

COMMENT

**LONG-ARM TO PROTECT THE UNARMED FROM HARM
BY THE ARMED: WHY WISCONSIN NEEDS A NEW
STATUTE TO ENSURE ITS RESIDENTS CAN OBTAIN
RESTRAINING ORDERS AGAINST FOREIGN RESIDENTS
WHO THREATEN THEM**

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A government’s primary responsibility is to render security to its citizens. The State of Wisconsin cannot currently perform this duty because Wisconsin courts do not have clear authority to protect the state’s residents who are threatened or abused by people living in other states. Specifically, Wisconsin courts lack authority to grant restraining orders against nonresidents who threaten Wisconsin citizens with domestic violence.

Domestic violence is a global epidemic that is similarly problematic in Wisconsin. Frighteningly, domestic violence homicide is one of the leading causes of premature death among U.S. women. Domestic violence and harassment are becoming easier to perpetrate, and both cross state borders with increasing frequency. A state government must be able to offer protection to its residents who are threatened with interstate domestic violence.

The primary manner in which state civil courts protect state residents against domestic violence is by issuing restraining orders against those who threaten to harm the residents. But a state court can issue a restraining order against an abuser only if state statutes grant the court personal jurisdiction over the abuser. Wisconsin’s statutes are ambiguous and do not currently provide Wisconsin courts with sufficient authority to exercise jurisdiction over nonresidents who make tortious communications into Wisconsin. After illuminating the prevalence and severity of interstate domestic violence, discussing the benefits of restraining orders, and revealing the flaw in Wisconsin’s current law, this Comment proposes a statute that would eliminate the flaw so that Wisconsin courts could exercise jurisdiction over nonresidents whose communications into Wisconsin harm the state’s residents.

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INTRODUCTION

Vance Evans was shot and killed by an Illinois resident who had entered into Evans’s home in Tomah, Wisconsin.¹ Evans had dated Tammy Cole when he lived in Illinois, but ended his relationship with Cole when he moved to Tomah.² After he arrived in Tomah, Evans began dating Mary McLain.³ Soon after that, a jealous Cole called McLain and threatened to kill her.⁴ Cole traveled to Tomah from Illinois,⁵ entered Evans’s residence, and shot Evans in the back of the head.⁶ Cole then attempted to burn down Evans’s house to destroy the evidence.⁷

Domestic violence is a global epidemic.⁸ A substantial portion of such violence occurs when an intimate partner has ended a

1. Criminal Complaint at 1, *Wisconsin v. Cole*, DA Case No.: 2010MO001206 (Monroe Cnty. Ct. June 9, 2010), available at <http://tomahpolice.com/news/Cole%20Criminal%20Complaint.pdf>.

2. WIS. COAL. AGAINST DOMESTIC VIOLENCE, WIS. DOMESTIC VIOLENCE HOMICIDE REPORT 2010, at 25 (2010) [hereinafter 2010 DOMESTIC VIOLENCE REPORT].

3. Criminal Complaint, *supra* note 1, at 1.

4. *Id.* at 2.

5. *See id.*

6. Anne Jungen, *Cole Found Guilty of Tomah Man’s Murder*, LACROSSETRIBUNE.COM (Mar. 26, 2011, 12:00 AM), http://lacrossetribune.com/news/local/article_9c2813d4-5765-11e0-bbc3-001cc4c002e0.html.

7. *Id.* Evans is not the only Wisconsin victim of interstate domestic homicide. *See, e.g.*, 2010 DOMESTIC VIOLENCE REPORT, *supra* note 2, at 16; Chris Vetter, *Vollbrecht, Who Killed Man while He Slept, Could Receive Parole in 25 Years*, EAU CLAIRE LEADER-TELEGRAM, July 23, 2011, available at http://www.leadertelegram.com/news/front_page/article_e8c39c8e-b4d2-11e0-b76b-001cc4c002e0.html.

8. *See generally* CLAUDIA GARCIA-MORENO ET AL., WORLD HEALTH ORGANIZATION, *WHO MULTI-COUNTRY STUDY ON WOMEN’S HEALTH AND DOMESTIC*

relationship.⁹ When relationships end, people sometimes try to get away from a former partner by moving to a different state.¹⁰ Yet moving away from an abuser actually increases the risk of violence.¹¹ If the victim begins to date a new partner after moving away, there is an even greater risk that the violence will escalate to homicide.¹²

Domestic violence in Wisconsin is consistent with these trends. Including Vance Evans, domestic violence killed 103 Wisconsin residents in 2009 and 2010.¹³ At least thirty-eight of these deaths occurred while an intimate partner was attempting to end a relationship.¹⁴

Homicide is clearly the most extreme form of domestic violence. Still, less severe forms—such as psychological abuse, harassment, and stalking—have dramatic and negative impacts on victims.¹⁵ While no

VIOLENCE AGAINST WOMEN: INITIAL RESULTS ON PREVALENCE, HEALTH OUTCOMES AND WOMEN'S RESPONSES (2005), available at http://www.who.int/gender/violence/who_multicountry_study/en/ (discussing global domestic violence statistics). The United States does not escape this trend, as domestic violence is equally problematic in the United States. See generally Nat'l Inst. of Justice, Office of Justice Programs, U.S. Dep't of Justice, *Intimate Partner Homicide*, NAT'L INST. JUST. J., Nov. 2003.

9. Carolyn Rebecca Block, *How Can Practitioners Help an Abused Woman Lower Her Risk of Death?*, NAT'L INST. JUST. J., Nov. 2003, at 4, 6 (finding seventy-five percent of domestic violence homicide victims had left or tried to leave the relationship in the past year); see also Tina Hotton, *Spousal Violence after Marital Separation*, JURISTAT, June 2001, at 1.

10. See discussion *infra* Part I.B.2.c.

11. After an abused woman tries to leave, violence often becomes more severe than for women who do not try to leave. Laura Dugan et al., *Do Domestic Violence Services Save Lives?*, NAT'L INST. JUST. J., Nov. 2003, at 20, 23 (stating that the risk of homicide is greatest when a victim tries to leave the relationship); see also Jacquelyn C. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, 93 AM. J. PUB. HEALTH 1089, 1092 (2003), available at <http://ajph.aphapublications.org/cgi/reprint/93/7/1089>; Emily J. Sack, *Domestic Violence across State Lines: The Full Faith and Credit Clause, Congressional Power, and Interstate Enforcement of Protection Orders*, 98 NW. U. L. REV. 827, 828 (2004).

