

Chief Justice Shirley Abrahamson
Wisconsin Supreme Court
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Madison, Wisconsin 53701

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CHIEF JUSTICE SHIRLEY S. ABRAHAMSON
SUPREME COURT

January 3, 2012

HAND DELIVERED

Dear Chief Justice Abrahamson and Justices:

I understand that the Wisconsin Supreme Court is scheduled to discuss at an upcoming administrative conference court policies related to the carrying of concealed weapons. The Wisconsin Coalition Against Domestic Violence has significant concerns about the presence of guns and other weapons in Wisconsin courtrooms and courthouses. Therefore, I am writing you to ask the Court to consider several points during its discussion.

The Wisconsin Coalition Against Domestic Violence (WCADV) is the statewide membership organization that represents and supports local domestic violence victim service providers as well as survivors in Wisconsin. WCADV is comprised of over 60 member programs that serve survivors of domestic violence and their children in all of Wisconsin's 72 counties.

Background

As you know, 2001 Wisconsin Act 35 authorizes the carrying of concealed weapons in Wisconsin. Act 35 provides that an individual may carry concealed weapons subject to certain restrictions, if the individual obtains a license through the Wisconsin Department of Justice or, in the case of an out-of-state resident, if the out-of-state resident possesses a license from certain other states. Under the legislation, generally, licensees may not carry weapons in certain areas, including the portions of buildings that are courthouses. Wis. Stat. § 175.60(16)(a)6.

However, the Act provides an exception to the statutory prohibition against a licensee carrying a concealed weapon in a courthouse. Under Wisconsin Statute section 175.60(16)(b)2. and 3., neither a licensee who is a district attorney or an assistant district attorney nor a person to whom "a judge has permitted in writing to carry a weapon" is statutorily prohibited from carrying a concealed weapon in a "courthouse or courtroom."

This exception is deeply troubling to WCADV, our member programs and the survivors of domestic violence served by our member programs. The most dangerous time for a victim of domestic violence and her children—the time at which she is at the greatest risk to be killed—is when the victim is taking steps to



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leave the perpetrator. In 2010, 50 percent of intimate partner homicides occurred when the victim left the relationship or was taking steps to leave the relationship.

When victims are attempting to leave a violent relationship, they usually have no choice but to face their abusers in court. Some victims seek domestic abuse injunctions. Victims with children or who are married must initiate family law actions to complete the separation. Other victims are called as witnesses in criminal actions. Intuitively sensing the heightened risk, victims often report that confronting their abusers in court is one of the most terrifying experiences of their lives. It is also one of the most courageous steps a victim can take. These victims deserve a courthouse that is as safe and secure as possible.

We believe the Court has an obligation to establish sufficient regulations around the carrying of weapons in Wisconsin courts. The security of courts, staff and litigants is essential to the basic administration of justice. The very specter of insecurity, especially in cases of domestic violence, is likely to prejudice a litigant's ability to effectively come before the court, and may prevent litigants from seeking redress in the first instance. Indeed, the court has previously recognized this obligation by promulgating Supreme Court Rule 70.39, which has extensive provisions related to court security.

Rule Recommendation

We recommend that as part of the Court's discussion of rules related to the carrying of weapons the court consider the following regulations.

1. Only sworn, on-duty law enforcement officers are permitted to carry weapons in Wisconsin courtrooms and courthouses.
2. Alternatively, the Court should regulate the manner in which circuit court judges can grant permission to licensees to carry in courtrooms and courthouses. Even putting aside the need for basic safety protections, section 175.60(16)(b)2. is not workable standing alone. It does not address the standards by which a judge may grant permission. Moreover, the plain meaning of the text does not set necessary and reasonable limits on the extent to which a judge may grant a licensee to permission carry a weapon in a courtroom or courthouse. Conceivably, the permission could extend to any courtroom or courthouse in the state.

We request that the Court establish that a judge's permission under section 175.60(16)(b)2.:

- is only valid with respect to a courtroom that the judge exclusively controls;
- the permission may not extend to other parts of the courthouse, other courthouses or other courtrooms;
- a judge may only issue permission under section 175.60(16)(b)2. after an individualized determination that the person to whom the permission is granted does not pose a safety risk to the public or the court; and,
- if a judge grants permission to a licensee to go armed under section 175.60(16)(b)2., the judge should provide sufficient notice to the public and the court system that the judge has granted such permission.

We also believe that certain precautions should be mandated when a licensee who has been granted permission desires to bring a weapon to a courtroom or courthouse. The licensee should be required to make arrangements with law enforcement prior to coming to the courthouse so that law enforcement can transport the weapon within the courthouse and to and from the judge's courtroom. When the licensee is present and armed, the judge should inform any parties or other people in the courtroom that the judge has granted the licensee permission to carry a weapon in the courtroom. In addition, two sworn and

armed law enforcement officer should be present in the courtroom at all times the armed licensee is present.

3. At an absolute minimum, we believe the Court should establish a rule that a licensee may not go armed in a courtroom or courthouse on any day he, she or a member of the licensee's family is scheduled to appear in any action affecting the family, in any action under sections 813.12, 813.122, 813.122 or 813.125 (restraining order hearings) or in any criminal proceeding. Allowing a party or member of a party's family to be armed in these types of cases will have a chilling effect on vulnerable litigants, many of whom already perceive themselves to be in imminent danger. In addition, these actions can be highly volatile and emotional. The presence of weapon in the hands of a party could very possibly result in tragedy. While a person may not intend to use a weapon when carrying it, the charged emotions which often occur at such proceedings between parties who are experiencing or alleging domestic violence substantially increases the likelihood the weapon will be used and have lethal consequences.

The Court's Authority

We believe the Court has the authority to promulgate any of the above rules. Article VII, section 3, subsection 1 of the Wisconsin State Constitution grants the Court superintending and administrative authority over all courts of the state. Any of the above provisions would be an exercise of this authority.

In addition, none of the provisions above conflict with Act 35. The legislature has not granted anyone an affirmative right to carry a concealed weapon in a Wisconsin courtroom or courthouse, nor has the legislature granted a judge an affirmative right to grant a licensee permission to carry a weapon in a courtroom or courthouse. The exceptions contained in section 175.60(16)(b)2. and 3. are exceptions to the statutory prohibition against carrying in a courtroom or courthouse. Under Act 35, the ability of a licensee to carry a weapon in any area that is neither per se prohibited nor affirmatively allowed is subject to the person or entity that owns, occupies or controls the area. The Wisconsin State Constitution grants the Court with superintendent and administrative authority over Wisconsin courts. Therefore, any regulation or restriction from the Court beyond those already legislatively imposed would not be in conflict with Act 35.

Moreover, even if the Court viewed a potential regulation as conflicting Act 35, the Court's prerogative would override Act 35. Under the separation of powers doctrine, each branch is prohibited from intruding upon another's "core zone of exclusive authority." *State ex rel. Friedrich v. Dane County Circuit Court*, 1992 Wis. 2d 1, 13, 531 N.W.2d 32 (1995). Any provisions of Act 35 that arguably hampers the Court from setting security standards would be such an intrusion.

Conclusion

Thank you for considering our viewpoint during your discussion of the concealed carry. Again, we believe the Court's obligation to create reasonable safety protections for litigants is concomitant with its obligation to ensure the fair administration of justice in this state. We stand willing to provide more information or assistance at anytime. Please forward this letter to the Justices and feel free to share it with Wisconsin's Chief Judges and the public.

Respectfully,


Patti Seger,
Executive Director


Tony Gibart,
Policy Coordinator