

2009 DRAFTING REQUEST

Bill

Received: 07/02/2009

Received By: phurley

Wanted: As time permits

Identical to LRB:

For: Joe Parisi (608) 266-5342

By/Representing:

↳ transferred to Rep. Zigmunt
This file may be shown to any legislator: NO (see attachment)

Drafter: phurley

May Contact:

Addl. Drafters:

Subject: Criminal Law - domestic abuse

Extra Copies:

Submit via email: YES

Requester's email: Rep.Parisi@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Waiting period

Instructions:

See attached

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>
/?	phurley 07/02/2009			_____			Crime
	jozalp 07/02/2009			_____			
	phurley 07/14/2009			_____			
	jozalp 07/15/2009			_____			
/1	phurley	kfollett	mduchek	_____	cduerst	lparisi	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	07/15/2009	07/17/2009	07/21/2009	_____	07/21/2009	08/24/2009	

FE Sent For:

<END>

↳ Not Needed

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	jozalp 07/15/2009						
	phurley						

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Under Wisconsin law, domestic violence offenders may not contact the victim within 72 hours of arrest, unless the victim consents to contact in writing.¹ Currently, Wisconsin law contains a loophole that allows offenders to violate the 72-hour no-contact condition with relative impunity. Wisconsin law should be amended so that violation of the 72 hour no-contact condition is treated in the same manner as a violation of bail conditions.

When an individual is arrested pursuant to Wisconsin's domestic abuse mandatory arrest law, the individual may not be released until he or she has posted bail or appears before a judge for a bond hearing.² When a defendant posts bail from the jail, he or she signs two documents. First, the defendant signs the generic bail/bond form.³ By signing this document the defendant agrees to the following four general conditions:

- Defendant shall appear on all court dates.
- Defendant shall give written notice to the Clerk of Court within 48 hours of any change of address or telephone number
- Defendant shall not commit any crime.
- Defendant shall neither directly nor indirectly threaten, harass, intimidate or otherwise interfere with victims or witnesses in this action.

Second, the defendant signs a conditional release agreement.⁴ The agreement states the defendant will not contact the victim for 72 hours unless written consent of the victim is filed. The agreement also notifies the defendant that if he or she violates the agreement, the defendant will be subject to a forfeiture of up to \$1,000.⁵

If after signing these two documents the defendant immediately contacts the victim, the defendant may only be assessed with the forfeiture. Some law enforcement agencies will re-arrest the defendant and book the defendant at the station for the forfeiture; however, the defendant must be immediately released. The defendant cannot be held in custody or further charged with bail-jumping because violation of the 72-hour no-contact condition is not defined as a crime. Therefore unless the defendant acts in an intimidating or harassing manner, the defendant has technically not violated any of the four conditions of bail (see above) by contacting the victim.⁶

Victims, advocates and law enforcement experience intense frustration because of this loophole. The 72-hour no-contact condition is an important victim safety measure. When defendants are released from jail on the condition that they not contact the victim, the legal consequence of violating that condition should provide for a return to jail. In addition, the defendant should be subject to at least the same penalty that could be imposed if the defendant does not appear in court or violates another condition of bail. Currently, bail-jumping is a Class A misdemeanor. The Legislature should amend the 72-hour no-contact statute to provide that a violation of the conditional release is also a Class A misdemeanor.

¹ Wis. Stat. § 968.075(5).

² Wis. Stat. § 969.07.

³ See Wisconsin Court Form CR-203

⁴ Wis. Stat. § 968.075(6).

⁵ Wis. Stat. § 968.075(5)(a)1..

⁶ In a 1998, Wisconsin Court of Appeals case, *State v. Boardman*, the state argued that the 72-hour no-contact condition of release was incorporated into the conditions of bond.⁶ Based on a reading of the applicable statutes, the Court rejected this argument and held that the defendant could not be charged with bail-jumping for merely violating the 72-hour no-contact condition. 216 Wis. 2d 386 (Ct. App. 1998).



2009 BILL

7-15-09

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AN ACT ...; relating to: ~~Violation of the 72-hour no contact provision in domestic violence cases~~ and providing a penalty.

Analysis by the Legislative Reference Bureau

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.

is
X

Under this bill, a person who violates these provisions is guilty of a Class A misdemeanor and subject to a fine not to exceed \$10,000, imprisonment not to exceed nine months, or both.

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.

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

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SECTION 1. 968.075 (5) (a) ^{2.} of the statutes is amended to read:

968.075 (5) (a) 1. ~~Unless there is a waiver under par. (c), during the 72 hours immediately following an arrest for a domestic abuse incident, the arrested person~~

BILL

SECTION 1

1 shall avoid the residence of the alleged victim of the domestic abuse incident and, if
2 applicable, any premises temporarily occupied by the alleged victim, and avoid
3 contacting or causing any person, other than law enforcement officers and attorneys
4 for the arrested person and alleged victim, to contact the alleged victim.

5 ~~no ff~~ 2. An arrested person who intentionally violates this paragraph shall be
6 ~~required to forfeit not more than \$1,000~~ is guilty of a Class A [✓]misdemeanor.

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

(END)

Parisi, Lori

From: Murray, Mike
Sent: Friday, August 21, 2009 4:02 PM
To: Ferus, Jay
Cc: Peterson, Eric; Parisi, Lori
Subject: RE: jackets

Hi Lori,

This is Mike from Rep. Parisi's office. I must have forgotten to authorize the transfer of this bill to Rep. Zigmunt. Rep. Parisi wanted to make sure that those are now Rep. Zigmunt's bills.

Thanks and please feel free to contact me if you have any questions.

Mike Murray

From: Ferus, Jay
Sent: Friday, August 21, 2009 4:00 PM
To: Murray, Mike
Cc: Peterson, Eric; Parisi, Lori
Subject: FW: jackets

Please see below.

Jay Ferus
Office of Rep. Ted Zigmunt
266-9870

From: Parisi, Lori
Sent: Friday, August 21, 2009 3:37 PM
To: Ferus, Jay
Subject: RE: jackets

Hello again Jay, I was just getting the drafts that you requested ready to jacket. LRB 09-3070/1 is actually not a Zigmunt draft. I cannot find any information in the file that it was passed onto your office. If you would like me to jacket it for you, I will need the original requester to e-mail me permission. Thank you and sorry for the inconvenience.

Lori Parisi
Program Assistant

From: Ferus, Jay
Sent: Friday, August 21, 2009 3:24 PM
To: Parisi, Lori
Subject: RE: jackets

Monday morning would be fine.

Jay

From: Parisi, Lori
Sent: Friday, August 21, 2009 3:23 PM
To: Ferus, Jay
Subject: RE: jackets

I will take care of it. Do you need them yet today? I know the Sergeant's office is closing at 4pm today.....

Lori Parisi
Program Assistant

From: Ferus, Jay
Sent: Friday, August 21, 2009 3:20 PM
To: LRB.Legal
Subject: jackets

Hi,

I need jackets for LRB-1669/1 and LRB-3070/1 please.

Thank you,

Jay Ferus
Office of Representative Ted Zigmunt
Madison:
420-North, PO Box 8953, Madison, WI 53708
608-266-9870 or 1-888-534-0002
District:
PO Box 321
Francis Creek, WI 54214
920-686-1060

Parisi, Lori

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Sent: Friday, August 21, 2009 3:20 PM
To: LRB.Legal
Subject: jackets

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Thank you,

Jay Ferus

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