12. Campbell et al., *supra* note 11, at 1092.

13. See WIS. COAL. AGAINST DOMESTIC VIOLENCE, WIS. DOMESTIC VIOLENCE HOMICIDE REPORT 2009, at 4 (2010) [hereinafter 2009 DOMESTIC VIOLENCE REPORT] (reporting fifty-two domestic violence homicides in Wisconsin in 2009); 2010 DOMESTIC VIOLENCE REPORT, *supra* note 2, at 5 (reporting fifty-one domestic violence homicides in Wisconsin in 2010).

14. Sixteen domestic violence homicides in 2010 occurred when an intimate partner was attempting to end a dating relationship or marriage. 2010 DOMESTIC VIOLENCE REPORT, *supra* note 2, at 14. Twenty-two domestic violence homicides in 2009 occurred when an intimate partner was attempting to end a dating relationship or marriage. 2009 DOMESTIC VIOLENCE REPORT, *supra* note 13, at 10.

15. For more information about the prevalence of domestic violence in Wisconsin, see discussion *infra* Part I.A. Harassment and stalking often result in severe psychological problems for victims, including depression, anxiety, insomnia, and social

government can eliminate these problems, “[t]he primary function of government . . . is to render security to its subjects.”¹⁶ The Wisconsin government must be able to offer protection to its residents experiencing interstate domestic abuse.

The primary manner in which state civil courts render security to their threatened residents is by issuing restraining orders against those who terrorize residents.¹⁷ Restraining orders¹⁸ are legal orders that are intended to act as a protective shield around a threatened or abused person by requiring the perpetrator to stop harming the person.¹⁹ Restraining orders reduce the prevalence of domestic violence.²⁰ Vance Evans’s life may have been spared if he had been able to obtain a restraining order against Tammy Cole. While stopping a determined killer may not be possible, restraining orders could certainly offer relief

dysfunction. See THE MASS. COAL. AGAINST SEXUAL ASSAULT AND DOMESTIC VIOLENCE, STALKING AWARENESS FACT SHEET 2009, at 1 (2009), available at <http://www.clotheslineproject.org/2009%20Stalking%20Fact%20Sheet.pdf>. See generally Erin S. Straight et al., *The Impact of Partner Psychological Abuse on Health Behaviors and Health Status in College Women*, 18 J. INTERPERSONAL VIOLENCE 1035 (2003).

16. *Lanzetta v. New Jersey*, 306 U.S. 451, 455 (1939) (quoting *State v. Gaynor*, 197 A. 360, 363 (1938)).

17. Carolyn N. Ko, *Civil Restraining Orders for Domestic Violence: The Unresolved Question of “Efficacy,”* 11 S. CAL. INTERDISC. L.J. 361, 362 (2002) (“Restraining orders continue to be the primary form of protection for victims of domestic violence.”).

18. In some jurisdictions, restraining orders are called “protective orders” or “orders of protection.” See, e.g., TEX. FAM. CODE ANN. § 85.001 (West 2011) (referring to “protective orders”); 750 ILL. COMP. STAT. 60/201 (2008) (referring to “orders of protection”).

19. THE NAT’L CONFERENCE OF COMM’RS ON UNIF. STATE LAWS, UNIF. LAW COMM’N, INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT SUMMARY (2010), <http://uniformlaws.org/ActSummary.aspx?title=Interstate%20Enforcement%20of%20Domestic%20Violence%20Protection%20Orders%20Act>.

20. See Victoria L. Holt et al., *Civil Protection Orders and Risk of Subsequent Police-Reported Violence*, 288 JAMA 589, 593 (2002) (finding eighty percent reduction in police-reported physical violence in the twelve-month period after a permanent restraining order is issued); see also TK LOGAN ET AL., THE KENTUCKY CIVIL PROTECTIVE ORDER STUDY: A RURAL AND URBAN MULTIPLE PERSPECTIVE STUDY OF PROTECTIVE ORDER VIOLATION CONSEQUENCES, RESPONSES, AND COST (2009), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/228350.pdf>; STATE BAR OF WIS., BRIDGING THE JUSTICE GAP: WISCONSIN’S UNMET LEGAL NEEDS, app. 8 at 22 (2007), available at <http://www.wisbar.org/am/template.cfm?template=/cm/contentdisplay.cfm&contentid=63633> (stating that restraining orders are between forty and eighty percent effective, but violations include incidents as minor as unwanted phone calls); TK LOGAN & ROBERT WALKER, CARSEY INST., POLICY BRIEF NO. 18, CIVIL PROTECTIVE ORDERS EFFECTIVE IN STOPPING OR REDUCING PARTNER VIOLENCE 2 (Spring 2011), available at <http://www.carseyinstitute.unh.edu/publications/IB-Logan-Civil-Protective-Order.pdf>.

to Wisconsin residents suffering from less severe forms of interstate domestic abuse. Yet it is unclear whether Wisconsin courts have the authority to issue restraining orders against nonresidents like Cole who threaten to harm people in Wisconsin.

A court can issue a restraining order only if it has jurisdiction over the person the order restrains. A restraining order restricts an abuser's liberty by prohibiting the abuser from engaging in certain actions.²¹ But a state court has the power to restrict an individual's liberty only if the court has personal jurisdiction over the individual.²² Personal jurisdiction is a doctrine intended to protect individual liberty by defining a state court's authority to exercise jurisdiction over nonresidents whose rights and interests may be affected by the court's judgment.²³ A state court has personal jurisdiction over a nonresident only to the extent granted by state statutes.²⁴ Such statutes are commonly called "long-arm statutes." A state's long-arm statute defines the authority of the state's courts to adjudicate a nonresident's affairs.²⁵

Wisconsin courts can restrict the activities of nonresident abusers like Cole only if the state's long-arm statute grants Wisconsin courts jurisdiction over the abusers. Long-arm statutes always grant state courts jurisdiction over anyone—whether resident or nonresident—who is found within the state.²⁶ When a nonresident is not physically present in the state, however, long-arm statutes grant jurisdiction only in certain situations.²⁷ In short, Wisconsin abuse victims like Vance Evans can obtain restraining orders against nonresident abusers like Tammy Cole only if Wisconsin's long-arm statute authorizes personal

21. See discussion *infra* Part I.C.

22. See *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

23. *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982) ("The personal jurisdiction requirement recognizes and protects an individual liberty interest. It represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty.").

