

SENATE CHAIR  
LENA C. TAYLOR

# STATE OF WISCONSIN

LRB-3070/1

ASSEMBLY CHAIR  
JOE PARISI

415-S Capitol  
P.O. Box 7882  
Madison, WI 53707-7882  
Phone: 608-266-5810



126-N State Capitol  
P.O. Box 8953  
Madison, WI 53707-8953  
Phone: 608-266-5342

sen.taylor@legis.wi.gov

rep.parisi@legis.wi.gov

## JOINT REVIEW COMMITTEE ON CRIMINAL PENALTIES

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### COMMITTEE REPORT -- 2009 ASSEMBLY BILL 410 & SENATE BILL 283

[Introduced by Representatives Zigmunt, Parisi, Benedict, Berceau, Bernard Schaber, Grigsby, Hraychuck, Kaufert, A. Ott, Pasch, Pope-Roberts, Roys, Sinicki, Soletski, Staskunas, Suder and Turner; cosponsored by Senators Taylor, Sullivan, Darling, A. Lasee, Lassa, Lehman and Risser.]

#### **Background**

AB 410 and SB 283 are identical, companion legislation. AB 410 was introduced in the Assembly on August 31, 2009 and referred to the Assembly Committee on Corrections and the Courts. SB 283 was introduced in the Senate on August 31, 2009 and referred to the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform and Housing. Under current law, a person who is arrested for a domestic abuse incident may not go to the residence of the alleged victim of the incident or contact the alleged victim for 72 hours after he or she is arrested unless the alleged victim signs a waiver that would allow the person to go to the home or make contact. A person who does so is subject to a forfeiture of up to \$1,000. Under AB 410/SB 283, a person who violates these provisions is guilty of a Class A misdemeanor and is subject to a fine not to exceed \$10,000, imprisonment not to exceed nine months, or both.

AB 410 was recommended for passage by the Assembly Committee on Corrections and the Courts by a vote of 12-0. The Assembly unanimously adopted AB 410 on a voice vote. AB 410 was messaged to the Senate and referred to the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform and Housing. AB 410/SB 283 received a concurrent public hearing in the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform and Housing. AB 410 was approved by the committee by a vote of 4-1 and SB 283 was approved by the committee by a vote of 5-0. Senator Lena C. Taylor, chair of the standing committee to which the bills were referred, requested a report of the Joint Review Committee on Criminal Penalties on the bills pursuant to s. 13.525(5)(a) & (b). This section of statutes requires a report to be prepared concerning all of the following:

1. The costs that are likely to be incurred or saved by the department of corrections, the department of justice, the state public defender, the courts, district attorneys, and other state and local government agencies if the bill is enacted.
2. The consistency of penalties proposed in the bill with existing criminal penalties.
3. Alternative language needed, if any, to conform penalties proposed in the bill to penalties in existing criminal statutes.
4. Whether acts prohibited under the bill are prohibited under existing criminal statutes.

This report addresses these statutory points regarding AB 410/SB 283.

**Costs or savings**

No fiscal estimates have been submitted by any state agencies regarding the potential costs or savings of AB 410/SB 283. For additional information, please see the attached letter from Wisconsin State Court system, which predicts that AB 410/SB 283 will likely lead to increased costs for the state court system, but that these costs are indeterminate.

The committee received also received testimony from the Wisconsin Coalition Against Domestic Violence (WCADV) and the Association of State Prosecutors (ASP) regarding the need for AB 410/SB 283 to close a loophole in Wisconsin's criminal statutes.

The ASP stated that the only remedy for cases involving a violation of the statutory 72-hour no contact order in a domestic violence case is a forfeiture, which is inconsistent with current bail jumping law and is inadequate to protect victim safety. The ASP did acknowledge that AB 410/SB 283 would result in a cost to the criminal justice system because the bills would lead to more criminal charges being filed for violations of the no contact order.

WCADV asserted that if no bail is currently set by a judge after a domestic violence arrest, then there is currently no statutory penalty beyond a forfeiture if an accused offender violates the 72-hour no contact statute. This undermines victims' trust in the system because most victims are promised that they will be protected by a 72-hour no contact period if they report the crime and that they will be protected if the accused offender violates the provision.

The State Public Defender questioned whether there was any evidence that perpetrators take into account the criminal penalties of their conduct before they act. WCADV asserted that repeat offenders certainly do become aware of what restrictions they face when engaging in patterns of power and control over victims. In addition, violations under s. 968 are currently not considered bail jumping unless the judge independently creates a no contact order, so victims are currently at the mercy of a particular court's custom.

The State Public Defender would incur costs related to additional criminal cases, and the bill would also indirectly result in additional proceedings in which the Department of Corrections would seek to revoke supervision and in which the State Public Defender would appoint attorneys.

**Consistency of penalties**

AB 410/SB 283 is consistent with existing criminal penalties. The proposal makes violations of the current 72-hour no contact statute for domestic violence offenses a Class A Misdemeanor, which is the same as bail jumping under current law.

**Alternative suggestions**

The committee did not discuss alternative suggestions to AB 410/SB 283.

**Duplication in statutes**

No concerns were raised by members of the committee or other parties that AB 410/SB 283 duplicated existing statutes.

**Findings of the committee**

The Joint Review Committee on Criminal Penalties finds that AB 410/SB 283 will likely have an indeterminate cost increase on the state's criminal justice system. The basis of this determination is that the proposal creates a new criminal penalty and will likely lead to increased court appearances for criminal defendants who violate the current 72-hour no contact statute that prohibits accused domestic violence offenders from going to the residence of the alleged victim of the incident or contacting the alleged victim for 72 hours after the incident.



# Supreme Court of Wisconsin

DIRECTOR OF STATE COURTS

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Shirley S. Abrahamson  
Chief Justice

16 East State Capitol  
Telephone 608-266-6828  
Fax 608-267-0980

A. John Voelker  
Director of State Courts

TO: Joint Review Committee on Criminal Penalties

FROM: John Voelker, Director of State Courts

RE: AB 410/SB 283 Relating to Violation of the 72-Hour No Contact Provision in Domestic Violence Cases

DATE: February 1, 2010

Your committee has requested comments about AB 410 and SB 283 that is the subject of an informational hearing before the Joint Review Committee on Criminal Penalties today. These bills would create a misdemeanor violation, rather than a forfeiture, for those persons who violate the 72-hour no contact provision in domestic violence cases.

#### (1) Costs Likely to be Incurred

AB 410 and SB 283 will likely increase costs for the court system, although it is not possible to estimate how significant they may be. Under these bills, certain cases that currently result in civil forfeitures may be brought as misdemeanors.

Using data from the 2006 Judicial Needs Assessment, submitted to the Director of State Courts by the National Center for State Courts, misdemeanors overall took an average of 27.7 minutes of judicial time. For purposes of comparison, forfeiture actions required, on average, 7.5 minutes of judicial time.

#### (2) Consistency of Penalties

We do not have information or suggestions relating to the consistency of penalties.

#### (3) Alternative Suggestions

We do not have any alternative language to suggest.

#### (4) Duplication in Statutes

It does not appear these bills duplicate other statutes.

I hope this information is helpful to the committee in fulfilling its assignment.

JV:NMR