When we had the hearing on the bill in August, it was clear there were some major problems with the bill. The police groups didn't like the no-knock search warrant requirements and the retention of biological evidence provision. The victims' rights groups also had issue with third-party discovery and discovery in the initial appearance. We asked the Department of Justice and DA's to list their problems with the bill. They had 48 of them.

Once we got the list of issues from DOJ and the District Attorneys, we asked for comment from the State Public Defender. The Public Defenders were happy to participate and provide feedback. They just wanted a seat at the table to present their case. We met with them just before Christmas to provide their input. The Department of Justice refused to participate in that meeting. At that time, 8 months after introduction, the Department of Justice stated very clearly they did not support a wholesale rewriting of the code.

Following the meeting with the Public Defender, we sat down with Legislative Council and Judicial Council to discuss amending the bill to address everyone's concerns and maintain the balance between the defense bar and the prosecutors.

The issues of the police groups have been addressed as the sections they were concerned about reverted to current law. The issues of victims groups were also address by removing and entire section of the bill, and mandating that victims and witnesses not be endangered.

The prosecutors had 48 issues. We did not favor them only 7 times. Twenty seven of the issues were resolved entirely in their favor, another six times, we either maintained current law, removed those issued for future consideration. On 8 occasions, we took a middle ground to maintain the balance between the prosecution and the defense. I could go on with more specifics of the issues that did not go as the prosecutors sought, but I will refrain at this time.

It's clear that both the defense bar and the prosecution were looking for an advantage in our criminal procedure code in this rewrite. It was also clear that neither side truly trusted the other. That is their right. In drafting Senate Substitute Amendment 1, I sought to maintain the balance in our criminal justice system as it is. The Amendment doesn't favor one side over the other, protects victims, helps the police, and maintains continuity in our criminal code.

Regrettably, but perhaps predictably, that isn't good enough for some people.

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