

JERRY PETROWSKI

WISCONSIN STATE SENATOR

Senate Bill 161 September 5, 2013

Mr. Chairman, members, thank you for the opportunity to testify on the proposed changes made by Senate Bill 161. This bill makes a number of technical and essential changes to the statutes related to temporary restraining orders. These restraining orders are aimed at protecting victims of domestic violence, child abuse, and stalking. Research has shown that these temporary restraining orders greatly help to prevent violence and protect victims. This bill closes loopholes in order to better protect the most vulnerable in Wisconsin.

This bill makes stalking behavior a basis for obtaining a temporary restraining order. Under current law, stalking behavior is not included as behavior warranting a temporary restraining order. Research indicates that stalking behavior often leads to violence. This bill makes it possible to protect a victim before any violence actually occurs.

One unfortunate loophole under current law is that a temporary restraining order may be set aside by the person it was issued against by requesting a judicial substitution. This bill will require that a restraining order remain in effect while a new judge is located for the substitution, ensuring the vulnerable victim is protected.

Under this bill a judge can prohibit any and all contact between the victim and the perpetrator through a harassment restraining order. Current law only bars *harassing* contact, inviting perpetrators to push the limits of the harassment orders without any enforcement mechanisms to stop the behavior.

This bill protects the anonymity of child victims, as is the case in many other areas of law. This bill requires that hearings regarding child abuse restraining orders be sealed to protect the minor victim. Some counties have already adopted this practice. Child victims of incredibly traumatic and horrendous crimes should not have such private information exposed to the public.

Once again, thank you for your time and I hope you will join me in supporting SB 161. I am happy to answer any questions.

29TH SENATE DISTRICT

testimony



To: Members of the Senate Committee on
Transportation, Public Safety, and Veterans and
Military Affairs

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Date: September 5, 2013

From: Tony Gibart, Public Policy Coordinator

Chairman Petrowski, Members of the Committee, thank you for the opportunity to offer testimony today. My name is Tony Gibart, and I represent End Domestic Abuse Wisconsin. End Abuse is the statewide membership organization that is the voice for survivors of domestic violence and local domestic violence victim service providers. We strongly support Assembly Bill 176 and thank Rep. Jacque and Sen. Petrowski for bringing it forward. This bill will resolve a number of inconsistencies with Wisconsin's restraining order laws that prevent victims and their children from gaining protection.

Fundamentally, domestic violence is about victims' loss of control and safety in their own families and homes. Restraining orders are a legal mechanism by which victims can begin to regain control and achieve a measure of protection. While there are limits to the protections offered by a restraining order alone, research has shown restraining orders are effective in many, if not most, cases. A 2009 study found that obtaining a restraining order was associated with an elimination of violence in 50% of cases within 6 months. Two studies from Seattle found that women with restraining orders were less likely to be abused, compared to those who did not obtain them.¹ In addition, 86% of women with restraining orders report the order either stopped or reduced the abuse.²

Wisconsin has four types of restraining orders: domestic abuse, harassment, child abuse and individual-at-risk restraining orders. Victims of domestic abuse might utilize any one or more of these orders depending on the circumstances. One of the main goals of AB 176/SB 161 is to make these orders more consistent and easier to understand for victims and court personnel. I will briefly discuss each of the changes made in the bill.

Technical Changes to Remove Inconsistencies and Add Clarity

(1) Current law provides a method for victims requesting a domestic abuse or harassment restraining order to submit their address confidentially. This allows victims to receive necessary notices from the court but remain safe from the abuser. The bill adopts this procedure for child abuse and individual-at-risk restraining order cases.

(2) Under current law, the court must rule on the final restraining order 14 days after the issuance of a temporary restraining order. Some judges will keep the temporary order in effect long-term in lieu of ruling on the final order, although this practice is not in keeping with the statute. The bill specifically prohibits the practice.

(3) WCADV has recently received reports of confusion over whether validly issued temporary restraining orders remain in effect when a party makes a motion for judicial substitution or when a party asks a judge

¹ Hotaling, G., and E. Buzawa. "Victim Satisfaction with Criminal Justice Case Processing in a Model Court Setting." Final report for National Institute of Justice, grant number 2000-WT-VX-0019. Washington, DC: U.S. Department of Justice, National Institute of Justice, January 2003, NCJ 195668. <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=195668>

² Ptacek, J. *Battered Women in the Courtroom: The Power of Judicial Responses*. Northeastern Series on Gender, Crime, and Law. Boston, MA: Northeastern University Press, 1999, NCJ 183008. <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=183008>

to review the decision of a court commissioner. The bill clarifies that the protection for the victim remains in effect.

(4) The bill states that harassment restraining orders may bar all contact between the perpetrator and the victim. This option is currently available under a general provision but not spelled out in the law. As a result, orders under the harassment statute tend to only prohibit harassing contact, which invites abusers to push the limits of the restraining order and leads to enforcement problems. Under the bill, the court commissioner or judge would retain the discretion to decide whether to bar all contact or only harassing behavior.