24. See *Kopke v. Hartrodt*, 2001 WI 99, ¶ 8, 245 Wis. 2d 396, 629 N.W.2d 662; *Gray v. Am. Radiator & Standard Sanitary Corp.*, 176 N.E.2d 761, 762 (Ill. 1961). Even if a long-arm statute authorizes personal jurisdiction, exercising jurisdiction over the individual must still comport with constitutional due process requirements. I illustrate how due process requirements allow jurisdiction over someone like Tammy Cole later in this Comment. See discussion *infra* Part II.A.

25. See, e.g., WIS. STAT. § 801.05 (2009–10) (Wisconsin's long-arm statute).

26. See VEDDER, PRICE, KAUFMAN & KAMMHOLZ, P.C., LONG-ARM STATUTES: A FIFTY-STATE SURVEY (2003), available at http://www.vedderprice.com/docs/pub/64a3d50f-1bf1-4b7d-a238-6b76933afa53_document.pdf; *Burnham v. Superior Court of Cal.*, 495 U.S. 604, 619 (1990) (upholding the constitutionality of exercising personal jurisdiction over anyone found within the state).

27. VEDDER, PRICE, KAUFMAN & KAMMHOLZ, P.C., *supra* note 26.

jurisdiction over nonresidents who make threatening communications into Wisconsin.

Wisconsin's long-arm statute provides trial courts with unclear authority regarding personal jurisdiction over nonresidents who make threatening communications into Wisconsin. While Wisconsin's long-arm statute does not expressly prohibit jurisdiction over people like Cole, it authorizes jurisdiction only if the nonresident commits a tortious act *in Wisconsin*.²⁸ A threatening communication into Wisconsin causes a legally actionable *injury*—apprehension and fear—in Wisconsin.²⁹ Yet it is not clear whether a threatening communication into Wisconsin can be construed as an *act* that occurs in Wisconsin. This imprecision provides insufficient guidance to trial courts attempting to determine whether they can exercise personal jurisdiction over individuals who, from a foreign state or country, threaten a person in Wisconsin.

Without personal jurisdiction over the defendant, Wisconsin courts cannot issue restraining orders against nonresidents like Cole. Because of the long-arm statute's imprecision, Evans probably could not have obtained a restraining order against his nonresident killer. Likewise, a victim of a less severe form of domestic abuse probably could not obtain a restraining order against a nonresident abuser.³⁰

In an attempt to clarify this imprecision, a bipartisan combination of new and experienced members of the 2011-12 Wisconsin Legislature proposed a bill to grant personal jurisdiction over nonresident abusers.³¹ The bill passed the Assembly,³² and then passed the Senate Committee

28. § 801.05(3).

29. Fear, apprehension, and other psychological injuries have been recognized as legally actionable for over 650 years. *See, e.g., I. de S. et ux. v. W. de S.*, Y.B. Lib. Assis., 22 Edw. III, folio 99, platicum 60 (1348), *available at* <http://history.cua.edu/faculty/sherman/IdeSetuxvWdeS.cfm> (allowing the plaintiff to recover for fear the plaintiff experienced when a hatchet was thrown at the plaintiff even though the hatchet missed and the plaintiff experienced no physical injury).

30. While I have withheld names and do not refer to the specific facts of the case for purposes of client protection and confidentiality, I worked on a divorce case with a renowned Madison family law practitioner in the summer of 2011. The divorce had been finalized for some time, and the other party had moved out of Wisconsin. The other party then allegedly made threatening phone calls to our client in Wisconsin from a foreign jurisdiction. Our client was terrified and wanted to obtain a restraining order. However, for reasons I will discuss as this Comment progresses, the court did not even explore the merits of our client's claim. Rather, the court determined that it lacked personal jurisdiction over the nonresident defendant and dismissed the case.

31. *See* Assemb. B. 247, 100th Sess. (Wis. 2011), *available at* <https://docs.legis.wisconsin.gov/2011/related/proposals/ab247.pdf>.

32. The Assembly Calendar for October 20, 2011, shows that Assembly Bill 247 was passed and immediately messaged to the Wisconsin Senate. *See* ASSEMB. JOURNAL, 100th Sess., at 591 (Wis. Oct. 20, 2011), *available at*

on Labor, Public Safety, and Urban Affairs.³³ But the bill did not become law because the 2011-12 legislative session ended before the Senate concurred on the bill.³⁴ Thus, Wisconsin courts still lack personal jurisdiction over nonresident abusers.

This Comment asserts that the 2013-14 Wisconsin Legislature should take action to guarantee that Wisconsin courts can exercise personal jurisdiction over nonresidents who threaten people inside Wisconsin. Expanding upon the 2011-12 bill, the 2013-14 legislature should enact a statute declaring that, for purposes of establishing specific personal jurisdiction, telephonic and written communications are acts that take place in both the jurisdiction from which the communication originated, and the jurisdiction in which the communication was received. Wisconsin courts could then offer protection to the state's residents by granting restraining orders against nonresident abusers. Part I of this Comment provides background information regarding the prevalence of domestic violence, the aspects of contemporary society that create an increased risk of severe forms of interstate domestic violence, and the efficacy of restraining orders. Part II analyzes the Wisconsin long-arm statute and its case law progeny and compares Wisconsin's long-arm statute to those of other states. After examining the realities of the legal system, Part III asserts that the Wisconsin Legislature is in the best position to ensure Wisconsin courts can protect in-state victims against out-of-state abusers, and then offers a proposed statute for the legislature. Finally, this Comment concludes that the Wisconsin Legislature should adopt the proposed statute to

<https://docs.legis.wisconsin.gov/2011/related/journals/assembly/20111020.pdf>; ASSEMB. CALENDAR, 100th Sess. (Wis. Oct. 20, 2011), *available at* <http://docs.legis.wisconsin.gov/2011/related/calendars/assembly/20111020.pdf>. The bill's full history is detailed in the Assembly Bulletin, Wis. Assemb. Bulletin, 100th Sess., at 99-100 (Wis. 2012), *available at* <https://docs.legis.wisconsin.gov/2011/proposals/ab247>.

