



# CHRIS KAPENGA

WISCONSIN STATE SENATOR

**Testimony on Assembly Bill 386**  
*Assembly Committee on Public Benefit Reform*

November 10, 2015

First, I would like to thank Chairman Born and the members of the committee for holding a hearing on Assembly Bill 386. Additionally, I would like to thank Representative Krug for his leadership on this issue.

I am here before you today to discuss why we must require verification from court orders for eligibility for public assistance programs. There are many programs in Wisconsin that this bill will potentially affect and I believe that it is important that we do everything we can to protect the integrity of those programs.

Ronald Reagan often used the phrase "Trust, but verify" and it is clear that we need to direct agencies to verify qualifying information that is provided by individuals for public assistance programs. As Representative Krug will point out, there many are instances where this legislation will help save taxpayer dollars and ensure that this fraud cannot continue going forward.

Assembly Bill 386 provides that, if a person's eligibility for a public assistance program depends on their relationship or arrangement with a child, and that relationship is set out in a court order, the department that administers the program must verify the information the person provides about their relationship or arrangement with a child by accessing the applicable court order.

I am committed to eliminating fraud in public assistance programs and this bill continues the fight against those individuals who are intentionally gaming the system. We have limited resources available when it comes to public assistance programs and we need to ensure those resources are going to the people who actually need them most. Requiring governmental agencies to communicate and verify information is part of the larger idea that government should be working smarter, in addition to working harder, for the people.

I ask you to consider the recommendation of Assembly Bill 386 for a vote in front of the full Assembly. Thank you again, Chairman Born and members of the committee, for taking the time to hold this public hearing. I look forward to working with you on the passage of this legislation.



**TO: Members, Assembly Committee on Public Benefit Reform**

**FROM: Legal Action of Wisconsin**

**DATE: November 10, 2015**

**RE: Assembly Bill 386, requiring verification from court orders for eligibility for public assistance programs**

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Chairman Born and members of the Committee, thank you for the opportunity to provide testimony on 2015 Assembly Bill 386, which would require verification of court orders for eligibility for public assistance programs.

Legal Action of Wisconsin (LAW) is a nonprofit law firm. Our attorneys and staff provide free civil legal services to low-income people in 39 Wisconsin counties, across a territory that extends from the southeastern corner of the state up through Brown County in the east and La Crosse County in the west. Our attorneys and staff have provided free legal advice and representation in both family law and public benefits matters for decades.

This legislation requires verification of information provided about the relationship between an (adult) applicant for public benefits and any children in that household. While this may sound like a straightforward requirement, we have numerous concerns and questions about how this would really work.

Before laying out those specific concerns, it is important to keep in mind three key facts:

- 1) The complexity of family law and situations involving children's custody and placement means that there is no such thing as, "simple custody verification," as the bill's authors stated in their co-sponsorship memo. For example, there is no easily searchable database of custody and placement orders;
- 2) The overwhelming majority of family law cases in Wisconsin are handled by *pro se* (unrepresented) litigants, and in many circumstances, the challenge of navigating a court process on one's own means that low-income people rely on informal arrangements for children's custody and placement instead of court orders; and
- 3) Wisconsin's public benefit programs already have complex and detailed systems of eligibility verification, fraud investigations, and penalties (including lengthy periods of program ineligibility and criminal prosecution) to be levied against program participants who intentionally misrepresent their situations.

Below are our specific concerns and questions about Assembly Bill 386:

**1. Different Regulations Exist for Different Programs Regarding Verification and Eligibility**

This bill applies to numerous programs, including Wisconsin Works, Wisconsin Shares child care, Food Share, Medical Assistance, the Caretaker Supplement to SSI, and others. Each of these programs has different state and federal regulations that govern the relevant agency and participants' responsibilities to provide or assist with obtaining verification. In many programs, the agency is required to assist in obtaining verification whenever an applicant or recipient cannot obtain it on his/her own. For example, in the Wisconsin Works (W-2), Emergency Assistance, FoodShare, BadgerCare Plus, and Wisconsin Shares Child Care programs, the agency is required to assist individuals who are cooperating and who cannot obtain requested verification on their own.

It is likely to be both very costly, time-consuming, and complicated for agency staff to have to obtain this verification. What will happen in situations where, for example, the program applicant/recipient lives in Sheboygan County but has a court order from a court in La Crosse County? Or what if the court order was issued by a court in a different state? For all of those programs where the agency is required to assist with verification, what will the costs be to obtain these orders?

