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## JOINT REVIEW COMMITTEE ON CRIMINAL PENALTIES

### COMMITTEE REPORT -- 2009 SENATE BILL 381 and 2009 ASSEMBLY BILL 559

[Introduced by Senators Taylor, Robson, Lassa, Jauch, Risser and Coggs; cosponsored by Representatives Bernard Schaber, Staskunas, Parisi, Berceau, Roys, Turner, Fields, Pasch, Milroy, A. Ott, Hraychuck, Richards, Sinicki, Kestell, Hebl, Zepnick, Seidel, Grigsby, Toles, LeMahieu and Newcomer.]

#### **Background**

SB 381 and AB 559 are identical, companion legislation. SB 381 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 559 was introduced in the Assembly on November 10, 2009 and referred to the Assembly Committee on Corrections and the Courts. SB 381/AB 559 create a procedure for notifying a person who is the subject of a domestic abuse injunction, child abuse injunction, or certain harassment injunctions, of the prohibition against possessing a firearm and of the requirement to surrender any firearm when the person is served with a petition for an injunction hearing. The bill also creates a procedure for surrendering firearms if the court grants an injunction.

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 381/AB 559.

#### **Costs or savings**

For a description of the cost and savings analysis of SB 381/AB 559, 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). Please note the amended fiscal estimate submitted on behalf of the district attorneys on November 25, 2009 that indicates that, if enacted, SB 381/AB 559 will likely have a "small" cost to district attorney offices.

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 some concerns regarding the bills. The circuit courts' primary concern was that the 7-day deadline requiring the court to schedule a surrender hearing after an injunction is granted and the court finds that it is not likely that the respondent has surrendered his or her firearms is too short. This timeline would create scheduling difficulties and make adequate service and notice for respondents difficult to accomplish. Ms. Rottier suggested changing the deadline from 7 to 14 days to coincide with the deadline required for scheduling an injunction hearing after a restraining order is granted.

The Wisconsin Counties Associated did not testify but indicated that their concerns were identical to those expressed by the Wisconsin Court System.

Ms. Rottier also noted that some judges expressed concern that the surrender hearing process could implicate 5<sup>th</sup> Amendment issues regarding the respondent's right not to be compelled to make self-incriminating statements. There was general agreement in the committee that this issue needed further clarification and if such a constitutional problem with the legislation exists, it should be addressed with an amendment.

Ms. Rottier also mentioned that the Wisconsin Office of Justice Assistance (OJA) currently has financial resources available for pilot projects to create a firearms surrender process similar to the one outlined by SB 381/AB 559. Ms. Rottier also indicated her belief that sheriff's costs may increase as a result of the need to receive and store surrendered firearms. Sheriff Mahoney confirmed these responsibilities would result in increased costs.

Tony Gibart, Policy Coordinator for the Wisconsin Coalition Against Domestic Violence (WCADV), also provided testimony on SB 381/AB 559. He indicated that the vast majority of counties do not have any firearm surrender process in place and this ad hoc approach potentially quite costly, only these costs are not currently being measured. Thus, it is difficult to tell how much of a cost increase SB 381/AB 559 would create. Mr. Gibart argued that by streamlining the firearm surrender process, this bill could lead to long term cost savings. In addition, SB 381/AB 559 does contain a cost saving provision for sheriffs by providing them with authority they currently lack to dispose of guns that the respondent has not claimed within 12 months after the injunction expires at cost to the respondent.

**Consistency of penalties**

SB 381/AB 559 do not create new criminal penalties. The proposal requires the court to issue an arrest warrant for a respondent who fails to appear at a required hearing, which could result in a civil contempt of court penalty.

**Alternative suggestions**

The committee discussed the possibility of changing the timeline for when a court has to schedule a firearm surrender hearing from 7 days (as is the bill is currently drafted) to 14 days after the court determines that the respondent has not surrendered his or her firearms.

**Duplication in statutes**

In reviewing the statutes, SB 381/AB 559 does not duplicate any existing statutes.

**Findings of the committee**

The Joint Review Committee on Criminal Penalties finds that SB 381/AB 559 will likely have an increased fiscal impact on the state court system and sheriff's offices, but the increase is indeterminate. Costs to circuit courts could be lessened by extending the time period in which a court must schedule a surrender hearing after an injunction is granted. The committee recognizes that because most counties do not have a formal firearms surrender proceedings in place, these costs will be new. For those counties with formal firearms proceedings in place, it is possible that the bill would result in savings, have no fiscal impact, or lead to indeterminate cost increases. Finally, the committee finds that further clarification is needed regarding any potential constitutional issues with the proposal that may implicate a witness' right not to be forced to make self-incriminating statements.