

## REPORT AND RECOMMENDATION OF THE WISCONSIN CRIME VICTIMS RIGHTS BOARD

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Wisconsin Statutes section 950.09(3) authorizes the Crime Victims Rights Board (“Board”) to “issue reports and recommendations concerning the securing and provision of crime victims’ rights and services.” The Board has become aware of a situation that raises concerns about the manner in which law enforcement enforces protection orders granted to victims of domestic abuse. The situation also provides the Board with an opportunity to commend to law enforcement the best practice for responding to a report of a protection order violation.

### **Factual Background**

A victim of domestic violence, ‘M.’, was granted a Domestic Abuse Injunction against her husband, ‘D’. The injunction ordered that D. have “no contact as describe on attached sheet.” The attached sheet included examples of prohibited contact, including that D. could not “write or send that person a letter, package, or anything else” nor “stalk or follow that person on public or private streets, sidewalks, buildings, parks or any other place.” D. was present in court and was personally served with a copy of the order. One month later, M. reported that D. had violated the no contact provisions of injunction.

The case was prosecuted and the defendant entered pleas of no contest to two counts of knowingly violating a domestic abuse order. The judge withheld sentence and placed the defendant on probation for a period of two years. Among other conditions of probation, the judge ordered that D. have no further contact with the victim.

Five months later, the victim contacted D.’s probation officer to report that D. was driving past her residence. The agent directed D. not to drive past the victim’s residence and reiterated that D. was to have no contact with the victim. A few days later, the victim reported that D. had again driven by her residence and an apprehension request was issued for his arrest. D. was placed in jail as a result and ordered to avoid driving past M.’s residence.

Approximately two weeks later, M. reported to the local sheriff’s department that she had received a letter from D., in violation of the no contact provisions of the domestic abuse injunction. M. showed the responding officer a post marked envelope with D.’s return address. When he asked to see the contents of the envelope, M. refused to show it to the officer, insisting that regardless of the content, D. had violated the domestic violence injunction by sending something to her in the mail. The following day, the officer noted that

D. had been arrested and erroneously assumed he was arrested for violating the injunction. Consequently, the officer did not follow up on M.'s complaint. Later that month, M. reported to the sheriff's department that D. had again violated the domestic abuse injunction by driving by her residence. The responding officer told M. that D. had a right to drive on a public road. M. told the officer that D. was not allowed to drive by her house and that he had been instructed by his probation officer to avoid her residence. The officer told M. he would review the injunction and contact D.'s probation officer. He also attempted, unsuccessfully, to contact D. Upon learning of the violation, D.'s probation officer issued an apprehension request and D. was picked up by the sheriff's department on a probation hold. The department did not pursue the matter further.

M. contacted the Wisconsin Department of Justice (DOJ) to complain that D. was not being arrested and prosecuted for the injunction violations. She believed she should have been provided with notice of her rights as a victim of a crime by law enforcement when she reported the violations. She also believed law enforcement had violated her right to be protected, as a witness to the crime of the injunction violation. M.'s complaint was mediated by the Department of Justice Victim Resource Center. Upon the request of the mediator, the sheriff's department referred the incidents to the district attorney for review. When the informal mediation was completed, M. exercised her right to submit a formal complaint to the Crime Victims' Rights Board. Shortly thereafter, the district attorney filed a forfeiture complaint for disorderly conduct against D. for one of the injunction violations, to which D. pled guilty.

After reviewing materials from the complainant, the DOJ mediator and the sheriff's department, the Crime Victims Rights Board determined that the remedial purpose of the Board would be best accomplished by issuing a report and recommendation in this case. The victim expressed to the Board that the goal of her formal complaint was to improve the response of the sheriff's department when a victim of domestic abuse reports a possible protection order violation. In that spirit, the Board found that a report with policy and practice recommendations would best serve the needs of the parties in this case and would be instructive to law enforcement throughout the state.

### **Statutes Involved**

**Wisconsin Stat. §813.12(7)** provides that a law enforcement officer shall arrest and take a person into custody if all of the following occur:

**813.12(7)(a):** A petitioner under sub. (5) presents the law enforcement officer with a copy of a court order issued under sub. (3) or (4), or the law enforcement officer determines that such an order exists through communication with appropriate authorities.

**813.12(7)(b):** The law enforcement officer has probable cause to believe that the person has violated the court order issued under sub. (3) or (4) by any circuit court in this state.