**2. Many Low-Income People Do Not Have Child Custody/Placement Orders, Or Do Not Have Current/Accurate Orders**

In many situations, low-income people participating in public assistance programs simply do not have court orders at all related to the custody and placement of their children. Most intact married couples do not have - nor should they have - any court order regarding the custody/placement of their children. Many intact *unmarried* couples also do not have specific court orders regarding custody/placement of their children. Or they have a custody/placement order which does not accurately reflect what the parents are doing, because the order is outdated, or one parent is no longer in compliance with the order, or the family's situation has simply changed and the family does not have the resources to go back to court to have the order(s) changed. Married couples who are now separated or not living together and who never officially divorced are unlikely to have any kind of court order at all.

It is unclear whether, under AB 386, families would face the loss of their benefits simply because they don't have an order in place regarding their children or if the order they have does not reflect the family's current reality. Do the bill's authors intend for everyone applying for these benefits to have to go into family court to obtain or change orders? It is very common for parents to agree to a new custody or placement arrangement outside of the court system, but not modify their court order. It is also common for one parent to decide to not follow the court order, but for the other parent to not file to change the court order. If applicants or participants are required to

provide a court order which accurately spells out their relationship with their children, this will encourage them to go to court to get or modify a court order. Encouraging people to go to or back to court will significantly increase litigation in the family courts, dramatically increasing the burden on our already overburdened court system.

As well, the overwhelming majority of Wisconsin residents who go before our state's family courts do so *pro se* – on their own, without attorneys. These *pro se* litigants take more of a court's resources and time, further increasing the burden on our court system. A perhaps unintended but very likely consequence of this legislation is that low-income people will be forced to file more motions in family court – an outcome that is not beneficial to those families, their children, or the court system more generally.

### **3. Who Will Pay the Cost of Compliance with this Legislation?**

In addition to the costs that will be accrued if a program participant or applicant has to obtain an order when one does not exist now, or if an applicant/participant has to obtain a new order to reflect the family's current situation, there will also be substantial costs for people to get copies of court orders. Wisconsin courts charge \$1.25 per page for copying, and \$5.00 to certify each court order.

By definition, program participants and applicants for these public assistance programs are extremely low-income or have no income at all. As mentioned in point #1, above, in most of the public benefit programs covered by this legislation, the agency is required to assist with obtaining requested verification. Requiring individual applicants/recipients to cover these costs may violate state and federal regulations, and the fiscal impact on agencies to comply may be substantial. As well, courts may experience costs related to this legislation as well since court staff will be confronted with increased questions and calls from both agency staff and potentially hundreds of thousands of program recipients/applicants, as well as dramatically increased requests for copies of court orders.

As of the time of this hearing, only the Department of Health Services (DHS) has submitted a fiscal estimate for this bill. Their implementation costs and annual costs alone are more than \$3.6 million, and that cost is based in part on an average time of just 15 minutes per non-married parent to search and review court records per year – a time estimate we believe to be dramatically understated. The fiscal estimates from the Department of Children and Families as well as the courts will drive this cost even higher. It is not at all clear what new system-wide or program integrity-related benefit would accrue from this multi-million dollar price tag.

### **4. What Happens in Situations Where Child-Related Orders Are Confidential?**

For many of our clients, particularly those experiencing or overcoming domestic or sexual violence, their court orders related to their children might be confidential. Child protective service orders, juvenile court orders, guardianship court orders, adoption orders, foster care

orders, and some paternity court orders are all confidential. It is unclear whether, under this bill, those confidential court orders would have to be turned over to public benefit agencies and caseworkers.

#### **5. What Happens if the Court Order(s) Is From Another State?**

It is not uncommon for Wisconsin residents to have court orders related to child custody or placement that were issued by family courts in other states. It may be quite difficult and costly to obtain copies of these court orders from other states.

#### **6. Court Orders Are Complicated; Agency Caseworkers Have No Expertise or Familiarity with these Orders**

Even in situations where a program participant or applicant has a court order which is accurate, and he/she is able to provide it to the department, the possibility exists that the caseworkers could misinterpret or misunderstand these family court orders. Will training be required for all caseworkers in all of these programs? How much will that cost?

