



# JERRY PETROWSKI

WISCONSIN STATE SENATOR

## Senate Bill 605 – Firearm Surrender

February 20, 2014

Honorable chair and committee members. Thank you for the opportunity to testify in support of the substitute amendment to Senate Bill 605, also known as the SAFE Act. (Stopping Abuse Fatalities through Enforcement).

This bill is a reasonable and proven way to prevent domestic violence related homicides by simply enforcing current law.

Currently, an abuser with an active child abuse, domestic abuse, or, in some cases, a harassment restraining order is prohibited from possessing a firearm. Under current law, these abusers are directed to either surrender the firearms to the sheriff or a third party. However, a survey conducted of Wisconsin Sheriff's departments found the majority did not automatically follow up to make sure that the abusers had complied with the court-ordered mandatory surrender of weapons. Because of this, most abusers are put on the honor system to hand them over.

Under this bill, abusers who are currently prohibited from possessing a firearm will be asked about the firearms they own or possess. The court will then verify the guns are given to the sheriff or third party. If issues with compliance arise, the court will schedule a mandatory court hearing to ensure firearms are turned in. This bill also provides a uniform procedure to return guns to individuals once their restraining order has expired.

Some counties have implemented a similar system that this bill seeks to codify. In those counties, victims generally feel safer. Agency representatives in the pilot counties reported the new protocol required minimum court time and they didn't experience any significant costs to law enforcement.

The substitute amendment that has been introduced provides a solution to a problem created by current federal law. Under federal law, as soon as a judge issues a permanent restraining order, the possession of firearms is illegal. This means that as soon as a person subject to a restraining order leaves the hearing, they are violating federal law. This substitute amendment requires that the court stay the permanent injunction for up to 48 hours so that the guns may be returned. While the court can give a respondent up to 48 hours, they may also chose to give them only one hour or less to comply.

29TH SENATE DISTRICT

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STATE CAPITOL: P.O. BOX 7882 • MADISON, WISCONSIN 53707-7882  
SEN.PETROWSKI@LEGIS.WISCONSIN.GOV • TELEPHONE: (608) 266-2502 • FAX: (608) 282-3569



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During the time the restraining order is stayed, the court will issue a temporary restraining order. This provides the same level of protection for a victim, but does not conflict with federal law. The substitute amendment also allows for the court to require a respondent to be escorted by law enforcement during the surrender.

There is also a simple amendment to the substitute that would make this bill consistent with another bill I have authored with Representative Jim Ott; Senate Bill 580. Senate Bill 580 deals with individuals who have been subject to involuntary mental health commitments. Under current law, they are prohibited from possessing a firearm. This amendment would make sure that this bill covers those individuals as well.

The recent tragedies involving gun violence in domestic abuse incidents as well as the bipartisan nature of this bill support why enforcement is necessary. Wisconsin needs to close the gap in our laws and take a step in the right direction of preventing another tragedy.

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SEN.PETROWSKI@LEGIS.WISCONSIN.GOV • TELEPHONE: (608) 266-2502 • FAX: (608) 282-3569



**Senate Committee on Transportation, Public Safety and Veterans and Military Affairs  
SB 605- Relinquishing Firearms in Cases Involving a Restraining Order**

Chairman Petrowski, committee members. I appreciate the opportunity to testify in support of Senate Bill 605, also known as the SAFE ACT. (Stopping Abuse Fatalities through Enforcement)

The SAFE Act, which passed the Assembly on a voice vote earlier this week, establishes a uniform procedure to ensure that domestic abusers who are prohibited under federal and state law from possessing firearms actually surrender their firearms. The bill is modeled after a successful pilot program in four Wisconsin counties (Outagamie, Sauk, Waushara, and Winnebago).

Right now an abuser with an active child abuse, domestic abuse or, in some cases, a harassment restraining order is prohibited from possessing a firearm and is directed to either surrender the firearms to the sheriff or a third party. However, a survey conducted of Wisconsin Sheriff departments found the majority didn't automatically follow up to ensure that abusers had complied with the court-ordered mandatory surrender of weapons, meaning in most Wisconsin counties abusers are put on the honor system to hand them over.

Under this bill, abusers who are currently required to relinquish their firearms will be asked about the firearms they own or possess. The court will then verify the guns are given to the sheriff or a third party. If there are issues with compliance, a mandatory court hearing is scheduled to ensure the firearms are turned in. If the abuser fails to attend the required hearing or later fails to surrender the firearms, the abuser will be arrested and held in contempt of court. The bill also provides a uniform procedure to return guns to individuals once their restraining order has expired.

Victims in the pilot counties supported the procedures called for under the bill. They said the procedures made them feel safer, gave them peace of mind, and enhanced their actual safety. Agency representatives in the pilot counties reported the new protocol required minimal court time and that they didn't experience any significant costs to law enforcement. I believe you'll be hearing from some of those folks today.