**Wisconsin Stat. § 813.12(8)** provides that violations of domestic abuse temporary restraining orders issued under Wis. Stat. 813.12(3) and violations of domestic abuse injunctions under Wis. Stat. § 813.12(4) are punishable by fine or imprisonment.

**Wisconsin Stat. § 939.12** defines “crime” as conduct which is prohibited by state law and punishable by fine or imprisonment or both.

**Wisconsin Stat. § 950.08(2g)** requires that law enforcement provide victims of crime with information about their rights no later than 24 hours after initial contact with the victim.

**Wisconsin Stat. § 950.04(2w)(c)** provides that witnesses of a crime have the right “to receive protection from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available.”

### **A Witness’s Right to Protection From Harm and Threats of Harm**

When M’s domestic abuse injunction was granted, the court made a finding that there were reasonable grounds to believe that the respondent had engaged in, or may engage in domestic abuse against her. The no contact provisions of the order were based on the premise that interaction between the petitioner and respondent could be potentially dangerous to the petitioner (M). Violating a domestic abuse injunction is a criminal act under Wisconsin law. When M. reported a violation of the injunction, she was reporting a crime and was a witness to that crime. As such, she had a right under Wis. Stat. § 950.04(2w)(c) to be protected from harm or threats of harm that might result from reporting that crime and to be provided with information about the level of protection available to her, as a witness to the crime. When the sheriff’s department didn’t enforce the order, the complainant believes that not only was she not protected, she was left even more vulnerable to additional violations of the order. The complainant argued that the department erred by treating the violations as probation violations instead of separate crimes. The complainant argued that when D. engaged in conduct explicitly prohibited by the court, the sheriff’s department was obligated to arrest him for violating the order. Whether the circumstances surrounding his arrest would have provided a sufficient basis for charging by the district attorney would have been a matter for prosecutorial discretion. However, when a valid injunction is violated, Wis. Stat. § 813.12(7) requires law enforcement to make an arrest and take the offender into custody. The law provides discretion to law enforcement only so far as determining whether the respondent engaged in acts prohibited by a valid injunction.

### **Injunction Violations May Be Threats of Harm**

By the time a domestic abuse injunction is granted, a victim may have suffered years of abuse, manipulation and control at the hands of her abuser. After years of such treatment, a victim becomes highly sensitive to non-verbal cues from her abuser and seemingly trivial behaviors that signal impending danger for her. Outsiders may not pick up on the subtle signs that indicate abuse in a relationship. In fact, both parties may put a lot of effort into hiding the fact that domestic abuse is occurring. Behind the scenes, however, it is common that an abuser has taken all power away from his victim by controlling the household

finances, controlling who the victim is “allowed” to spend time with, isolating the victim so he or she is without friends, blaming the victim for the couple’s problems and inflicting abuse. In the case before the Board, the victim alleges her abuser used food as a means of controlling her. The family only ate when the abuser allowed it and only ate what the abuser provided. Such extreme control, abuse and manipulation over a long period of time (12 years in this case) may create a dynamic of fear which is exacerbated with only the slightest provocation. The victim may come to believe that everything about her life—and perhaps life itself—is controlled at the whim of a person who has repeatedly demonstrated cruelty toward her. This is the lens through which the victim sees the actions of the abuser.

When a domestic abuse injunction is ordered, it may be the first time the victim feels he or she can start to live a life of his or her own without being controlled by the abuser. It may also infuriate an abuser who feels entitled to continue to behave as he or she has in the past. It is not uncommon for an injunction respondent to try to manipulate the criminal justice system to his or her favor. It can become a means to exert control and to justify past behavior by denying the legitimacy of the current court order. The respondent may enjoy pushing the envelope by engaging in behavior that will upset his or her victim and remind them “who is boss” without letting the behavior rise to the level that would alert law enforcement. The respondent knows which cues to send to bully, frighten and threaten the petitioner. It is not uncommon that these would be ordinary actions, their significance perceptible only to the victim. Engaging in conduct prohibited by a court order can be part of this pattern—especially if the abuser suspects it will go unpunished. When a reported violation is ignored, the unspoken threat to the victim is that any future report of misbehavior to law enforcement would be fruitless. If a violation is minimized or ignored by law enforcement, an abuser may repeatedly violate the order as a way to intimidate the victim and discourage her from reporting future violations.

