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TO: Members of the Assembly Committee on Public Safety & Homeland Security

FROM: Representative André Jacque

DATE: May 21, 2013

RE: Assembly Bill 176

Dear Colleagues,

Assembly Bill 176 will accomplish a number of technical but essential refinements to Wisconsin's statutes related to temporary restraining orders (TROs), which are available to victims of domestic violence, child abuse, stalking and individuals at risk. Research shows that restraining orders reduce or eliminate abuse in the majority of cases. This bill will close loopholes and clarify laws so that these proven and cost-effective protections continue to help vulnerable victims in Wisconsin.

One of the unfortunate loopholes in current Wisconsin statute is that a TRO may be vacated (until the request is heard by the substituting judge) by the person it is issued against simply by that person requesting a judicial substitution. AB 176 will require that, in the event a new judge subs for the original judge, any ex parte order (including a TRO) granted by the original judge remains in effect and is automatically extended until the new judge holds an injunction hearing. Likewise, this bill specifies that if a person seeks a new hearing involving the issuance of a domestic abuse, child abuse, or harassment TRO or injunction, the ruling made in the original hearing remains in effect until the final determination is made in the new hearing.

The bill makes stalking behavior, as defined by the criminal law, a basis for obtaining a domestic abuse restraining order. Stalking is a significant indicator of danger but is currently not included in the definition of domestic abuse for the purpose of obtaining a domestic abuse restraining order.

Also under this bill, a judge can prohibit all contact between the victim and perpetrator through a harassment restraining order. Currently, the law only specifically bars harassing contact, which invites abusers to push the limits of the orders and leads to enforcement problems.

Similar to other hearings related to children, child abuse restraining order hearings will be closed and the records sealed to protect minor victims. Some counties have already adopted this practice. Child victims of incredibly traumatic and horrible crimes should not have their privacy exposed on CCAP.

AB 176 also prohibits charging child victims and parents not involved in the case for guardian *ad litem* fees in child abuse restraining order cases. Charging child victims (or their non-offending parent) for justice and protection likely violates federal funding conditions and is an unjust barrier to safety for child victims.

These changes were suggested to me by the Wisconsin Coalition Against Domestic Violence.

Thank you again for your time and for your consideration of Assembly Bill 176.

Testimony



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To: Members of the Assembly Public Safety and Homeland Security
From: Tony Gibart, Policy Coordinator, Wisconsin Coalition Against Domestic Violence (WCADV)
Date: May 21, 2013
Re: Support for Assembly Bill 176

Chairman Jacque, Members of the Committee, thank you for the opportunity to offer testimony today. My name is Tony Gibart, and I represent the Wisconsin Coalition Against Domestic Violence (WCADV). WCADV is the statewide membership organization that is the voice for survivors of domestic violence and local domestic violence victim service providers. We strongly support Assembly Bill 176 and thank Rep. Jacque and Sen. Petrowski for bringing it forward. This bill will resolve a number of inconsistencies with Wisconsin's restraining order laws that prevent victims and their children from gaining protection.

Fundamentally, domestic violence is about victims' loss of control and safety in their own families and homes. Restraining orders are a legal mechanism by which victims can begin to regain control and achieve a measure of protection. While there are limits to the protections offered by a restraining order alone, research has shown restraining orders are effective in many, if not most, cases. A 2009 study found that obtaining a restraining order was associated with an elimination of violence in 50% of cases within 6 months. Two studies from Seattle found that women with restraining orders were less likely to be abused, compared to those who did not obtain them.¹ In addition, 86% of women with restraining orders report the order either stopped or reduced the abuse.²

Wisconsin has four types of restraining orders: domestic abuse, harassment, child abuse and individual-at-risk restraining orders. Victims of domestic abuse might utilize any one or more of these orders depending on the circumstances. One of the main goals of AB 175 is to make these orders more consistent and easier to understand for victims and court personnel. I will briefly discuss each of the changes made in the bill.

Technical Changes to Remove Inconsistencies and Add Clarity

- (1) Current law provides a method for victims requesting a domestic abuse or harassment restraining order to submit their address confidentially. This allows victims to receive necessary notices from the court but remain safe from the abuser. The bill adopts this procedure for child abuse and individual-at-risk restraining order cases.
- (2) Under current law, the court must rule on the final restraining order 14 days after the issuance of a temporary restraining order. Some judges will keep the temporary order in effect long-term in lieu of ruling on the final order, although this practice is not in keeping with the statute. The bill specifically prohibits the practice.
- (3) WCADV has recently received reports of confusion over whether validly issued temporary restraining orders remain in effect when a party makes a motion for judicial substitution or when a

¹ Hotaling, G., and E. Buzawa. "Victim Satisfaction with Criminal Justice Case Processing in a Model Court Setting." Final report for National Institute of Justice, grant number 2000-WT-VX-0019. Washington, DC: U.S. Department of Justice, National Institute of Justice, January 2003, NCJ 195668. <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=195668>

² Ptacek, J. *Battered Women in the Courtroom: The Power of Judicial Responses*. Northeastern Series on Gender, Crime, and Law. Boston, MA: Northeastern University Press, 1999, NCJ 183008. <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=183008>

party asks a judge to review the decision of a court commissioner. The bill clarifies that the protection for the victim remains in effect.