33. The Senate Committee on Labor, Public Safety, and Urban Affairs recommended the bill for concurrence by a four to one vote on January 10, 2012. *See* S. JOURNAL 652 (Wis. 2012), *available at* https://docs.legis.wisconsin.gov/2011/related/records/ab247/slab_01172012.pdf.

34. The bill was included in a list of bills that was in the Senate's possession at the end of the last general business floor period, which was adjourned on March 15, 2010. *See* S. JOURNAL 821 (Wis. Mar. 23, 2012), *available at* <https://docs.legis.wisconsin.gov/2011/related/journals/senate/20120323.pdf>. All these bills were "adversely disposed of pursuant to Senate Joint Resolution 1." *Id.* Senate Joint Resolution 1 is the legislative schedule for the 2011-12 legislative session, showing the final date of the last session. *See* S.J. Res. 1, 100th Sess. (Wis. Jan. 3, 2011), *available at* <http://docs.legis.wisconsin.gov/2011/related/proposals/sjr1.pdf>. Because the bill had not yet passed on the last day, it was "adversely disposed of."

ensure it can perform its most basic function of rendering security to its subjects.³⁵

I. DOMESTIC VIOLENCE AND RESTRAINING ORDER BACKGROUND

Domestic violence is epidemic, and its impact is widespread. Technological developments and contemporary social trends increase the risk that domestic violence will cross state borders. This Part provides statistics on domestic violence, analyzes how modern technology and current social trends impact domestic violence, and affirms the effectiveness of restraining orders.

A. *The Domestic Violence Epidemic*

Vance Evans was not the victim of a rare or isolated type of violence. Although most domestic violence is never reported to police, nearly 25% of American women and over 7% of American men report being victims of domestic violence.³⁶ Domestic violence homicide accounts for approximately 12% of all U.S. homicides.³⁷ Women are killed by their intimate partners more frequently than by any other category of killer.³⁸ Domestic violence homicide is the seventh-leading cause of premature death for women in the United States,³⁹ and claimed

35. See *Lanzetta v. New Jersey*, 306 U.S. 451, 455 (1939).

36. PATRICIA TJADEN & NANCY THOENNES, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE iii, v (July 2000), available at <https://www.ncjrs.gov/pdffiles1/nij/181867.pdf>.

37. Leonard J. Paulozzi et al., Nat'l Ctr. for Injury Prevention & Control, Ctrs. for Disease Control & Prevention, *Surveillance for Homicide among Intimate Partners – United States, 1981-1998*, MORBIDITY & MORTALITY WKLY. REP. SURVEILLANCE SUMMARIES, Oct. 12, 2001, at 1, 4, available at <http://www.cdc.gov/mmwr/PDF/ss/ss5003.pdf>.

38. VIOLENCE POLICY CTR., WHEN MEN MURDER WOMEN: AN ANALYSIS OF 2008 HOMICIDE DATA 3 (Sept. 2010), available at <http://www.vpc.org/studies/wmmw2010.pdf> (finding that sixty-four percent of 2008 female homicide victims were killed by their intimate partners); Nat'l Inst. of Justice, *supra* note 9, at 18 (finding intimate partners are responsible for up to fifty percent of homicides of female victims); Campbell et al., *supra* note 11, at 1089 (“American women are killed by intimate partners . . . more often than by any other type of perpetrator.”).

39. Block, *supra* note 9, at 18; Campbell et al., *supra* note 11, at 1089. For females in the United States between ages one and four, homicide is the third-leading cause of death; for ages five to fourteen, the fourth-leading cause of death; for ages fifteen to twenty-four, the second-leading cause of death; for ages twenty-five to thirty-four, the fifth-leading cause of death; for ages thirty-five to forty-four, the eighth-leading cause of death. CTRS. FOR DISEASE CONTROL, LEADING CAUSES OF

nearly 50,000 American lives over the course of two decades.⁴⁰ Of course, the vast majority of domestic violence cases involve forms of abuse less severe than homicide. Yet these nonfatal abusive actions can have significant negative impacts on victims—often causing psychological problems such as depression, anxiety, insomnia, and social dysfunction.⁴¹

Domestic violence is similarly prevalent in Wisconsin. Each year, roughly 30,000 incidents of domestic violence are reported in Wisconsin.⁴² Dozens of these incidents are domestic violence homicides,⁴³ but the remaining incidents are nonfatal forms that can cause severe psychological problems.⁴⁴

B. Domestic Violence across State Borders

Modern conditions and circumstances have increased the risk of interstate domestic violence. Tammy Cole traveled into Wisconsin from Illinois before killing Vance Evans. Cole's interstate domestic homicide is a drastic act, yet nonfatal forms of interstate domestic abuse are unfortunately not random or unforeseeable. Indeed, modern technology and contemporary social trends heighten the risk that domestic violence will cross state borders. The following Subsections explore the modern factors that lead to this increased risk.

1. TECHNOLOGICAL AND INFRASTRUCTURE ADVANCEMENTS AND INTERSTATE DOMESTIC VIOLENCE

Over the past century, rapid advancements in technology and transportation infrastructure have made the world so interconnected that mere distance no longer provides victims of domestic violence with sufficient protection or comfort.⁴⁵ State borders are wide open,

DEATH BY AGE GROUP, ALL FEMALES—UNITED STATES, 2007 (2007), http://www.cdc.gov/women/lcod/07_all_females.pdf.

40. Paulozzi et al., *supra* note 37, at 4 (approximating 45,513 domestic violence homicides in the United States between 1981 and 1998).

41. *See supra* note 15 and accompanying text.

42. STATE BAR OF WIS., *supra* note 20, at i.

43. *See supra* notes 13–14 and accompanying text.

44. *See supra* note 15 and accompanying text.

45. Indeed, no matter where one is in the world, the person may only be twenty-four hours away from Wisconsin. For example, using TripAdvisor.com one can observe that, in slightly under twenty-two hours, a person with a United States passport or visa can travel from Timbuktu, Mali to Madison, Wisconsin. A flight from Timbuktu to Bamako, Mali takes about two hours. Then, a flight from Bamako to

interstate highways connect every major American city,⁴⁶ and daily flights connect every major city in the world.⁴⁷ Cellular telephone technology and the Internet reduce costs⁴⁸ and increase the convenience of communication by allowing an abuser to specifically select the person to receive a communicative message.⁴⁹ All of these factors increase the ease with which someone like Tammy Cole can abuse, harass, and ultimately harm someone like Vance Evans.⁵⁰

O'Hare International Airport in Chicago takes about sixteen hours and fifty minutes. Finally, a bus ride from O'Hare to Madison, Wisconsin takes about three hours.

