

**2011 DRAFTING REQUEST**

**Bill**

Received: **08/12/2011**

Received By: **chanaman**

Wanted: **As time permits**

Companion to LRB:

For: **Joan Ballweg (608) 266-8077**

By/Representing: **Dee**

May Contact:

Drafter: **chanaman**

Subject: **Criminal Law - domestic abuse**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Ballweg@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Domestic violence no-contact order violations

---

**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 08/23/2011	wjackson 08/25/2011		_____			S&L Crime
/1	chanaman 08/25/2011	wjackson 08/25/2011	rschluet 08/25/2011	_____	ggodwin 08/25/2011		S&L Crime
/2			jfrantze 08/25/2011	_____	sbasford 08/25/2011	lparisi 08/29/2011	

FE Sent For:

*At intro  
9/29/2011*

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/1		1/2 wij 8/25	rschluet 08/25/2011	_____	ggodwin 08/25/2011		

*[Handwritten signature]* 8/25

FE Sent For:

<END>

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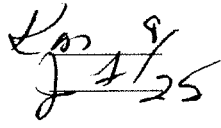
**Instructions:**

See attached

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/?	chanaman	1 WLJ 8/24					
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FE Sent For:

<END>

**Hanaman, Cathlene**

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**From:** Pettack2, Deanna  
**Sent:** Wednesday, August 10, 2011 2:24 PM  
**To:** Hanaman, Cathlene  
**Subject:** 72 Hour No Contact

**Attachments:** Victim Protection Legislation\_3 (2).pdf

Cathlene,

0403/1

Earlier this session Rep. Kleefisch drafted LRB 4031/1 regarding provision of 72-hour no contact emails.

The District Attorney's have requested some changes to the original proposal, after speaking with Rep. Kleefisch, he decided to give the legislation to Rep. Ballweg.

I have attached the changes requested, could you prepare a draft for Rep. Ballweg reflecting these important changes.

Please don't hesitate to call if you have any questions 4-8691.

Attached is the information regarding changes from the draft previously prepared from Rep. Kleefisch.

Thanks,

Dee Pettack  
Legislative Aide to



Victim Protection  
Legislation\_...

Rep. Ballweg

# VICTIM PROTECTION LEGISLATION

## SECTION 1. 941.39 of the statutes is amended to read:

941.39 Victim, witness or co-actor contact. Whoever intentionally violates a court order issued under s. 973.049 (2) is:

- (1) If the offense with which the person is convicted is a misdemeanor, guilty of a Class A misdemeanor.
- (2) If the offense with which the person is convicted is a felony, guilty of a Class H felony.

## SECTION 2. 968.075 (5) (a) 2. of the statutes is amended to read:

968.075 (5) (a) 2. An arrested person who intentionally violates this paragraph shall ~~be required to forfeit not more than \$1,000~~ is guilty of a Class A misdemeanor.

## SECTION 3. 973.049 (2) of the statutes is amended to read:

- (2) When a court imposes a sentence on an individual or places an individual on probation for the conviction of a crime, the court may prohibit the individual from contacting victims or witnesses of, or co-actors in, a crime considered at sentencing during any part of the individual's sentence or period of probation if the court determines that the prohibition would be in the interest of public protection. For purposes of the prohibition, the court may determine who are the victims or witnesses of any crime considered at sentencing.

## SECTION 4. 973.049 (3) of the statutes is amended to read:

- (3) If a court issues an order under sub. (2), the court shall ~~inform the individual of the prohibition and of the penalty under s. 941.39~~ include the prohibition in the judgment of conviction.

still  
in  
other  
prohibitions

## Hanaman, Cathlene

---

**From:** Pettack2, Deanna  
**Sent:** Tuesday, August 23, 2011 2:05 PM  
**To:** Hanaman, Cathlene  
**Subject:** RE: 72 Hour No Contact

No problem!

I actually got the clarification from the head of the District Attorney's association, is it ok to draft as requested?

