



# Amy Loudenbeck

REPRESENTING WISCONSIN'S 31<sup>ST</sup> ASSEMBLY DISTRICT

**Testimony before Assembly Committee on Criminal Justice  
Assembly Bill 171  
Rep. Amy Loudenbeck  
November 7, 2013**

Thank you, Mr. Chairman, Representatives, for the opportunity to speak on this bill that protects victims who are being abused, harassed or threatened from out of state.

We live in a highly mobile, high-tech society, and sometimes our laws need to be updated to reflect current reality.

Assembly Bill 171 was written to clarify language in current law that often prevents victims in Wisconsin from obtaining restraining orders against individuals who are abusing, threatening or harassing them from other states.

The bill does not create a new law or a new penalty. It simply clarifies when the court has personal jurisdiction in certain actions for restraining orders or injunctions in cases of domestic abuse, child abuse or harassment.

In these types of cases, a victim may be unable to get a judge to review a request for a restraining order because personal jurisdiction cannot be determined. This may be because the abuser resides in another state, or it may be due to advances in technology such as email, social media and texting which allow stalkers and abusers to harass from undisclosed locations.

Under current law, if personal jurisdiction is unclear, the victim may be advised that the only option is to go to another state to apply for the restraining order. For many victims, this is an impossible or unnecessarily risky task.

I have already offered an amendment to the bill that would ensure that the court may allow a respondent who lives or resides in another state to testify on the record, or otherwise participate in any proceeding in the action, by telephone or live audiovisual means. This amendment was drafted in response to concerns raised in the Senate regarding the potential inability of an accused person to travel in order to defend themselves in court.

Crimes such as domestic violence and child abuse don't distinguish between gender, race, socio-economic status, state borders, or political parties. I encourage all members to support this bill to protect victims by empowering judges with the authority to consider restraining order applications based on facts and allowing victims to "get their day in court".

Thank you for your time.



## State Senator Sheila Harsdorf

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Date: November 7, 2013

To: Assembly Committee on Criminal Justice

Fr: Senator Sheila Harsdorf

Re: Assembly Bill 171 – clarifying jurisdiction of Wisconsin courts to protect domestic violence victims from abusers who reside in other states

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Chairman Kleefisch and Committee Members,

Thank you for holding a public hearing on Assembly Bill 171 (AB 171), which seeks to make a change in state law that prevents victims in Wisconsin from obtaining restraining orders against individuals who are abusing, threatening, or harassing them from other states. I regret that I am unable to testify in support of this bill in person due to scheduling conflicts but I appreciate the opportunity to share with you the importance of passage of this legislation.

Courts currently do not have the authority under state law to place a restraining order on someone outside of Wisconsin. Not having this authority ties the hands of judges, leaving them only with the ability to inform the victim that their only option to seek relief is to go to another state and file a restraining order there.

Under this bill, courts will be provided guidelines specific to restraining order actions that allow victims to apply for orders that protect them from individuals in other states. Nothing in this bill requires the court to issue a restraining order; it simply allows the victim to have their day in court. Additionally, as federal law provides that court rulings from one state are honored in other states, restraining orders issued by Wisconsin courts are fully enforceable across state lines.

I am introducing this legislation in order to allow victims of domestic abuse and stalking to seek protections without having the additional burden of traveling to another state to do so. Victims of domestic abuse and stalking live in fear every day and the decision to apply for a restraining order is not an easy one. Requiring a victim to apply in the state the perpetrator resides can sometimes be an impossible task and is unnecessarily risky.

In today's society and with advances in technology and communication, stalking and harassment over social media sites are becoming more and more common. Additionally, as a legislator whose district lies adjacent to the State of Minnesota, I know that threatening individuals can live nearby yet still be in a neighboring state. We need to ensure that victims of these crimes are able to seek protection without unnecessary, costly, and burdensome travel to another state.

