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TO: Members of the Assembly Committee on Public Safety & Homeland Security

FROM: Representative André Jacque

DATE: May 21, 2013

RE: Assembly Bill 175

Dear Colleagues:

I am pleased to bring forward Assembly Bill 175 to clarify obligations for and improve documentation of law enforcement responses to domestic disturbance calls.

Under current law, when domestic violence occurs, police are supposed to either arrest the perpetrator or, in a narrow set of circumstances, file a report with the district attorney. Unfortunately, there is strong evidence to suggest that many cases of abuse are going unrecorded due to recanting of victim or witness testimony under coercion or the law simply not being consistently followed.

Similar to effective legislation in the state of Washington championed by their Republican Attorney General and legislators of both parties, this bill will clarify that police must document their response to domestic violence calls when they do not arrest a perpetrator. Law enforcement officials, district attorneys and policymakers will then be better able to identify problems and solutions in communities.

The bill will also encourage better referral of domestic violence victims to local services and shelter. Research shows these services are effective in keeping victims safe and making it more likely victims can successfully help bring violent offenders to justice.

I first became aware of this best practice through the suggestion of Prof. Sarah Buel in the attached article from the Milwaukee Journal Sentinel, and am appreciative of the efforts of Tony Gibart of the Wisconsin Coalition of Domestic Violence for his assistance researching the effects of this legislation in Washington state and helping to assure the proper fit for Wisconsin during the drafting process.

Thank you again for your time and for your consideration of Assembly Bill 175.

## With no oversight, police can ignore domestic violence laws

By [Gina Barton](#) and [John Diedrich](#) of the Journal Sentinel  
Nov. 3, 2012

Wisconsin's laws on how police must respond to domestic violence are among the most comprehensive in the country, but no one has the authority to enforce them, a Journal Sentinel investigation has found. And if the laws are ignored, there are no penalties.

Under state statute, local police must arrest domestic violence suspects regardless of the victim's cooperation. Departments also must have written policies on how to investigate domestic violence.

But nothing guarantees they follow through.

The lack of oversight allows local departments to circumvent the laws, rendering them ineffective and putting victims - and the public - in jeopardy. That's what law enforcement experts and a dozen legislators say Brown Deer police did by not holding accountable Radcliffe Haughton, whose trail of domestic violence culminated in killing his estranged wife and two other women at Azana Salon & Spa in Brookfield before committing suicide last month.

"If there's no arrest, you're enabling behavior. This individual is only becoming more emboldened by our lack of responding appropriately," said David R. Thomas, program administrator for domestic violence education at Johns Hopkins University in Baltimore.

Wisconsin is among 21 states with a mandatory arrest law, a centerpiece of strong domestic violence enforcement, according to experts and advocates. Wisconsin's law, which took effect in 1989 and was updated in 2006, requires officers to make an arrest in a domestic violence case if they believe abuse is likely to continue or if there is physical injury.

"Absent some really compelling circumstances to the contrary, an officer would be prudent to view every incident with probable cause of a violation within a domestic abuse context as a mandatory arrest situation," state training materials say.

An officer is not supposed to base the decision to arrest on the victim's cooperation. Officers are not even supposed to ask victims whether they want to press charges or file a complaint, according to a training guide used by the state's Office of Justice Assistance.

But laws are not effective if they're not applied.

"I think Wisconsin has good laws, but officers have to enforce them. It is not discretionary," said Sarah Buel, a former prosecutor and domestic violence victim, now a professor at Arizona State University.

State leaders have promised to revisit the issue. Both Gov. Scott Walker and a bipartisan group of

legislators say that more needs to be done to protect victims - either by writing new laws or adding more accountability to the current ones. Lawmakers plan to take up the issue when the Legislature reconvenes in January.

New laws alone won't solve the problem, said Assistant District Attorney Peter Tempelis, head of the domestic violence unit in Milwaukee County. Police and prosecutors must effectively use the laws they have, he said.

"We can't just focus on changing the laws. We need to use those laws but focus on those who will enforce them and make sure we have the resources to do the job," Tempelis said.

### **Written policies, no oversight**

In addition to mandatory arrest, Wisconsin statutes require every law enforcement agency to have a written policy that spells out how they respond to domestic violence calls. The law lists guidelines for what those policies must address, including an explanation of the mandatory arrest law and a statement that the arrest cannot be based on the cooperation of the victim. Local policies also must lay out a procedure for notifying the victim about when the perpetrator will be released from jail, among other things.

But local departments are not required to submit their policies to any state agency for review, and neither the state Department of Justice nor the Wisconsin Coalition Against Domestic Violence knows how many departments have actually written one.

"There is not even a mechanism to follow up and make sure every law enforcement department has a policy," said Patti Seger, executive director of the coalition. "There are several loopholes that we are now recognizing."

For departments that do have policies, no outside entity evaluates how effective they are or whether officers are following them.