Thanks so much!

Dee

---

**From:** Hanaman, Cathlene  
**Sent:** Tuesday, August 23, 2011 2:02 PM  
**To:** Pettack2, Deanna  
**Subject:** RE: 72 Hour No Contact

Interesting, it was modeled after this statute (and 971.17 (1g) and (1h), 973.0335, and 973.176 (3)), and they include the penalty notice:

973.176(1)

(1) Firearm possession. Whenever a court imposes a sentence or places a defendant on probation regarding a felony conviction, the court shall inform the defendant of the requirements and penalties under s. 941.29.

That's the reason I asked because I didn't know if the difference in wording would raise concern (in the past, I have received many calls when wording varies). But if the DAs do not find issue with the language difference (and since judges don't include penalty notice-- I didn't know that since the statute seems to require it, but the DAs and the judges see this daily, I don't), I obviously am fine with whatever they want.

Thank you both for your quick responses. I know both of you are extremely busy and we always appreciate any insight.

-Cathlene

---

**From:** Pettack2, Deanna  
**Sent:** Tuesday, August 23, 2011 1:39 PM  
**To:** Hanaman, Cathlene  
**Subject:** FW: 72 Hour No Contact

Cathlene –

Please see the notes below:

The problem with the current language is that the violation only applies should the court give notice of the penalties, which is very different from all other laws. In the firearm context, the judge only says it is prohibited to possess a firearm not the penalties for a violation.

The current law essentially has a loophole that when judges don't provide the penalty warning the prohibition is meaningless and unenforceable. If the drafter would prefer leaving the notice requirement, then you could leave the "inform the individual of the prohibition," but still strike the "and of the penalty under s. 941.39."

The goal is to strike the second half because that is quite different from other parts of the law. In my conversations with prosecutors, judges commonly don't include the penalty notice requirement.

---

**From:** Pettack2, Deanna [<mailto:Deanna.Pettack2@legis.wisconsin.gov>]  
**Sent:** Tuesday, August 23, 2011 1:23 PM  
**To:** Collins, Winn

**Subject:** FW: 72 Hour No Contact

Winn,

Any thoughts regarding the drafters notes below.

Thanks,

Dee

---

**From:**

**Sent:** Tuesday, August 23, 2011 11:10 AM

**To:** Rep.Ballweg

**Subject:** RE: 72 Hour No Contact

It's going to editing. Everything made sense except I was not sure about the intent of the change to s. 973.049 (3). Usually (such as in firearm prohibitions or prohibitions on body armor), the statutes require a court to inform the individual of the prohibition and penalty of violating the prohibition. But your request seeks to replace this language with "include the prohibition in the judgment of conviction." I am simply curious because of the other prohibition languages.

---

**From:** Rep.Ballweg  
**Sent:** Tuesday, August 23, 2011 9:44 AM  
**To:** Hanaman, Cathlene  
**Subject:** FW: 72 Hour No Contact

How is this draft coming along?

Thanks

---

**From:** Pettack2, Deanna  
**Sent:** Wednesday, August 10, 2011 2:24 PM  
**To:**  
**Subject:** 72 Hour No Contact

Earlier this session Rep. Kleefisch drafted LRB 4031/1 regarding provision of 72-hour no contact emails.

The District Attorney's have requested some changes to the original proposal, after speaking with Rep. Kleefisch, he decided to give the legislation to Rep. Ballweg.

I have attached the changes requested, could you prepare a draft for Rep. Ballweg reflecting these important changes.

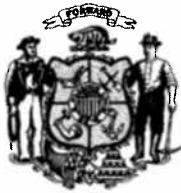
Please don't hesitate to call if you have any questions 4-8691.

Attached is the information regarding changes from the draft previously prepared from Rep. Kleefisch.

Thanks,

Dee Pettack  
Legislative Aide to  
Rep. Ballweg << File: Victim Protection Legislation\_3 (2).pdf >>





State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-2647/1  
CMH:1:...