46. See FED. HIGHWAY ADMIN., U.S. DEP'T OF TRANSP., MAP OF NATIONAL HIGHWAY SYSTEM (2009), available at <http://www.fhwa.dot.gov/planning/images/nhs.pdf>.

47. A brief glance at the Research and Innovative Technology Administration's website reveals that air travel is available to nearly every destination in the world. The following link is especially helpful: <http://www.transtats.bts.gov/> (click on "Debate Directory" under the "Resources" header on the left of the page; then click on "Air Carrier Statistics (Form 41 Traffic)-All Carriers" in the "Database Name" column). The various articles on this page show the availability of flights to the destinations of the world.

48. Most cell phone plans include free long-distance calling. See *About "Free" Cell Phone Long Distance*, MYRATEPLAN.COM, http://www.myrateplan.com/free_long_distance (last visited Sept. 22, 2012). Provided one can access the Internet, e-mail and social network message can be sent at no cost. Because cell phones, e-mail addresses, and social networking sites do not share the long-distance cost limitations of traditional landline telephones, an abuser who owns or has access to such technology can send a no-cost threatening or harassing message to anyone at any time.

49. The vast majority of Americans now own personal cell phones, e-mail addresses, and social networking accounts. There were over 223 million cell phone users aged thirteen years and above as of 2009. THE NIELSEN CO., 2010 MEDIA INDUSTRY FACT SHEET (2010), available at <http://blog.nielsen.com/nielsenwire/press/nielsen-fact-sheet-2010.pdf>. Over 195 million Americans use the Internet. *Id.* There are over 200 million social networking accounts owned by the United States population. *Id.* Because cell phones, e-mail addresses, and social networking site accounts are personally owned, an abuser who sends a threatening message through any of these means can be sure the message is received by the intended recipient.

50. See Emma Short & Isabella McMurray, *Mobile Phone Harassment: An Exploration of Students' Perceptions of Intrusive Texting Behavior*, 5 HUM. TECH. 163, 175 (2009), available at <http://www.humantechnology.jyu.fi/articles/volume5/2009/short-mcmurray.pdf> (stating that one of the study's most striking findings was the sample population's perception that harassing text messages were common behavior); Neil Selwyn, *A Safe Haven for Misbehaving? An Investigation of Online Misbehavior among University Students*, 26 SOC. SCI. COMPUTER REV. 446, 454-61 (2008) (reporting that ninety percent of survey respondents reported Internet-based misbehavior, partially because the Internet provides a more conducive environment for misbehaving); Joseph B. Walther, *Computer-Mediated Communication: Impersonal, Interpersonal, and Hyperpersonal Interaction*, 23 COMM. RES. 3, 17-23 (1996), available at <http://homes.chass.utoronto.ca/~wellman/undergrad04/walther%20-%20COMPUTER-MEDIATED%20COMMUNICATION.pdf> (discussing how

2. CONTEMPORARY SOCIAL TRENDS AND INTERSTATE DOMESTIC VIOLENCE

Technological and infrastructural developments would not increase the risk of interstate domestic violence if the estranged interstate relationship between Tammy Cole and Vance Evans was an aberration. But the opposite is true. Contemporary social trends—including access to firearms, high divorce rates, increased violence after separation, and the transient nature of contemporary society—suggest that the Cole and Evans dynamic could frequently recur. This Subsection explores the impact of these trends on interstate domestic violence.

a. Gun prevalence enhances the severity of domestic violence

The prevalence of firearms in the United States significantly amplifies the severity of domestic violence, increasing the odds that domestic abuse will turn fatal.⁵¹ There are about eighty-four guns for every one hundred people in the United States.⁵² Females living with a gun in the home are three times more likely to be murdered than females with no gun in the home.⁵³ Indeed, “domestic violence and guns [are] a deadly combination.”⁵⁴

b. Divorce, separation and post-relationship issues

A significant number of American marriages end in divorce.⁵⁵ Wisconsin is no exception. There were 17,285 divorces in Wisconsin in

relationship formation is accelerated in online communications, leading to deep, intense relationships causing individuals to self-disclose information very rapidly).

51. Campbell et al., *supra* note 11, at 1092 (suggesting that abusers who own guns inflict the most severe abuse upon their victims); VIOLENCE POLICY CTR., *supra* note 38, at 1 (“Guns can easily turn domestic violence into domestic homicide.”); Garen J. Wintemute et al., *Increased Risk of Intimate Partner Homicide among California Women Who Purchased Handguns*, 41 ANNALS EMERGENCY MED. 281–82 (2003).

52. GRADUATE INST. OF INT’L STUDIES (GENEVA, SWITZ.), SMALL ARMS SURVEY 2001: PROFILING THE PROBLEM 65 (2001), *available at* <http://www.smallarmssurvey.org/publications/by-type/yearbook/small-arms-survey-2001.html>. American civilians own more than 230 million firearms, which constitutes nearly half of all known firearms in the entire world. *Id.* In fact, American civilians own as many firearms as the total firearms owned by all the armed forces in the entire world. *Id.* at 66.

53. VIOLENCE POLICY CTR., *supra* note 38, at 1–2.

54. *Id.* at 2.

55. One study that analyzed divorce rates based on the age of the bride on the day of the wedding indicated that the divorce rate for first marriages is 48% when the bride is under age eighteen on the day of her first wedding, 40% for ages eighteen to

2010.⁵⁶ These statistics underestimate the overall scope of separations because they do not include the severance of non-marital relationships—like that of Cole and Evans.

Separation and divorce often involve high levels of emotion. Divorcing or separating couples must resolve child custody,⁵⁷ divide marital property, determine maintenance payments, and face the loss of companionship that both partners believed would last forever.⁵⁸ These factors—along with a general loss of control—illustrate why domestic violence often increases in both frequency and severity after separation.⁵⁹

c. Mobility of American citizens

Prior to being killed, Vance Evans, like so many other American citizens, moved to a different state. In 2010, over 4.3 million Americans moved from one state to another.⁶⁰ Over 2.75 million people who moved in 2010 specifically cited “change in marital status” as the motivation for their move.⁶¹ Because so many people move to a different state, post-separation domestic abuse has the potential to cross state borders with great frequency. Restraining orders are one means of protecting people like Evans from potentially deadly acts of domestic violence.

nineteen, 29% for ages twenty to twenty-four, and 24% for ages twenty-five and older. Matthew D. Bramlett & William D. Mosher, *Cohabitation, Marriage, Divorce, and Remarriage in the United States*, VITAL & HEALTH STATISTICS, July 2002, at 1, 17–18.