The bill has been amended to address concerns that were raised after the public hearing in the Assembly. The State Courts asked for a couple technical changes and the other more substantive change address a concern that compliance with the procedures in the original bill would cause abusers to violate federal law. The amendment allows the court to stay the injunction and extend the temporary restraining order to give the abuser time to retrieve their firearms and turn them over. Both changes have the support of End Domestic Abuse Wisconsin.

Once again, thank you for the opportunity to testify on SB 605.

*First for Wisconsin!*

# testimony



To: Members of the Committee on Transportation,  
Public Safety, & Veterans & Military Affairs  
Date: February 20, 2014  
From: Tony Gibart, Public Policy Coordinator  
Re: SB 605: The SAFE Act (Stopping Abuse Fatalities  
through Enforcement)

Wisconsin Coalition Against Domestic Violence  
307 South Paterson Street, Suite 1  
Madison, Wisconsin 53703  
Phone: (608) 255-0539 Fax: (608) 255-3560  
tonyg@wcadv.org

Chairperson Petrowski and Members of the Committee, thank you for the opportunity to provide testimony on SB 605, the SAFE Act (Stopping Abuse Fatalities through Enforcement). My name is Tony Gibart, and I represent End Domestic Abuse Wisconsin. End Abuse is the statewide membership organization that is the voice for survivors of domestic violence and local domestic violence victim service providers. We strongly support the SAFE Act and thank Senators Petrowski, Taylor and Ellis and Representative Bies for bringing it forward.

A gun is the most commonly used weapon in domestic violence homicide in Wisconsin and throughout the United States. In response to the heightened risk that guns pose to domestic violence victims, both federal and Wisconsin law prohibit the possession of firearm while a person is subject to an active restraining order. However, abusers with civil restraining orders are not held accountable and retain possession of their guns, even when barred under state law.

In 2004, a Polk County resident, Mikayla Tester, died after being shot by her father, John Tester, who then killed himself. Mikayla was only five years old. Mikayla's mother had long been afraid for her and Mikayla's safety. She related numerous occasions when John threatened her life. She had two different protection orders during their marriage, and in court documents she had written, "I worry about our daughter if she happens to be in the wrong place at the wrong time when he goes into a rage." John had been arrested three times, twice for violating the order of protection and once for interfering with a 911 call. At the time of the homicide, he had an order of protection against him stating he was not to possess a firearm.

## **Under an existing law, individuals subject to restraining orders must surrender their firearms.**

Wisconsin was one of the first states to implement legislation to require domestic abusers to surrender their firearms. Currently, under Wisconsin law, individuals who have an active domestic abuse, child abuse or, in some cases, a harassment restraining order against them may not possess firearms and must surrender firearms in their possession to the sheriff's department or a court approved third party. This provision, passed almost 20 years ago, makes sense.

- A Massachusetts study found that almost two-thirds of guns used by men who shot their partners were illegal because the killer had a prior abuse conviction or a protective order was in effect at the time of the killing.
- A study in North Carolina found that over one-third of respondents to domestic abuse restraining orders had access to a firearm, and over a quarter of those had used firearms against the victim in the previous 12 months.
- A 2010 study in the journal *Injury Prevention* found that **disarming violent offenders through the restraining order process reduces domestic violence homicides by almost one-fifth.**

**Currently, offenders are not being required to actually surrender their guns.**

In many counties, procedures do not exist to enforce firearms surrender requirements, leaving abusers to the honor system and exposing victims to potentially fatal danger. The Governor's Council on Domestic Abuse—Firearms Subcommittee, an interdisciplinary group of law enforcement officers, judicial officials, victim advocates and other professionals, surveyed counties regarding enforcement of the surrender law. In 2008, the subcommittee found that only 12 counties in Wisconsin have policies in place to actively ensure that abusers who are required to surrender their firearms do so.

**SB 605 provides for the implementation of model procedures to ensure that perpetrators are held accountable and victims are protected.**

SB 605 will create a procedure to confirm that the abuser has surrendered firearms in accordance with current law. The procedures were developed by the Governor's Council on Domestic Abuse—Firearms Subcommittee. The subcommittee, which was made up of a variety of stakeholders, was mindful of administrative and practical concerns and looked to best practices from other jurisdictions that have similar surrender requirements. Under the model procedures, if the firearms are not surrendered to the sheriff after the restraining order has issued, the abuser will be required to appear in court so that surrender can be arranged. Under SB 605, the respondent may still surrender the weapons to a third party. The bill requires that the third party also appear in court so that the judge takes steps to approve the third party, including informing that individual of his or her responsibilities as a third party and verifying that the third party is not legally prohibited from possessing guns.

**SB 605 will not affect the rights of anyone who is currently legally allowed to possess a gun.**

SB 605 will not affect the rights of anyone who is currently legally allowed to possess a gun. This is bipartisan legislation; it only creates procedures to make sure that Wisconsin's current surrender law actually does what it is supposed to do—protect victims and prevent domestic violence killings.

**These model procedures have been successfully piloted in four counties.**

Since the development of the procedures, four counties in Wisconsin, Outagamie, Winnebago, Waushara and Sauk, took part in a pilot project to implement the procedures. The pilot project was widely considered a success and demonstrated that these commonsense procedures can be implemented without undue expenditures of time and money. After these findings were documented in a final report, the Chief Judges in Wisconsin endorsed the procedures as a best practice.