WLj

*Thurs  
please*

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1 AN ACT <sup>*gen cat*</sup> relating to: prohibitions against contacting certain persons and  
2 providing penalties.

*individual*  
**Analysis by the Legislative Reference Bureau**  
*on individual*

Under current law, ~~a person~~ <sup>an individual</sup> who has been arrested for a domestic abuse incident must, unless the victim of the alleged domestic abuse signs a waiver, avoid the victim's residence and avoid contacting the victim for 72 hours following the arrest. If the ~~person~~ <sup>individual</sup> intentionally violates this requirement, the ~~person~~ <sup>individual</sup> must ~~forfeit~~ <sup>individual must</sup> not more than \$1,000 (a civil penalty). Under this bill, the ~~person~~ <sup>individual</sup> is guilty of a Class A misdemeanor and is subject to a fine of up to \$10,000 or imprisonment of up to nine months, or both. *individual*

Under current law, when a court imposes a sentence on an individual or places an individual on probation for a conviction for a crime, the court may prohibit the individual, during his or her sentence or probation period, from contacting victims of, or co-actors in, a crime considered at sentencing if the court determines that such a prohibition would be in the interest of public protection. An individual who violates such a prohibition is guilty of a Class A misdemeanor. This bill adds that a court may include a prohibition against contacting witnesses to the crime. In addition, this bill changes the penalty for violating a prohibition imposed following a conviction for a felony to a Class H felony. *the individual from*

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 941.39 of the statutes is renumbered 941.39 (intro.) and amended  
2 to read:

3           **941.39 Victim, witness, or co-actor contact.** (intro.) Whoever intentionally  
4 violates a court order issued under s. 973.049 (2) is guilty of one of the following:

5           **(2) If the court order results from a conviction for a misdemeanor, a Class A**  
6 misdemeanor.

History: 2005 a. 32.

7           **SECTION 2.** 941.39 (1) of the statutes is created to read:

8           941.39 (1) If the court order results from a conviction for a felony, a Class H  
9 felony.

10           **SECTION 3.** 968.075 (5) (a) 2. of the statutes is amended to read:

11           968.075 (5) (a) 2. An arrested person who intentionally violates this paragraph  
12 shall be required to forfeit not more than \$1,000 is guilty of a Class A misdemeanor.

History: 1987 a. 346; 1989 a. 293; 1993 a. 319; 1995 a. 304; 2005 a. 104.

13           **SECTION 4.** 973.049 (2) and (3) of the statutes are amended to read:

14           973.049 (2) When a court imposes a sentence on an individual or places an  
15 individual on probation for the conviction of a crime, the court may prohibit the  
16 individual from contacting victims of, witnesses to, or co-actors in, a crime  
17 considered at sentencing during any part of the individual's sentence or period of  
18 probation if the court determines that the prohibition would be in the interest of  
19 public protection. For purposes of the prohibition, the court may determine who are  
20 the victims of or witnesses to any crime considered at sentencing.

1           (3) If a court issues an order under sub. (2), the court shall inform the individual  
 2 of the prohibition and of the penalty under s. 941.39 include the prohibition in the  
 3 judgment of conviction for the crime.

4     History: 2005 a. 32.

**SECTION 5. Initial applicability.**

5           (1) The treatment of section 973.049 (2) and (3) of the statutes first applies to  
 6 sentences imposed or placements made on the effective date of this subsection.

7   (END)

## Hanaman, Cathlene

---

**From:** Pettack2, Deanna  
**Sent:** Thursday, August 25, 2011 11:40 AM  
**To:** Hanaman, Cathlene  
**Subject:** RE: LRB 2647-1

Is there anyway I could get that back today?

Thanks,  
D

---

**From:** Hanaman, Cathlene  
**Sent:** Thursday, August 25, 2011 11:37 AM  
**To:** Pettack2, Deanna  
**Subject:** RE: LRB 2647-1

Thanks.