56. STATE VITAL RECORDS OFFICE, WIS. DEP’T OF HEALTH SERVS., WISCONSIN MARRIAGES AND DIVORCES 2010, at 5 (2011), *available at* <http://www.dhs.wisconsin.gov/stats/pdf/2010mardiv.pdf>.

57. Fifty-three percent of Wisconsin divorces involve families with children under age eighteen. *Id.*

58. *See* STATE BAR OF WIS., DIVORCE: ANSWERING YOUR LEGAL QUESTIONS (2011), *available at* http://www.wisbar.org/AM/Template.cfm?Section=Consumer_Resources&Template=/CM/ContentDisplay.cfm&ContentId=92174 (mentioning custody, child support, maintenance, and property division as some of the issues that divorcing couples face); Rachel L. Virk, *General List of Topics to be Resolved in Divorce*, VIRK-LAW, http://virk-law.com/issues_divorce.html (last visited Sept. 23, 2012).

59. *See supra* notes 8–14 and accompanying text.

60. *See* U.S. CENSUS BUREAU, CURRENT POPULATION SURVEY, 2010 ANNUAL SOCIAL AND ECONOMIC SUPPLEMENT tbl.23 (May 2011), *available at* <http://www.census.gov/hhes/migration/data/cps/cps2010.html>.

61. *See id.*

C. Restraining Order Efficacy and Enforcement

Vance Evans did not attempt to obtain a restraining order, but most people faced with threats of domestic violence benefit from restraining orders. Restraining orders are obtained when a person files a petition to a civil court.⁶² The person filing the petition must prove by a preponderance of the evidence that abuse has occurred or that a threat was made.⁶³ Once issued, a restraining order demands that the abuser refrain from further abusing the victim, but often includes more comprehensive prohibitions and limitations on the abuser.

Numerous types of restraining orders exist in Wisconsin.⁶⁴ While the circumstances dictate which type of order a victim may seek, the various types of orders generally provide victims the same protections and place the same restrictions on abusers' activities.⁶⁵ The purpose of restraining order statutes is to allow the state government to protect its threatened or abused citizens by preventing future harm.⁶⁶ Yet restraining orders can fulfill this purpose only if they effectively protect victims from their abusers. The following Subsections explore the benefits and efficacy of restraining orders.

1. RESTRAINING ORDERS REDUCE VIOLENCE AND HELP VICTIMS
FEEL SAFER

Restraining orders cannot eliminate all violence, but they are effective in reducing violence and helping victims feel safer. Through a restraining order, a judge may prohibit an abuser from contacting the threatened person, possessing weapons, or visiting places frequented by the threatened person.⁶⁷ These limitations and restrictions have many

62. Sack, *supra* note 11, at 833.

63. *Id.* at 834. In this context, a "preponderance of the evidence" means that the greater weight of the evidence shows that abuse has occurred or that a threat was made. See BLACK'S LAW DICTIONARY 1301 (9th ed. 2009).

64. See WIS. STAT. § 813.12 (2009–10) (domestic abuse restraining order); § 813.122 (child abuse restraining order); § 813.123 (restraining orders for individuals at risk); § 813.125 (harassment restraining order).

65. See §§ 813.12, .122, .123, .125.

66. *Restraining Orders and Protective Orders*, RESOURCE4THEPEOPLE.COM, <http://www.resource4thepeople.com/criminallaw/restrainingorders.html> (last visited Sept. 23, 2012) (stating that the purpose of restraining orders is to prevent and protect).

67. "Orders may contain a variety of additional terms, commonly prohibiting any contact, direct or indirect, by phone, through third parties or other means; ordering the respondent to stay away from the protected party, as well as her home, workplace, or school; and ordering the respondent to refrain from interfering with the petitioner's property. If the respondent currently is

positive effects.⁶⁸ Restraining orders reduce incidents of abuse,⁶⁹ improve a victim's sense of well-being and perception of security,⁷⁰ and generally improve a victim's quality of life.⁷¹

While most abuse victims benefit from them, restraining orders—like all court injunctions—are valuable only if they are enforced. Over the past few decades the justice system has increased its focus on restraining order enforcement.⁷² In Wisconsin, perpetrators who violate restraining orders *must* be arrested.⁷³ Protected individuals facilitate enforcement by calling the police immediately after a restraining order is violated.⁷⁴ Violators are subject to a fine of up to \$1,000 or imprisonment for up to nine months, or both.⁷⁵ The strong enforcement and high penalties for violating restraining orders further enhances

living with the petitioner, the judge may order the respondent to vacate the premises.”

Sack, *supra* note 11, at 834; *see also* §§ 813.12–.125; Holt, *supra* note 20, at 589; La Keisha H. Jones Witzig, *The Effectiveness of Restraining Orders in Deterring Domestic Violence: A Study in the State of New Jersey* 5 (Jan. 1, 2000) (unpublished Masters of Public Administration Thesis, Seton Hall University), *available at* <http://scholarship.shu.edu/theses/133>.

68. *See supra* note 20 and accompanying text.

69. *See supra* note 20 and accompanying text.

70. *See* LOGAN & WALKER, *supra* note 20, at 3; SUSAN L. KEILITZ ET AL., OFFICE OF JUSTICE PROGRAMS, NAT'L INST. OF JUST., U.S. DEP'T OF JUSTICE, CIVIL PROTECTION ORDERS: VICTIMS' VIEWS ON EFFECTIVENESS (1998), *available at* <https://www.ncjrs.gov/pdffiles/fs000191.pdf>; Ko, *supra* note 17, at 369–71.