(5) Along with obtaining a restraining order, victims in severe cases sometimes need to actively hide from their abusers. Under a law that was passed last year, victims can change their names confidentially. This bill will fix a technical issue related to how the confidential name change statute interacts with CCAP so that the law functions as intended.

(6) Under current law, in some limited situations, a victim can obtain an extension of a domestic abuse restraining order. The statute directs the victim to notify the perpetrator of the extension. The bill takes the more sensible approach of directing the clerk of court to make the notification in order to limit the perpetrator's ability to have contact with or locate the victim.

Recognizing Stalking as an Act of Domestic Abuse

Stalking is, itself, not currently included in the definition of domestic abuse under the domestic abuse restraining order statute. Stalking behavior should be a basis for obtaining a domestic abuse restraining order. This behavior is a significant indicator of danger. The bill uses the criminal definition of stalking and incorporates it into the domestic abuse restraining order law.

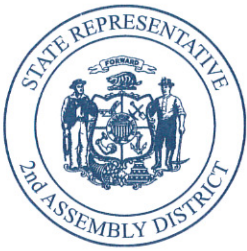
Giving Child Victims Better Access to Protection and Privacy

This bill will make protections for minors more accessible and sensitive to their unique needs. There is a significant overlap between domestic abuse and child abuse. About half of men who abuse their female partners will also abuse their children. Beyond abuse of children by parents or adults, teen dating violence is an increasingly more recognized issue.

AB 176/SB 161 will ensure that child abuse restraining order hearings are closed and that records of the proceedings are not available on CCAP. This change will make these hearings consistent with other sensitive legal proceedings involving children, such as CHIPS actions. Currently, the identities of some physical and sexual abuse child victims are freely accessible on CCAP. This re-victimizes these children and only stifles their ability to come forward and get protection.

In addition, AB 176/SB 161 will ensure that child victims are not charged for the fees of a guardian *ad litem* in child abuse or harassment restraining order proceedings. WCADV periodically receives reports of some courts charging fees to the victim in these cases or making the payment of a deposit a condition of moving forward with the restraining order. These practices very likely violate federal funding conditions, which prohibit the assessment of any fee for orders of protection. In addition, creating a financial obstacle for child victims is unjust and unnecessarily increases the risk the victim will continue to be abused. The bill also prohibits charging the same fees to a parent of the child, when the parent is not otherwise a party to the action. This prohibition is necessary because charging a parent in this situation would legally and practically be equivalent to charging the child victim.

This concludes my testimony. I want to again thank Rep. Jacque and Sen. Petrowski for bringing forward this package of needed technical changes and refinements. We believe this bill will go a long way to making restraining orders in Wisconsin more effective and enhancing the safety and protection of victims in our communities. Thank you, and I would be happy to answer any questions.



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TO: Members of the Senate Committee on Transportation, Public Safety, and Veterans and Military Affairs
FROM: Representative André Jacque
DATE: September 5, 2013
RE: Assembly Bill 176 (Senate Bill 161)

Dear Colleagues,

Please accept my apology for being unable to attend today's hearing. I am very pleased to partner with Sen. Petrowski on Assembly Bill 176 (Senate Bill 161), which will accomplish a number of technical but essential refinements to Wisconsin's statutes related to temporary restraining orders (TROs) available to victims of domestic violence, child abuse, stalking and individuals at risk. Research shows that restraining orders reduce or eliminate abuse in the majority of cases. This bill will close loopholes and clarify laws so that these proven and cost-effective protections continue to help vulnerable victims in Wisconsin. I am pleased by the broad bipartisan support for this legislation, and for the efforts of the Wisconsin Coalition Against Domestic Violence and numerous domestic abuse shelters in bringing these issues to my attention.

One of the unfortunate loopholes in current Wisconsin statute is that a TRO may be vacated (until the request is heard by the substituting judge) by the person it is issued against simply by that person requesting a judicial substitution. AB 176 will require that, in the event a new judge substitutes for the original judge, any *ex parte* order (including a TRO) granted by the original judge remains in effect and is automatically extended until the new judge holds an injunction hearing. Likewise, this bill specifies that if a person seeks a new hearing involving the issuance of a domestic abuse, child abuse, or harassment TRO or injunction, the ruling made in the original hearing remains in effect until the final determination is made in the new hearing.

The bill makes stalking behavior, as defined by the criminal law, a basis for obtaining a domestic abuse restraining order. Stalking is a significant indicator of danger but is currently not included in the definition of domestic abuse for the purpose of obtaining a domestic abuse restraining order.

Also under this bill, a judge can prohibit all contact between the victim and perpetrator through a harassment restraining order. Currently, the law only specifically bars harassing contact, which invites abusers to push the limits of the orders and leads to enforcement problems.

Similar to other hearings related to children, child abuse restraining order hearings will be closed and the records sealed to protect minor victims. Some counties have already adopted this practice. Child victims of incredibly traumatic and horrible crimes should not have their privacy exposed on CCAP.

AB 176 also prohibits charging child victims and parents not involved in the case for guardian *ad litem* fees in child abuse restraining order cases. Charging child victims (or their non-offending parent) for justice and protection likely violates federal funding conditions and is an unjust barrier to safety for child victims.

Thank you again for your consideration of Assembly Bill 176.