"The state does not review individual law enforcement agency standards or policies to be sure that they are adequate. The DOJ does not have statutory oversight of these policies," said Dana Brueck, spokeswoman for the Justice Department.

The Journal Sentinel filed a request for Brown Deer's domestic violence policy under the state public records law Oct. 23, but the department has not yet released it.

Mark Wynn, a retired Nashville Police Department lieutenant and a domestic violence expert, said if the department has an adequate written policy, it clearly wasn't being used.

"It may have a great policy, but somewhere along the chain it is not being followed. You may have two policies, a written and an unofficial policy of practice, and that is a problem. That is a failure of leadership," he said. "We know this: If you have a performance problem in a police department, people will die."

### **Missed arrest opportunities**

In Brown Deer, the Police Department has come under fire for failing to arrest Radcliffe Haughton during two separate incidents, one in January 2011 and one just weeks before the deadly shooting at the

spa.

In January 2011, officers saw Haughton point what appeared to be a rifle at his wife. Officers set up a tactical perimeter, told him he was under arrest and ordered him to surrender. He refused. A supervisor instructed officers to leave the scene 90 minutes into the standoff.

Police Chief Steven Rinzel recently defended his department's handling of the scene, saying Zina Haughton was not cooperative. The chief said officers left because she told them her husband was alone in the house and was not armed. Rinzel contradicted his own department's reports, saying officers were not sure they saw a gun.

Police experts told the Journal Sentinel leaving without making an arrest was a breach of basic police protocol and created a risk to the public.

"Let me get this right. They are on a call of domestic violence, they believe they saw a gun and they didn't arrest him?" Wynn said. "That is the most unusual thing I have ever heard of."

Buel said the officers' actions were more like those of police in the 1970s. Training now tells officers that when victims say nothing is wrong, they likely are trying to protect themselves.

"It is so typical to have the offender send the victim outside to tell the police there is no problem," Buel said. "There is no excuse for not arresting in that case. You have got to have police doing their job so you can have prosecutors do their job."

On Oct. 2, police responded to a 911 call from Zina Haughton, who was at a gas station barefoot with a bruised face and a torn shirt. Officers saw Radcliffe Haughton in the couple's house. He didn't answer the door and they left.

The two incidents were among nearly two dozen times Brown Deer police officers were called to the Haughtons' home in 11 years, never making an arrest. At least seven calls were to investigate domestic violence, records show. The one time Brown Deer police arrested Haughton, they did so at the request of Brookfield police after he slashed his wife's tires there last month.

In failing to arrest him sooner, police missed several opportunities to help his wife, said state Rep. Andre Jacque (R-Bellevue).

"By having an arrest, you do have a better ability for people in the criminal justice system to reach out to the victim and let them know the rights they have as a victim, help them with safety and with where they can find shelter," he said.

### **Mandatory reporting not followed**

The single piece of the mandatory arrest law designed to address accountability says if an officer does not make an arrest, he or she is required to file a written report with the district attorney explaining the decision.

Deputy District Attorney Patrick Kenney, who has supervised the domestic violence unit at the Milwaukee County district attorney's office for 3½ years, said he has never received such a report from Brown Deer - or from any other department.

Buel wasn't surprised no such reports were received. She couldn't imagine an officer filing a report saying he was supposed to make an arrest but didn't.

Wisconsin should consider an alternative used by Washington state, which requires officers to file a report on every call that involves a domestic dispute of any kind, even if there is no need for an arrest, she said.

"If it is deemed important enough to send an officer, they filed a report," she said.

Police in Washington hated it at first, but then they realized they were building a history, ultimately making it easier to convict perpetrators, she said.

Wisconsin also should look to Minnesota for a way to make domestic violence prosecutions easier, experts say.

During domestic violence trials in Minnesota, prosecutors can enter evidence showing the history of abuse, even if the police were not involved. Wisconsin's district attorneys are considering recommending that change in state law here, according to Kenney

"Minnesota has recognized, in a criminal case involving domestic violence, there should be information about the relationship between the victim and perpetrator," he said. "There should be a broader context provided to the court, and the jury should be able to hear that."

### **Independent expert to investigate**

After demands from legislators and the Wisconsin Coalition Against Domestic Violence, Brown Deer Village Manager Russell Van Gompel announced Friday that he had hired an independent expert to investigate the Police Department's interactions with the Haughton family.

Robert C. Willis, a law enforcement instructor at the Northeast Wisconsin Technical College Tactical Training Complex with a 30-year career in police work, will prepare a public report and make recommendations to the department.

But Willis does not have expertise in domestic violence cases, which concerns victim advocates.

The Brown Deer police chief earlier had asked state Attorney General J.B. Van Hollen for help with additional training.

But most Brown Deer officers already have received more training than state law requires.

No matter how long someone serves as a police officer, state law mandates only 12 hours of training on domestic violence. Those hours come during recruit school. After that, it's up to individual departments to decide how much follow-up training veteran officers get on the topic, if any.