71. One study showed that between 77% and 95% of victims thought the protective order was effective. *See* LOGAN ET AL., *supra* note 20, at 103. Another study showed that, because of a restraining order, 85% of victims reported life improvement, over 90% reported feeling better about themselves, and 80% felt safer. *See* KEILITZ ET AL., *supra* note 70. Yet another study found that between 86 and 87% of women thought their protective orders were effective. *See* LOGAN & WALKER, *supra* note 20, at 3; Ko, *supra* note 17, at 369–71.

72. Sack, *supra* note 11, at 836.

73. *See* §§ 813.12(7), .122(10), .123(9), .125(6) (“A law enforcement officer *shall* arrest and take a person into custody if . . . [t]he law enforcement officer has probable cause to believe that the person has violated [a restraining order].”) (emphasis added).

74. *See* JUDICIAL COUNCIL OF CAL., HOW TO ENFORCE YOUR RESTRAINING ORDER 1 *available at* <http://www.courts.ca.gov/documents/dv530info.pdf> (providing information about the typical process of restraining order enforcement). For example, if a perpetrator violates a restraining order prohibiting all contact with the protected individual, the protected person will call law enforcement personnel, who can immediately arrest or fine the perpetrator. *Id.* Sometimes, the protected person may be required to provide the arriving officer with a copy of the restraining order and proof of service before the officer arrests the violator. *Id.*

75. *See* §§ 813.12(8), .122(11), .123(10), .125(7) (imprisonment for violations of harassment restraining orders is a maximum of ninety days).

efficacy.⁷⁶ Perhaps Vance Evans's life could have been saved had he sought and obtained a restraining order. Certainly, victims of other forms of domestic abuse can benefit greatly from a restraining order's restrictions on the abuser's liberty.

2. FULL FAITH AND CREDIT UNDER THE VIOLENCE AGAINST WOMEN ACT

Congress acknowledged the increasing risk of interstate domestic violence when it enacted the Violence Against Women Act of 1994 (VAWA).⁷⁷ Congress attempted to provide individuals who move from one state to another with greater protection against interstate domestic violence by including a Full Faith and Credit provision within VAWA.⁷⁸ The Full Faith and Credit provision mandates that each state enforces restraining orders issued in other states the same way the state enforces its own restraining orders, regardless of the victim's gender.⁷⁹ This mandate improves restraining order efficacy by increasing enforcement.⁸⁰ But VAWA's mandatory enforcement is helpful only if a victim has already obtained a restraining order against an abuser.⁸¹

76. LOGAN ET AL., *supra* note 20, at 156 (“[T]he majority of victims [whose restraining orders were not violated], indicated they believed the [restraining] order was not violated because the perpetrator was afraid of legal repercussions, especially of going to or back to jail.”).

77. Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902-55 (codified in scattered sections of 8 U.S.C., 18 U.S.C., and 42 U.S.C.).

78. Vice President Joe Biden, a U.S. Senator at the time, was VAWA's original sponsor. At the opening of an earlier hearing on the act, Biden stated that the reason for the Full Faith and Credit provision was to “protect[] women who flee across State lines to elude their abusers, by making a protective stay-away order issued in one State valid in every State. Today, a woman must often show that her spouse abused her in a particular State to be protected in that particular State.” *Women and Violence: Legislation To Reduce the Growing Problem of Violent Crime against Women: Hearings Before the S. Comm. on the Judiciary*, 101st Cong. 85 (1990) (statement of Sen. Biden, Chair of the Senate Judiciary Committee).

79. The Full Faith and Credit provision of VAWA is codified at 18 U.S.C. § 2265 (2006). Similarly, Wisconsin statutory provisions declare that restraining orders issued in Wisconsin are enforceable in every state. *See* WIS. STAT. §§ 813.12(9), .122(12), .123(12), .125(8) (2009–10).

80. LOGAN ET AL., *supra* note 20, at 156 (“[T]he majority of victims [whose restraining orders were not violated], indicated they believed the [restraining] order was not violated because the perpetrator was afraid of legal repercussions, especially of going to or back to jail.”).

81. To be clear, VAWA does not offer protection by granting a restraining order to victims. Rather, VAWA's Full Faith and Credit provision merely demands that a restraining order issued in one state must be recognized and enforced in all other states. VAWA therefore can only help an abuse victim if the victim has first obtained a restraining order from a state government.

Thus, VAWA can help people like Vance Evans only if a state's long-arm statute authorizes its courts to issue restraining orders against nonresident abusers like Tammy Cole.

II. WISCONSIN'S LONG-ARM STATUTE PROVIDES INSUFFICIENT GUIDANCE TO TRIAL COURTS SEEKING TO EXERCISE PERSONAL JURISDICTION OVER NONRESIDENT ABUSERS

Tammy Cole was a nonresident who made threatening communications into Wisconsin before entering the state to kill Vance Evans. For a Wisconsin court to grant a restraining order against someone like Cole based upon these threatening communications, the court must first have statutory authority to exercise personal jurisdiction. This Part examines the requirements of exercising personal jurisdiction and then analyzes Wisconsin's long-arm statute to determine whether it provides courts with personal jurisdiction over people like Tammy Cole. The Part concludes by highlighting the imprecision of Wisconsin's long-arm statute by comparing Wisconsin's statute to more precise statutes of other states.

A. Personal Jurisdiction Must Be Authorized by a Long-Arm Statute and Comport with Due Process

For a state court to assert personal jurisdiction over a defendant, such an assertion must be supported by a state long-arm statute and be consistent with constitutional due process requirements.⁸² There are two types of personal jurisdiction: general personal jurisdiction and specific personal jurisdiction.⁸³ General personal jurisdiction allows a court to exercise jurisdiction over an individual for any matter that comes before the court—even if the matter is not directly related to the defendant's activities within the forum state.⁸⁴ Recent Supreme Court cases have suggested that general personal jurisdiction exists only in an

82. *Lincoln v. Seawright*, 104 Wis. 2d 4, 9–10, 310 N.W.2d 596 (1981). Due process requires that a defendant not be “subject to the binding judgments of a forum with which he has established no meaningful ‘contacts, ties, or relations.’” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471–72 (1985) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)).

83. *See Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414–15, 416 n.10 (1984).

84. *See, e.g., Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2853–54 (2011) (describing general personal jurisdiction as instances when a person's operations within the state are “so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities” (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945))).

individual's state of residence or domicile.⁸⁵ Tammy Cole resided in and was domiciled in Illinois; Wisconsin courts do not have general personal jurisdiction over people, like Cole, domiciled elsewhere.