(4) The bill states that harassment restraining orders may bar all contact between the perpetrator and the victim. This option is currently available under a general provision but not spelled out in the law. As a result, orders under the harassment statute tend to only prohibit harassing contact, which invites abusers to push the limits of the restraining order and leads to enforcement problems. Under the bill, the court commissioner or judge would retain the discretion to decide whether to bar all contact or only harassing behavior.

(5) Along with obtaining a restraining order, victims in severe cases sometimes need to actively hide from their abusers. Under a law that was passed last year, victims can change their names confidentially. This bill will fix a technical issue related to how the confidential name change statute interacts with CCAP so that the law functions as intended.

(6) Under current law, in some limited situations, a victim can obtain an extension of a domestic abuse restraining order. The statute directs the victim to notify the perpetrator of the extension. The bill takes the more sensible approach of directing the clerk of court to make the notification in order to limit the perpetrator's ability to have contact with or locate the victim.

Recognizing Stalking as an Act of Domestic Abuse

Stalking is, itself, not currently included in the definition of domestic abuse under the domestic abuse restraining order statute. Stalking behavior should be a basis for obtaining a domestic abuse restraining order. This behavior is a significant indicator of danger. The bill uses the criminal definition of stalking and incorporates it into the domestic abuse restraining order law.

Giving Child Victims Better Access to Protection and Privacy

This bill will make protections for minors more accessible and sensitive to their unique needs. There is a significant overlap between domestic abuse and child abuse. About half of men who abuse their female partners will also abuse their children. Beyond abuse of children by parents or adults, teen dating violence is an increasingly more recognized issue.

AB 176 will ensure that child abuse restraining order hearings are closed and that records of the proceedings are not available on CCAP. This change will make these hearings consistent with other sensitive legal proceedings involving children, such as CHIPS actions. Currently, the identities of some physical and sexual abuse child victims are freely accessible on CCAP. This re-victimizes these children and only stifles their ability to come forward and get protection.

In addition, AB 176 will ensure that child victims are not charged for the fees of a guardian *ad litem* in child abuse or harassment restraining order proceedings. WCADV periodically receives reports of some courts charging fees to the victim in these cases or making the payment of a deposit a condition of moving forward with the restraining order. These practices very likely violate federal funding conditions, which prohibit the assessment of any fee for orders of protection. In addition, creating a financial obstacle for child victims is unjust and unnecessarily increases the risk the victim will continue to be abused. The bill also prohibits charging the same fees to a parent of the child, when the parent is not otherwise a party to the action. This prohibition is necessary because charging a parent in this situation would legally and practically be equivalent to charging the child victim.

This concludes my testimony. I want to again thank Rep. Jacque and Sen. Petrowski for bringing forward this package of needed technical changes and refinements. We believe this bill will go a long way to making restraining orders in Wisconsin more effective and enhancing the safety and protection of victims in our communities. Thank you, and I would be happy to answer any questions.



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May 21, 2013

Golden House fully supports the proposed bill, LRB-0720-1 and believes that it will truly be a gain for victims of domestic violence if passed.

From a Domestic Violence Survivor:

"After my relationship ended and my partner was arrested the fear did not stop. Being with someone for an extended period of time they get to know you're routine and changing that up is not as easy as it seems. It was difficult to change my whole life because my ex could not handle us no longer being together. My life as it was was placed on hold. Due to his actions, I couldn't be me in any sense. I had to rely on friends and family to keep me safe. I was scared to answer the phone, scared to approach customers at my work because I would always think and wonder whom my ex would be sending in to "check up on me, to make sure that I was where he knew I would be. I was advised by the police department, for my safety to not park my vehicle in front of my work, to not answer the phone, and to not be left alone until the injunction went into effect. In my case, I fit the definition of domestic abuse and was able to obtain an injunction because there was a physical incident which occurred. I was lucky but what about the numerous victims who don't fit into the definition because they are no longer with their abusive partner but their partner still cannot accept the fact they aren't together. I believe the addition of stalking, or threat to stalk will capture the numerous victims who are still experiencing domestic abuse but now looks differently."

Domestic violence is about power and control. Not all domestic violence involves acts of physical violence. The addition of stalking, or a threat to stalk to the definition of domestic abuse for the purpose of issuing a temporary restraining order (TRO) or injunction, will allow more victims of domestic violence the opportunity to gain protection from their abusive partners.

The most common and potentially lethal stalking cases are those which emerge from domestic violence situations. The most dangerous time for victims of domestic violence is at the time of separation. In attempting to leave, the victim is undermining the batterer's power and control. To a batterer, this is the ultimate defiance or betrayal. They may refuse to accept that the victim could or should live a life outside their power and control. With the advance of technology, victims can now experience abusive behavior through phone calls, text messages, social media and email. The inclusion of stalking to the definition of domestic abuse will increase the number of restraining orders that assist victims who are experiencing domestic violence.

Sincerely,

Karen Faulkner
Golden House