The state's Office of Justice Assistance presents domestic violence training sessions for law enforcement between eight and 12 times annually, but attendance is optional.

In 2006, nearly half of Brown Deer's police force - including the supervisor at both questionable incidents involving the Haughtons - attended the training, state records show. Department members have received similar training since then, according to Van Gompel and Milwaukee County District Attorney

John Chisholm.

In addition to training, the department needs to be held accountable, said Rep. Therese Berceau (D-Madison).

"If there's no reporting and there's no penalty, I think that we have to change that," she said. "This department is clearly not compliant with the law."

**Find this article at:**

<http://www.jsonline.com/watchdog/watchdogreports/with-no-oversight-police-can-ignore-domestic-violence-laws-0s7egfm-177128581.html>

Check the box to include the list of links referenced in the article.

# Testimony



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**To:** Members of the Assembly Public Safety and Homeland Security  
**From:** Tony Gibart, Policy Coordinator, Wisconsin Coalition Against Domestic Violence (WCADV)  
**Date:** May 21, 2013  
**Re:** Support for Assembly Bill 175

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Chairman Jacque, Members of the Committee, thank you for the opportunity to offer testimony today. My name is Tony Gibart, and I represent the Wisconsin Coalition Against Domestic Violence (WCADV). WCADV 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 175 and thank Rep. Jacque and Sen. Petrowski for bringing it forward. This bill makes two commonsense improvements to our domestic violence arrest law. First, the bill clarifies the intent and spirit of current law: that responding officers are to either arrest domestic violence perpetrators or file a report explaining why an arrest was not warranted. Second, the bill ensures that responding officers will refer victims to local services and resources for shelter and support.

## ***Background***

Under Wisconsin's mandatory arrest law, when officers respond to a scene of domestic violence, in most circumstances, they are supposed to arrest the perpetrator of domestic violence. This has been the policy in Wisconsin since the late 1980's. The policy was developed to change ineffective, counter-productive and dangerous police practices related to domestic violence. Prior to mandatory arrest, common police responses involved counseling the victim or perpetrator or encouraging the perpetrator to leave the residence and "cool off."

Arresting the perpetrator accomplishes several important purposes. First, removing the perpetrator temporarily from the residence gives the victim an opportunity to take steps to improve his or her safety, such as asking for help from family or friends or contacting a local shelter or service agency. Second, arrest is a very clear and immediate consequence for the offender. It should send the message that the criminal justice system is going to hold the offender accountable. Research has shown that for some offenders, arrest by itself leads to a stop or reduction of the abuse. Third, arrest brings offenders into the criminal justice system with a consistency that was lacking prior to the mandatory arrest law.

In October 2012, a domestic violence perpetrator shot and killed three women, including his estranged wife, at a Brookfield salon. Shortly after the shooting it was revealed that the Brown Deer Police Department had over twenty contacts with the perpetrator and the domestic violence victim and that many of these contacts were for domestic abuse. Despite this, the perpetrator was not arrested for any of these incidents. As a result, troubling questions were raised about compliance with Wisconsin's domestic violence arrest policy. Independent of this case, WCADV receives anecdotal reports of poor compliance with the law from around the state.

## ***Gathering Information, Fostering Better Investigations and Strengthening the Connection to Support Services.***

Because we realize that law enforcement officers face numerous challenges when responding to domestic violence, we believe AB 175 represents a very measured and commonsense response to these questions by focusing on information gathering and fostering stronger connections between law enforcement and services for victims.

Rather than significantly modifying the domestic violence arrest law or creating penalties for non-compliance, AB 175 calls for better documentation of why and in what situations arrests are not made. We

believe that requiring officers to report on their reasoning and basis for not arresting in specific situations will foster better interviewing and investigation of domestic violence incidents, and therefore lead to better outcomes. It will also allow law enforcement supervisors and policymakers to better determine whether the law is being correctly applied and what trainings might be necessary.

Current law actually calls for these types of reports in most situations; however, evidence suggests officers are not consistently filing the reports when required. AB 175 will expand and clarify the requirement that documentation and reports are required when officers respond to domestic abuse situations but do not make an arrest.

Creating a record of officers' interactions with potential domestic violence perpetrators will be a benefit to other officers who might deal with the same perpetrator in the future. With more information, officers can consider the history between the victim and perpetrators and assess safety risks before and during any confrontations with abusers.

In addition, AB 175 will strengthen the connection between law enforcement and local services for victims by requiring officers to provide victims with information about services in their area. This requirement reflects the fact that the criminal justice system cannot address domestic violence alone; a more comprehensive strategy for both victims and perpetrators is needed. Moreover, research shows that working with a victim advocate both increases the chances a victim will feel safe enough to participate in the criminal justice system and will successfully escape abuse.

Thank you again for considering my testimony. I would be happy to answer any questions.