I urge committee members to support this legislation in an effort to minimize the devastating impact of domestic violence, harassment, and stalking. Thank you for your consideration.

# testimony



**To:** Members of the Assembly Committee on  
Criminal Justice

**Date:** November 7, 2013

**From:** Tony Gibart, Public Policy Coordinator

Wisconsin Coalition Against Domestic Violence  
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Chairman Kleefisch and Members of the Committee, thank you for the opportunity to provide testimony in support of Assembly Bill 171. I want to thank Sen. Harsdorf and Rep. Loudenbeck for authoring this important bill. My name is Tony Gibart, and I am with End Domestic Abuse Wisconsin. We are the statewide voice for local domestic violence victim service providers and survivors in Wisconsin. Our members serve victims in all of the state's 72 counties and 11 tribes.

At End Abuse, we field legal questions from advocates and domestic violence victims around the state. Many times victims or advocates call us because they are experiencing intense frustration at a provision in the law or legal interpretation that defies commonsense and seemingly puts the victim at risk unnecessarily. Assembly Bill 171 addresses a legal problem that, based on the calls we receive, victims are facing with increasing frequency: the denial of restraining order petitions on jurisdictional grounds, even when the victim has solid evidence that the abuser is currently threatening and harassing him or her.

*Assembly Bill 171 will ensure that our courts are authorized to consider restraining order petitions to protect Wisconsinites from abuse, stalking and harassment that was committed or is being committed by an individual who is not in Wisconsin.*

Let me explain. As a prerequisite to any civil action—including a petition for a restraining order—the court must find it has personal jurisdiction over the defendant. Personal jurisdiction is conferred by statute, and, in general terms, it currently requires that the defendant be in Wisconsin, reside in Wisconsin or that the defendant commit an act in Wisconsin that gives rise to the legal action. Most of the specific language of our personal jurisdiction statutes was written with things like personal injury or product liability suits in mind, not potentially life-threatening cases of violence, stalking or harassment.

Therefore, the current personal jurisdiction statutes have been interpreted to deny Wisconsin courts the authority to act in situations for which most people would assume restraining orders are available. Say for instance, a young woman from Manitowoc attends college in Chicago. During her freshman year she dates a classmate for several months. Towards the end of the spring semester she breaks up with the classmate, because he is being controlling. She then returns home to work for the summer at the family business in Manitowoc. Her ex-boyfriend, who is still living in Chicago, is now constantly sending her threatening emails and facebook messages. Under current law, this young woman may be denied a restraining order, because the ex-boyfriend is not in Wisconsin and has no connection with Wisconsin. Or take another situation: a woman and her children live in Minneapolis with her husband and their father. The husband has repeatedly been violent to the mother, but one day he comes home drunk and physically abuses the children. The mother decides she must leave immediately and flees with the children to her parents' house in Eau Claire. The mother's request for a restraining order might be denied for the same reasons as the college student's request.

Assembly Bill 171 corrects this needless gap in our law by creating jurisdictional statutes specifically for restraining orders, so that victims in Wisconsin, at the very least, have access to our courts and the protection of our restraining orders.

Before concluding, there are two other aspects of the bill that I would like to point out:

- Alleged abusers (respondents) who are out-of-state must be served with notice of the restraining order hearing and given the same opportunity to contest the petition as provided under current law to individuals in Wisconsin. A forthcoming amendment will clarify that courts can give respondents the opportunity to appear by telephone to lower any burden on them.
- Under federal law, Wisconsin restraining orders are valid in every other state, and if violations occur in another state the abuser can be prosecuted entirely under the laws of that other state. So, a restraining order issued under this bill would be more than "just a piece of paper." It could be a ticket for the out-of-state abuser to face real accountability for continued abuse, stalking or harassment. In addition, the issuance of a Wisconsin restraining order against someone who is engaged in abuse from another state can help law enforcement more efficiently respond to inter-state abuse. Because the abuser can be arrested and prosecuted entirely in the home state, there is less of a need for more complicated coordination between law enforcement agencies in two different states, and the need to extradite the defendant to Wisconsin to face possible criminal charges here is completely eliminated.