When a victim reports a violation, it may seem inconsequential or vindictive to an outsider. To the victim however, a violation of the order may signal that the respondent is flaunting his or her ability to circumvent the law. The victim, having come forward to get the injunction and then report a violation, has the expectation that law enforcement is the first line of defense against improper behavior by the respondent. When even “minor” violations are overlooked by law enforcement, it sends the message that it is sometimes alright for the respondent to bend the rules, even at the expense of the victim. Though entirely unintentional, law enforcement may reinforce the abuser’s threat that no one can protect the victim from future harm. Both the respondent and the victim hear this message loud and clear. It may embolden the respondent and frighten the petitioner.

### **Law Enforcement Must Enforce Court Orders**

It is the duty of law enforcement to determine whether there is probable cause to believe that the conduct reported to be a violation of a domestic abuse restraining order or injunction is prohibited by the restraining order or injunction. The protection order may not be clear enough to give the officer probable cause to believe that the reported behavior is a violation. If there is probable cause that a valid domestic abuse restraining order or injunction was violated, the statutes *mandate* arrest and taking the offender into custody. It is not the role of law enforcement to decide whether there were mitigating or aggravating circumstances

involved in the violation. A law enforcement officer needn't evaluate whether a given violation signals imminent danger. The court has already made findings concerning what type of contact is prohibited. Similar to the enforcement of other types of court orders, law enforcement is obligated to enforce the order of the court.

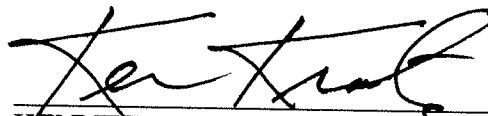
### **Recommendations**

The Board recommends that law enforcement officers consider the following when responding to reports of protection order violations:

- Most domestic abuse injunctions are granted after the petitioner applies for and is granted a temporary restraining order by a court commissioner or a judge. The court official has already made a determination, based upon the petition and hearing, that domestic violence has or is likely to occur. There has already been a determination of potential danger as an inherent element in the relationship that requires systemic intervention.
- Wisconsin statutes address proper law enforcement response to a domestic abuse injunction violation. After verifying the validity of a no-contact order, if probable cause exists that the order was violated, law enforcement **MUST** make an arrest and take the person into custody.
- An abuser who is willing to violate a court order, bond condition, probation rule, condition of sentencing, etc. is exhibiting a lack of regard for the law. It may illustrate a mindset that no one can tell him/her what to do and in some cases, this should be considered as increasing the threat and risk of harm to his or her victim(s).
- “Incidental contact” by an abusive partner subject to a domestic abuse injunction may be part of a pattern of behavior intended by the abuser to maintain an emotional, physical, or physis hold on their victim. Abusers will often utilize the concept of “public space” to put themselves in the visual vicinity of their victim and continue contact. It is often a way the abuser tests how far he or she can go before the victim calls for assistance and to test whether law enforcement will enforce the no contact provisions of a court order.
- So-called “minor” violations of a protection order can be a way for the abuser to gradually get the victim used to an escalation of violations. For example, the abuser might first pass in front of the victim’s house in a car recognized by the victim. Then the next time, s/he might slow down in front of the house. Eventually, s/he may be pulling into the drive way, later calling from a cell phone while in the car, etc. Without prompt and appropriate response by law enforcement, the violations become an unpleasant but “normal” part of life for the victim and over time the victim may be less likely to report violations. The abuser is essentially allowed to stalk the victim with little or no consequence, as potential danger to the victim increases.

- Victims no longer need to petition the court to hold the offender accountable for “contempt of a court order,” as they had to in the past. The very fact that the court issued an injunction is recognition of the danger present to the petitioner.
- If a no-contact order is unclear, law enforcement should inform the victim the order is unclear. The victim may want to seek clarification from the court. Many domestic violence advocacy groups will help a victim seek clarification of an order. It is important that the victim and respondent understand that the responding officer is not condoning a violation but rather that he or she is unable to show probable cause because the order is not clear.
- On April 1, 2006, Wisconsin Act 104 will become effective. The Act upholds current law that any violation of a domestic abuse restraining order requires arrest. It also affirms that citations should not be issued in situations that require arrest under Wis. Stat. 968.075 (Domestic abuse incidents). It sets forth factors that law enforcement is **required** to consider in determining the “predominant aggressor” (previously called “primary physical aggressor”) for the purpose of mandatory arrest. A summary of the new law, prepared by the State of Wisconsin Office of Justice Assistance, is attached to this report. The act can be accessed by going to *2005 Wisconsin Act 105 in Chapter IV, Section H. Statutes* or at:  
<http://www.legis.state.wi.us/2005/data/acts/05Act104.pdf>.

Dated this 14<sup>th</sup> day of April, 2006.



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Chairperson  
Crime Victims Rights Board