**Victims statewide deserve consistent enforcement of laws that can save their lives.**

The success of the pilot projects and the support of judicial leaders represent improvements compared to the situation several years ago. However, still today, most counties do not have an active enforcement procedure. A victim's safety should not depend on where he or she lives in Wisconsin. This legislation will ensure that lifesaving enforcement of Wisconsin law will exist throughout our state and that the safety of victims in all of your districts will be taken seriously when known offenders are supposed to surrender their guns. For close to 20 years, the enforcement of this law has been worse than inconsistent. Now that we have a proven solution, we should not wait for another preventable killing before we act.

Thank you for the opportunity to provide testimony on SB 605, the SAFE Act. I urge you to pass this legislation.

PHONE: Oshkosh (920) 236-4791  
(920) 236-4792  
Neenah (920) 727-2880  
Fax (920) 424-7779



COURTHOUSE  
415 Jackson Street, Room 220  
P.O. Box 2808  
Oshkosh, Wisconsin 54903-2808

**DAVID W. KECK**  
**COURT COMMISSIONER**  
**WINNEBAGO COUNTY, WISCONSIN**

February 17, 2014

To: Senate Committee on Transportation, Public Safety, and Veterans and Military Affairs

RE: Senate Bill 605

I am writing to voice my support for Senate Bill 605 because I am unfortunately unable to appear and testify before you personally.

As a court commissioner in Winnebago County and a participant in the Firearms Surrender Protocol Pilot Project I am involved in the development of and current implementation of the protocol for firearms surrender.

Implementation of the protocol throughout the state can be achieved effectively and simply, and with minimal cost.

Winnebago County is generally considered to be a mid-sized county by our state standards, and the cost to our system to continue the protocol amounts to not more than the costs of copying forms to be served on respondents. The additional time spent by the courts and sheriff is minimal.

These costs are far outweighed by the benefit to the community of assuring that firearms do not illegally remain in the hands of individuals who are disqualified from possessing them.

I am asking that you give your support to Senate Bill 605. I do believe it will save lives.

Sincerely,

David W. Keck  
Family/Court Commissioner

From: Sarah Engle

Date: February 20, 2014

Re: Testimony in Support of Senate Bill 605 and Assembly Bill 464, the SAFE Act.

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Hello, my name is Sarah Engle. I am from Price County, but currently live in Marshfield, Wisconsin to be near the Marshfield Clinic, where I received treatment for my injuries. I am a survivor of domestic violence. I am here today to testify in support of Senate Bill 605 and Assembly Bill 464 and tell my story about how dangerous it is when abusers have guns.

On September 10, 2008, my ex, James Lahoud, shot and killed my mother—she was my best friend. He also held me hostage, raped me, shot me in the head and left me for dead. At the time, I was living with my mom because I had left him. When I returned home that night, he was in my mother's house holding a gun. He threatened to shoot me if I did not do what I was told. He told me to take off all of my clothes. He then taped my hands behind my back and tried to rape me. I convinced him to untie me, and I pretended that I wanted to have sex with him. I just wanted to get the gun away from him. But, he kept the gun close at hand as he raped me several times that night. Even when I had to use the bathroom, he would stand there and point the gun at me—always threatening to shoot me. He even shot the gun once to let me know that it worked. Then he made me get dressed. I assumed he would just go. I don't remember being shot. I have no idea how long I was unconscious before I woke up.

When I woke up, I didn't realize that I had been shot. I searched through the house to see if he was still there. I saw my car was gone. He had barricaded the door to my mother's room. I had to break in. I remember her being cold. I remember telling her I would get help. I left house frantically, without my shoes. Someone on the road saw me and got me to a clinic that just opened early that morning. I was taken to a hospital and don't remember much after that. I was told that because I was shot at such close range my skin burned immediately, preventing me from bleeding to death.

The next thing I can remember is waking up in the hospital. It was a month later, and I had been in a coma. As soon as I woke up, I immediately felt that I had survived so that I could speak out and help prevent others from becoming victims. That is why I am here. Even if SB 605 would not have saved my mother, I am living proof of how important it is that we do everything we can to keep guns out of the hands of domestic abusers. My ex had a history of being abusive. He had active domestic restraining orders at the time of the killing. SB 605 is the least we can do. The bill will help keep guns out of the hands of people like him, abusers who already are not legally able to own guns.

This legislation is not intended to punish abusers; it is meant to protect victims and prevent the senseless loss of life. I believe many domestic abusers learn abusive behavior because they either witnessed or experienced abuse as a child. However, when domestic abusers have access to guns, the cycle of abuse and pain continues for generations. Since 2000, over 50 people in Wisconsin, including my mother, have been killed by domestic abusers who illegally possessed their guns. Domestic violence has caused me pain and heartache that I will have to confront for the rest of my life. My hope is that by speaking out here today I can transform that experience into something positive and help change the laws so that others don't lose a parent or loved one.