It almost goes without saying that in an increasingly mobile and technology driven society the incidence of inter-state abuse cases will continue to grow. It certainly would be comforting if abuse, stalking and harassment couldn't cross state lines. But, that of course is not the reality. Assembly Bill 171 will offer victims a fair chance to get the protection they deserve when they are threatened or harassed by a person in another state. I urge the committee to support this bill. Thank you.



# Wisconsin State Public Defender

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October 18, 2013

Representative Joel Kleefisch  
Chair, Assembly Committee on Criminal Justice  
P.O. Box 8952  
Madison, WI 53708

Dear Chairman Kleefisch,

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I am writing regarding Assembly Bill 171 which is scheduled for a public hearing on October 24. AB 171 expands who may apply for a restraining order or injunction in the case of domestic abuse, child abuse, or harassment.

The bill provides subject matter jurisdiction to the courts regardless of whether the alleged abuse or harassment occurred in Wisconsin.

In addition, personal jurisdiction is authorized if **any** of the following are true:

1. The abuse or harassment alleged in the action could have an effect in Wisconsin.
2. The petitioner or alleged child victim resides or is living temporarily in Wisconsin.
3. Jurisdiction is otherwise permissible under the constitution of the United States or of the state of Wisconsin.

Combined, these provisions create a scenario where essentially anyone could apply for a restraining order regardless of where the abuse has occurred or may occur. This has the potential to put Wisconsin courts in the position of issuing restraining orders and injunctions based on acts committed in other states. In addition, the bill has the potential to provide a false sense of security to petitioners as law enforcement would not actually have the ability to protect a petitioner who is not in the state.

In considering the effect this would have on the population served by the State Public Defender, the consequences of making an individual from another state come to Wisconsin to participate in a hearing in terms of cost and time can not be understated. The implications for the number of court hearing events could also be significant, particularly in counties that border other states.

While everyone shares the goal of protecting victims of domestic abuse, child abuse, and harassment, the broad parameters of this bill in its current form will have an inordinate impact on out of state respondents and the Wisconsin court system.

Sincerely,

Adam Plotkin  
Legislative Liaison, Office of the State Public Defender

Cc: Members, Assembly Committee on Criminal Justice

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October 18, 2013

Representative Joel Kleefisch  
Chair, Assembly Committee on Criminal Justice  
P.O. Box 8952  
Madison, WI 53708

Dear Chairman Kleefisch,

I am writing to provide this committee with additional information related to Senate Bill (AB) 171. AB 171 is intended to expand a court's subject matter and personal jurisdiction in actions for restraining orders or injunctions in cases of domestic abuse, child abuse, or harassment. Practically speaking, AB 171 is designed to allow Wisconsin to second guess other states' laws and court decisions and provide a venue for individuals who want to misuse or frustrate the judicial process.

The language in Section 1 of the bill is overly broad. It allows for misuse within Wisconsin and for assertion of Wisconsin law in lieu of other states' statutes governing restraining orders and other legal actions. The language allowing a petition to be filed by a person living temporarily in Wisconsin could allow a person to file a petition in Wisconsin that may not have been granted in another state or was in fact denied in another state. In effect, this provision usurps other states' statutes regarding the use of restraining orders by allowing wide latitude in who may apply for, and the circumstances in which the court may grant, a restraining order or injunction.

I fully support a process to provide legal protection in the form of restraining orders, but ask that the committee seriously consider the actual language in AB 171 and whether it serves a stated problem with the current system. Currently, we can prosecute an individual in Wisconsin for violating a restraining order granted in Wisconsin or an order granted in any other state (see Wis. Stat. 813.128). There is no legitimate interest in expanding existing protections but a great deal of opportunity for abuse of process in this bill.

