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TO: Members of the Assembly Committee on Criminal Justice

FROM: Representative André Jacque

DATE: May 30, 2013

RE: Assembly Bill 187

Chairman Kleefisch and Colleagues:

Thank you for the opportunity to testify before you today as the author of Assembly Bill 187. This strong bi-partisan legislation is being brought forward as a result of discussions with District Attorneys, the Coalition of Domestic Violence, and will allow prosecutors to show the full pattern of domestic violence when offenders are put on trial.

Many domestic violence victims are subjected to repeated abuse before the activity is prosecuted. Unfortunately, current rules often prohibit evidence of the full pattern of abuse, and as a result, judges and juries are not allowed to understand the full context and reality of domestic violence that has occurred.

This bill proposes to permit prosecutors to show documentation of past abusive behavior to judges and juries, such as violations of restraining orders or injunctions, police reports, and prior convictions for domestic abuse, stalking or harassment.

Recognizing this problem, a number of states have amended their rules of evidence to allow prosecutors to present a fuller picture of the domestic violence to judges and juries. Five states, including our neighbors, Michigan and Minnesota, have amended their rules of evidence to allow evidence of prior acts of domestic violence during prosecutions. The high courts of Kansas and Vermont have developed similar policies through case law.

We should likewise amend Wisconsin's rules of evidence to bring the true nature of domestic violence out from the shadows and into the light of our state's court rooms. This bill would still provide adequate protection to defendants by allowing judges to exclude evidence that is prejudicial, confusing, duplicative or related to events that happened more than ten years ago.

Thank you again for your time and for your consideration of Assembly Bill 187.

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 187

Chairman Kleefisch and 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 187 and thank Representatives Jacque, Richards and Senators Ellis and Gudex for bringing it forward. Assembly Bill 187 will allow prosecutors and victims to present a more complete picture of domestic violence to judges and juries by allowing more evidence related to the pattern, cycle and context of abuse.

While accounting for a significant portion of the workload in Wisconsin district attorney's offices, domestic violence cases can be some of the most difficult and challenging cases to prosecute. Yet, these cases have life and death consequences. Each year, domestic violence killings account for between one-quarter and one-third of all homicides in Wisconsin.

One of the main challenges to prosecuting domestic violence is the disconnect between the criminal justice system's abstract focus on discreet criminal acts and the reality that, in lives of abused families, domestic violence is an on-going pattern of terror and coercive control. These patterns are the essence of domestic violence. Compared to the individual acts, it is the entire campaign of terror and intimidation, aimed at keeping the victim compliant, that is truly concerning and the hallmark of increased lethality. For victims and perpetrators, the context is primary. From the abuser's perspective, a particular instance of criminal activity is only a means to an end; it is an attempt to make a threat or carryout a previous one. From the victim's perspective, many times, any one particular act is irrelevant. What is terrifying to the victim is the cycle of abuse, physical, psychological and emotional. What may appear to an outsider as an innocuous or "technical" violation of a restraining order is really part of a pattern of surveillance, intrusion and control that has been constant since the victim separated. Likewise, the grabbing and twisting of the victim's arm during an argument might seem like over-aggressiveness or an unfortunate outburst. Actually, it is a warning shot—a reminder of the threats to kill made earlier in the week when the victim said she was going to leave.

And, yet, when we ask juries to render verdicts in domestic violence cases, we only provide them with a sliver of the facts, and we prevent them from knowing about the vast majority of the abuse that occurred in the relationship. Rules of evidence applicable to all court actions generally exclude evidence of other bad acts by the defendant, even when they are highly relevant.¹ In domestic violence cases, juries only hear about the shove to the floor, the slap across the face or the shouting and punching a hole in the wall. They rarely know about the threats that preceded the police intervention, the pattern of violence that has been ongoing or the systematic attempts to limit the victim's freedom. Thus, juries are put in the position of

¹ Wisconsin Statute sec. 904.04(2)(a) "...evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. This subsection does not exclude the evidence when offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."the character of a person in order to show that the person acted in conformity therewith. This subsection does not exclude the evidence when offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

having to declare someone guilty of a crime when the conduct at issue may seem "trifling," "blown out of proportion" and "unworthy of their time." The Vermont Supreme Court put it well when declaring that evidence of a history of abuse should be admissible in domestic violence trials:

Allegations of a single act of domestic violence, taken out of its situational context, are likely to seem "incongruous and incredible" to a jury. Without knowing the history of the relationship between the defendant and the victim, jurors may not believe the victim was actually abused, since domestic violence is "learned, . . . controlling behavior aimed at gaining another's compliance" through multiple incidents. *State v. Sanders*, 168 Vt. 60, 62, 716 A.2d 11, 13 (1998).

