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JOINT REVIEW COMMITTEE
ON CRIMINAL PENALTIES

COMMITTEE REPORT -- 2009 SENATE BILL 380 and 2009 ASSEMBLY BILL 558

[Introduced by Senators Taylor, Robson, Lassa, Jauch and Coggs; cosponsored by Representatives Staskunas, Bernard Schaber, Hraychuck, Pasch, Pope-Roberts, Parisi, Roys, Berceau, Fields, Turner, A. Ott, Milroy, Cullen, Van Akkeren, Zepnick, Seidel, Grigsby and LeMahieu.]

Background

SB 380 and AB 558 are identical, companion legislation. SB 380 was introduced in the Senate on November 3, 2009 and referred to the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing. AB 558 was introduced in the Assembly on November 10, 2009 and referred to the Assembly Committee on Corrections and the Courts. SB 380/AB 558 would prohibit a person who is convicted of misdemeanor domestic violence from possessing a firearm. Violations of the prohibition would be subject to a class G Felony, which includes a fine of up to \$25,000 or a term of imprisonment of up to 10 years, or both.

Neither bill has received a hearing in their respective standing committee. Senator Lena C. Taylor and Representative Joe Parisi, chairs of the standing committees 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 SB 380/AB 558.

Costs or savings

For a description of the cost and savings analysis of SB 380/AB 558, please see the attached fiscal estimates from the Department of Administration that describe the potential fiscal impact the

legislation could have for district attorneys, the Department of Corrections, the Department of Justice, and the State Public Defender (SPD).

In addition to the above mentioned fiscal estimates, the Joint Review Committee on Criminal Penalties received testimony from Nancy Rottier, representing the Wisconsin Court System, who expressed that the circuit courts had workload concerns regarding the bills similar to those expressed by the district attorney and SPD fiscal estimates. The circuit courts' primary concern was that more defendants would choose to challenge misdemeanor domestic violence cases because of the collateral consequences of the proposed state firearm prohibition for domestic violence misdemeanants.

The committee then discussed whether the concerns regarding increased challenges to domestic violence misdemeanors are mitigated by current federal law, which prohibits domestic violence misdemeanants from possessing firearms. The committee discussed whether the creation of a state criminal statute would indicate intent from the state to increase enforcement of the current federal prohibition, which might induce more defendants to challenge the case to trial or to try to arrange for a plea bargain to a non-domestic violence offense. The committee acknowledged that these concerns were speculative and did not reach a consensus regarding to what extent defendants would factor in the new state law when determining whether to challenge domestic violence prosecutions as compared to current practice under the federal firearm prohibition.

Representative Parisi asked if the courts or other institutions considered the possible savings that could result from this legislation if it prevents domestic violence homicides, which are far more costly to investigate and prosecute. There was some acknowledgment from committee members that there could be some savings in this regard, but such savings would be difficult to determine.

Tony Gibart, Policy Coordinator for the Wisconsin Coalition Against Domestic Violence (WCADV), also provided testimony on SB 380/AB 558. Victim advocates are concerned that the current federal prohibition is not currently being enforced. Mr. Gibart also stated that the fiscal estimate submitted by the district attorneys is possibly an overestimate because it is based on an inadequate sample size. The fiscal estimate was based solely on one county's district attorney and then extrapolated for the entire state.

The Department of Justice (DOJ) indicated that SB 381/AB 559 would likely make the current process of determining who subject to a firearm prohibition clearer and more streamlined. DOJ also stated that the technical costs of the legislation could be absorbed by the Department. The new felony classification will lead to some increased appellate work for the Department. DOJ stated that the bill is prospective, so concerns regarding prior convictions being appealed are without merit.

The committee discussed whether there was empirical evidence that firearm restrictions help reduce domestic violence homicides. The committee was unaware of such studies, but Mr. Gibart noted that domestic violence homicides, on average, constitute between one-fourth to one-third of homicides in Wisconsin and over one-half of domestic homicides involved firearms, so there is a rational nexus between prohibiting domestic abusers from possessing firearms and preventing homicides.

Consistency of penalties

SB 380/AB 558 prohibits anyone convicted of a misdemeanor crime of domestic violence from possessing a firearm. A person who violates the prohibition is guilty of a class G felony and is subject to a fine of up to \$25,000 or a term of imprisonment of up to 10 years, or both. The proposal codifies the current federal firearm prohibition for domestic violence misdemeanants into state law.

The proposed penalty in SB 380/AB 558 is consistent with the existing penalty for violating the current firearm possession restriction statute that applies to convicted felons and other parties under Wis. Stat. 941.29.

Alternative suggestions

The SPD suggested considering whether the proposed firearm prohibition be narrowed in order to be more strongly linked to the underlying behavior. However, no specific suggestions were provided.

Duplication in statutes

In reviewing the statutes, there is no duplicative firearm restriction for domestic violence misdemeanants.

Findings of the committee

The Joint Review Committee on Criminal Penalties finds that SB 380/AB 558 will likely have an indeterminate fiscal impact, but will likely lead to at least some cost increases. The extent of the fiscal impact will depend primarily on two factors: (1) how frequently district attorney prosecute violations of the proposed firearm prohibition and (2) whether parties charged with misdemeanor domestic violence will more frequently contest these charges at trial as compared to current practice.