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In conclusion, this legislation serves primarily to impose an additional burden on program participants, applicants, agencies, caseworkers, and our court system - a burden that will create more work for already overburdened agencies and courts and will likely cause program participants to lose access to critically needed benefits. The Department of Health Services' fiscal estimate appears to be quite conservative and yet still estimates a more than \$3.6 million price tag for implementation and annual costs caused by this bill. That estimate does not even take into account the unknown but likely significant costs to our courts, to agencies administering these programs, and caseworker time, training, and resources costs.

Please contact Vicky Selkove at [yss@legalaction.org](mailto:yss@legalaction.org) or (608) 620-2011 if you have additional questions about this bill.

# testimony



To: Assembly Committee on Public Benefit Reform  
Date: November 10, 2015  
From: Tony Gibart, Public Policy Director  
Re: Opposition to AB 386

Wisconsin Coalition Against Domestic Violence  
307 South Paterson Street, Suite 1  
Madison, Wisconsin 53703  
Phone: (608) 255-0539 Fax: (608) 255-3560  
tonyg@wcadv.org

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Chairman Born and Members of the Committee, thank you for the opportunity to provide testimony before today. My name is Tony Gibart, and I am the Public Policy Director for End Domestic Abuse Wisconsin. End Abuse is the statewide voice for survivors of domestic violence and the membership organization representing local domestic violence victim service providers throughout the state. We are opposed to Assembly Bill 386. Under Assembly Bill 386, if a person's eligibility for a public assistance program depends on his or her relationship or arrangement with a child and that relationship or arrangement is set out in a court order the administering agency must verify the information the person provides about his or her relationship or arrangement with a child by accessing the applicable court order.

While not the intent of the legislation, this bill would make it more difficult for victims to access essential services that make it possible for victims and their children to live independently of abusers. It would also complicate victims' attempts to remain safely separated from perpetrators by requiring them, in some cases, to go back to court with their abusers and re-litigate child custody and placement cases.

As background, an inability to survive financially apart from abusers is a top reason victims stay in abusive homes and a main reason they are often forced to return to abusers. Therefore, programs like W-2 or FoodShare are key bridges to safety and independence for survivors. Policy changes that affect victims' ability to access these services have a clear bearing on their safety.

AB 386 would complicate victims' paths to safety in a number of ways. I will discuss a few of the more common ways this bill could cause significant problems for victims and their children.

First, those victims who may have a court order that outlines relevant custody and placement arrangements will likely be required to locate and obtain that order under the bill. The process of locating and obtaining copies can be costly and time-consuming, especially for working parents. As victims often move for safety reasons, records may be located in another county or state. Presumably, failure to access these records would result in a delay, denial or interruption of basic necessities for victims and their children.

Second, many families' court orders regarding child custody and placement do not accurately reflect current arrangements. This is especially true for victims of domestic violence and their children, as victims face pressures from abusers in family court to agree to arrangements on paper that may not be workable and realistic in practice. As time moves on, victims often become the primary caregivers for their children even though the order might specify a different arrangement. Similarly, many orders are vague or do not specifically address many of the considerations that are relevant to an eligibility determination. In all of these cases, families that have orders that don't reflect the real-world arrangements would be forced to

go back to court to seek modifications of orders. Generally, this is a costly and burdensome process, especially for low-income individuals. For victims in particular, going back to court with an abuser can be a dangerous proposition because the victim and perpetrator will have increased contact and communication. Re-litigating child custody and placement runs a significant risk of reigniting abusive dynamics and behavior. Additionally, in a number of situations, a victim will not be able to obtain an accurate order without the consent of the abuser, which gives the abuser the continued ability control the victim.

Third, some victims do not have custody and placement court orders because they have never been married to, or are separated from but still married to, their abusers. This bill will likely create a degree of uncertainty as to whether these victims are eligible for assistance programs. If these victims were required to go to court, that process would potentially entail all of the negative consequences I have mentioned.

Lastly, some victims and their children have custody and placement orders that are contained in confidential records, such as child abuse injunctions. Dissemination of this information is restricted by law to protect the confidentiality and privacy of especially sensitive victims, such as victims of child sexual assault. We are opposed to the sharing of these confidential documents beyond those people currently allowed access under the law.

Thank you again for the opportunity to offer testimony today. I appreciate the Committee's thoughtful consideration of our concerns, and I would be happy to answer any questions.