Defense attorneys know juries are likely to never learn the full context, and therefore, taking into account the other difficulties of domestic violence prosecutions, defendants have the advantage at trial or in plea negotiations. As a result, many repeat and dangerous abusers face only minimal accountability, if any, in part because the current legal system—based on myopic bits of evidence of isolated events—shields from full view their patterns of crime and terror.

Recognizing this inherent problem, a number of states have amended their rules of evidence to allow prosecutors to present a fuller picture of the domestic violence to judges and juries. Five states, including our neighbors, Michigan and Minnesota, have amended their rules of evidence to allow evidence of prior acts of domestic violence during prosecutions.² The high courts of Kansas and Vermont have developed similar policies through case law.³ AB 187 would likewise amend Wisconsin's rules of evidence to bring the true nature of domestic violence out from the shadows and into the light of our state's court rooms.

The following proposal also contains procedural safeguards for defendants that are found in other states' laws.

- If evidence of prior acts of domestic violence is going to be introduced, the defense must be notified in advance so there is an opportunity to object or plan for any opposing evidence.
- If the relevance of the evidence is substantially outweighed by any prejudicial effect, the evidence will not be allowed.
- Moreover, judges would retain the ability to exclude evidence that was not relevant, was confusing to the jury or would waste court time.
- Evidence of acts ten or more years in the past would not generally be allowed unless the court finds the evidence is in the interest of justice.

Again, to emphasize, this bill does not mandate that judges admit evidence of prior acts of domestic abuse. It simply provides an opportunity for the proponent of the evidence to make the case that the evidence is relevant and that the relevance is not substantially outweighed by the danger of an unfair prejudicial effect.

In conclusion, I want to again thank the authors for proposing this legislation and the Members of the Committee for considering my testimony. I would be happy to answer any questions.

² Alaska R. Evid. 404(b)(4); Cal. Evid. Code § 1109; Colo. Rev. Stat. Ann. § 18-6-801.5; Mich. Comp. Laws. Ann. § 768.27b; Minn. Stat. Ann. § 634.20.

³ *State v. Sanders*, 168 Vt. 60, 62, 716 A.2d 11, 13 (1998); *State v. Green*, 652 P.2d 697, 701 (Kan. 1982).

W D A A

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Re: Assembly Bill 187

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The Executive Board of the Wisconsin District Attorneys Association strongly supports Assembly Bill 187 relating to the admissibility of evidence of other acts in domestic violence cases.

Executive Director

Margie Drees

Domestic violence cases account for a significant portion of our caseloads. They can be complex and challenging cases to prosecute due to the emotional, psychological and oftentimes legal relationship between the perpetrators and victims.

Communications Committee

Ralph Uttke, Chair
Jacalyn LaBre
Peter Tempelis

In most prosecutions, the court and criminal justice system focus on a distinct historical event. However, domestic violence cases often involve long standing patterns of terror and coercive control by the perpetrators. If evidence in most domestic violence prosecutions is restricted to one particular act, the evidence is misleading. It oftentimes obscures the truth. This improvement in the evidence code will promote justice by giving context to a domestic violence relationship, important information for judges and juries to consider in these cases. It also protects the rights of defendants by permitting judges to exclude evidence which is substantially outweighed by any prejudicial effect.

IT Committee

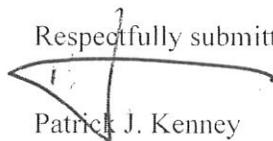
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Each year, domestic violence killings account for between one quarter and one third of all homicides in Wisconsin. This legislation provides proactive resources for prosecutors to promote peace in our families and communities. Thank you.

Legislative Committee

Melinda Tempelis, Chair
Adam Gerol
Patrick Kenney
David O'Leary
Peter Tempelis
Emily Thompson

Respectfully submitted,



Patrick J. Kenney
Deputy District Attorney, Milwaukee County
On behalf of the Executive District Attorneys Association