---

**From:** Pettack2, Deanna  
**Sent:** Thursday, August 25, 2011 11:33 AM  
**To:** Hanaman, Cathlene  
**Subject:** FW: LRB 2647-1

Cathlene:

Could you please make the change below in our draft.

Regards,

Dee

---

Dee,

Thanks for providing it for review and now I agree with the drafter's earlier comments that Section 4 should be modified slightly on page three. Could you recommend to the drafter to change sub. 3 as follows:

**(3)** If a court issues an order under sub. (2), the court shall inform the individual of the prohibition and ~~of the penalty under s. 941.39~~ include the prohibition in the judgment of conviction for the crime.

The above change balances the need to provide notice, while also closing the loophole that presently exists when judges don't specifically recite the penalty.

---

**From:** Pettack2, Deanna [mailto:Deanna.Pettack2@legis.wisconsin.gov]  
**Sent:** Thursday, August 25, 2011 10:52 AM  
**To:** Collins, Winn  
**Subject:** LRB 2647-1

Winn,

I finally received the draft this morning. Would you mind taking a look at it and make sure it is drafted correctly before I circulate it for co-sponsorship.

Regards,

Dee << File: LRB 2647.pdf >>



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-2647/1  
CMH:wlj:rs

2  
↑  
stays

2011 BILL

TOOBY

Refer out

1 AN ACT to renumber and amend 941.39; to amend 968.075 (5) (a) 2. and  
2 973.049 (2) and (3); and to create 941.39 (1) of the statutes; relating to:  
3 prohibitions against contacting certain persons and providing penalties.

*Analysis by the Legislative Reference Bureau*

Under current law, an individual who has been arrested for a domestic abuse incident must, unless the victim of the alleged domestic abuse signs a waiver, avoid the victim's residence and avoid contacting the victim for 72 hours following the arrest. If the individual intentionally violates this requirement, the individual must forfeit not more than \$1,000 (a civil penalty). Under this bill, the individual is guilty of a misdemeanor and is subject to a fine of up to \$10,000 or imprisonment of up to nine months, or both.

Under current law, when a court imposes a sentence on an individual or places an individual on probation for a conviction for a crime, the court may prohibit the individual, during his or her sentence or probation period, from contacting victims of, or co-actors in, a crime considered at sentencing if the court determines that such a prohibition would be in the interest of public protection. An individual who violates the prohibition is guilty of a Class A misdemeanor. This bill adds that a court may also prohibit the individual from contacting witnesses to the crime. In addition, this bill changes the penalty for violating a prohibition imposed following a conviction for a felony to a Class H felony.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a

**BILL**

report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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4 violates a court order issued under s. 973.049 (2) is guilty of one of the following:

5           (2) If the court order results from a conviction for a misdemeanor, a Class A  
6 misdemeanor.

7           **SECTION 2.** 941.39 (1) of the statutes is created to read:

8           941.39 (1) If the court order results from a conviction for a felony, a Class H  
9 felony.

10          **SECTION 3.** 968.075 (5) (a) 2. of the statutes is amended to read:

11          968.075 (5) (a) 2. An arrested person who intentionally violates this paragraph  
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**BILL**

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2 the victims of or witnesses to any crime considered at sentencing.

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4 of the prohibition and of the penalty under s. 941.39 include the prohibition in the  
5 judgment of conviction for the crime.

6 **SECTION 5. Initial applicability.**

7 (1) The treatment of section 973.049 (2) and (3) of the statutes first applies to  
8 sentences imposed or placements made on the effective date of this subsection.

9 (END)

*plain*

*plain*



**Parisi, Lori**

---

**From:** Pettack2, Deanna  
**Sent:** Monday, August 29, 2011 9:17 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 11-2647/2 Topic: Domestic violence no-contact order violations

Please Jacket LRB 11-2647/2 for the ASSEMBLY.