My experience in Winnebago County suggests that the current ability to obtain a restraining order is far from a difficult process and that guidance and assistance in doing so is readily available. This same experience requires that I caution you about this bill. Several years ago it was brought to my attention that only about 20-25% of the temporary restraining orders issued by a court commissioner in Winnebago County were subsequently put into place as permanent orders. A restraining order limits an individual's freedom. While one could argue it is okay to

take away freedoms as a general precaution, it undermines some very dear core values of our country and our state.

Under this bill, anyone outside of Wisconsin would have to hire an attorney here or travel to Wisconsin to answer the allegations or the court can simply put the injunction in place. Unless an individual is able to incur such expenses, these could be ordered at a rate of 100%. The traditional jurisdictional protections citizens enjoy would be circumvented. I note that a subsequent proposed revision allows for a court to hear testimony by phone or videoconference but this does little to help alleviate the problem. Courts may simply not allow telephone or video testimony and the legislature will be powerless to force the issue. Conducting a telephone or videoconference evidentiary hearing is quite difficult, if even possible, as a practical matter. Even if a court allowed it and the respondent has the technical capability, the respondent would be unable to submit evidence. That would seem inherently biased. The proper channel would be for the person wanting to restrain the freedom of another citizen, to have to go to the state in which jurisdiction lies and obtain the restraining order according to the law of the state that has jurisdiction over the respondent.

AB 171 will also provide a means for individuals who want to complicate or circumvent current legal process or use the new law itself as a tool for harassment. Imagine if California had such a law and members of this committee had to travel to California or hire attorneys in California every time a politically motivated person filed for a restraining order. One option would be to ignore the process and allow the restraining order to go into effect, however, that would be hard to explain in a campaign. Likewise, this new bill could subject professionals with licensing requirements and people in custody disputes to travel to Wisconsin because there is no longer a required essential element occurring within the state of Wisconsin, simply a possibility that something could occur in Wisconsin and a statement from the individual obtaining the restraining order that they "temporarily" live here. Jurisdiction protects people from such harassment.

While some people may claim that the restraining order process will not be abused, it most certainly is and will continue to be. It is difficult to keep Wisconsin law from conflicting at times with respect to restraining orders without the additional complications of other states' laws. In Winnebago County, we had an incident in which a man was the victim of a domestic violence incident committed by his estranged wife. When the defendant appeared in court, she was ordered to have no contact with the victim. This also meant she could not return to the home where the victim and his children were living. Our local domestic violence shelter disagreed with the courts' order and subsequently assisted the offender in obtaining a temporary restraining order that required the victim to vacate his home. This further victimized the victim and his children but it also put the bond statutes and the court commissioner's orders in direct conflict with the temporary restraining order statute and a second court commissioner's orders. Fortunately, our office was able to work with the defense attorney in the case and resolve the issue without displacing the victim. This was only possible because all actors were local. Had the victim been out of state, he and his children would have been displaced from his home.

Wisconsin law currently allows us to utilize restraining orders when appropriate. Likewise, Minnesota, Texas, and all other states have exercised their judgment regarding when and under what circumstances they will allow restraining orders. We should respect, not undermine, other states laws. This proposed expansion is wrought with problems and ripe for abuse. The benefits are even questionable as well. One must wonder what immediate threat is posed to a person in Wisconsin from an individual in a different state. If any act occurs in Wisconsin,

current law enables the victim to get a restraining order. We also have the ability to enforce other states restraining orders under Wis. Stat. 813.128. These two possibilities make this bill unnecessary from a protection standpoint. We have an obligation to protect everyone, including protecting individuals from abuse of process. I urge you to vote against this bill.

Sincerely,

A handwritten signature in black ink, appearing to be 'CG', written over a horizontal line.

Christian Gossett  
District Attorney  
Winnebago County

Cc: Members, Assembly Criminal Justice Committee