Specific personal jurisdiction grants state courts jurisdiction over defendants who direct specific and particular acts at the state.⁸⁶ Specific jurisdiction comports with due process when the defendants' actions reveal that they purposefully availed themselves to the forum state⁸⁷ or the defendants' intentional behavior had an effect in the forum state.⁸⁸ Even if due process requirements are met, a state court can exercise specific jurisdiction only if authorized by the state's long-arm statute.⁸⁹

There are two basic types of long-arm statutes—"limits of due process" statutes and "enumerated" statutes.⁹⁰ Limits of due process statutes allow state courts to exercise personal jurisdiction in any situation that is consistent with the Due Process Clause of the Fourteenth Amendment.⁹¹ Due process is satisfied when a defendant's purposeful actions have an effect in the forum state.⁹² Intentionally sending threatening communications to someone in a state is an action directed at—and having an effect in—that state. A "limits of due process" statute would thus grant jurisdiction over someone like Tammy Cole.⁹³

85. *Id.* at 2853.

86. *See id.*

87. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

88. *See Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984); *Calder v. Jones*, 465 U.S. 783, 787–89 (1984).

89. *See Lincoln v. Seawright*, 104 Wis. 2d 4, 9–10, 310 N.W.2d 596 (1981).

90. Compare CAL. CIV. CODE § 410.10 (West 2011), with WIS. STAT. § 801.05 (2009–10). California's long-arm statute is an example of a "limits of due process" statute. Wisconsin's long-arm statute is an example of an "enumerated" statute.

91. *See* CAL. CIV. CODE § 410.10 ("A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.").

92. *See Keeton*, 465 U.S. at 774; *Calder*, 465 U.S. at 787–89. These cases create the "effects test," which authorizes jurisdiction over nonresidents wherever a nonresident's intentional tortious acts have an effect.

93. In this Comment, I assume that due process requirements are satisfied under the "effects test" because a nonresident abuser's intentional abusive communications into a state have an effect in the state by causing the person who receives the communication to experience fear and apprehension—psychological injuries that have been recognized as legally actionable for centuries. *See supra* note 29 and accompanying text. A recent Wisconsin Court of Appeals case discussing personal jurisdiction over nonresidents whose only contacts with Wisconsin were through telephone, e-mail, and facsimile may appear on the surface to provide a different basis—other than the "effects test"—for satisfying due process over people like Cole. *See Johnson Litho Graphics of Eau Claire Ltd. v. Sarver*, No. 2010AP1441, 2012 WL

Enumerated statutes do not inherently grant jurisdiction to the full extent allowed by the Due Process Clause.⁹⁴ Instead, enumerated statutes specify the particular circumstances or activities that subject a defendant to personal jurisdiction in a state's courts.⁹⁵ For states with enumerated statutes, the mere fact that exercising jurisdiction over

3984569 (Wis. Ct. App. Sept. 6, 2012), available at <http://www.wicourts.gov/ca/opinion/DisplayDocument.pdf?content=pdf&seqNo=86802>. But the *Johnson Litho* personal jurisdiction analysis does not apply to the facts of a nonresident abuser like Tammy Cole.

In *Johnson Litho*, Sarver had placed numerous orders over a six-year period with a Wisconsin business, Johnson Litho, through phone, e-mail, and facsimile. *Id.* ¶¶ 2–4. When Sarver failed to pay for the goods he had ordered, Johnson Litho sued. *Id.* ¶¶ 4–5. Sarver moved to dismiss the case for lack of personal jurisdiction, arguing both that there was no provision in Wisconsin's long-arm statute authorizing jurisdiction and exercising jurisdiction would violate due process because he never physically entered Wisconsin and therefore did not have sufficient minimum contacts. *Id.* ¶ 5. The court first explored whether the long-arm element was satisfied through a long-arm provision that granted jurisdiction over a defendant when a plaintiff ships goods from Wisconsin "to the defendant on the defendant's order or direction." *See id.* ¶ 7 (quoting WIS. STAT. § 801.05(5)(d) (2009–10)). The court held that the long-arm element was met even though the goods Sarver ordered were not technically shipped "to the defendant" because Sarver had arranged for the goods to be shipped to a third party. *Id.* ¶¶ 8–12. Because nonresident abusers like Tammy Cole did not order any goods from Wisconsin, the long-arm provision the court applied in *Johnson Litho* is not relevant to establishing whether Wisconsin's long-arm statute authorizes Wisconsin courts to exercise personal jurisdiction over people like Cole.

After finding personal jurisdiction was authorized by Wisconsin's long-arm statute, the *Johnson Litho* court declared that "[a] nonresident defendant's communications with a forum plaintiff via telephone, email and facsimile may comport with due process principles, even when the defendant has not entered the state physically." *Id.* ¶ 30. While this quotation supports the notion that due process is satisfied even if a nonresident abuser like Cole was never physically present in Wisconsin, the *Johnson Litho* court made this declaration within the context of the particular facts of that case—specifically, Sarver's large number of contacts over the course of a six-year business relationship. *Id.*

This Comment asserts that the long-arm statute must provide jurisdiction over nonresident abusers like Tammy Cole even if those abusers make only one threatening communication into Wisconsin. Because Sarver's due process was satisfied by his numerous contacts with Wisconsin over a long duration, *see id.*, the *Johnson Litho* due process analysis is not applicable to people for whom personal jurisdiction must be found based on a small number of communications into Wisconsin. In short, the focus on "quantity" of contacts in *Johnson Litho* cannot be applied to nonresidents like Tammy Cole. Rather, due process over people like Cole is satisfied because of the "quality" of the contact—that is, the injurious and tortious effect the communication had on a person inside Wisconsin—which is the basis of the "effects test." *See Keeton*, 465 U.S. at 774; *Calder*, 465 U.S. at 787–89. Because due process is satisfied by the "effects test," I do not discuss due process any further in this Comment, and rather focus on whether Wisconsin's long-arm statute authorizes jurisdiction.

94. *See, e.g.*, WIS. STAT. § 801.05.

95. *See id.*

someone like Cole comports with due process does not necessarily mean that the long-arm statute authorizes the state's courts to exercise personal jurisdiction. Rather, courts must parse the language of each statutory provision and determine whether the defendant's specific activities fit within the language of any provision authorizing jurisdiction.⁹⁶

B. Wisconsin's Long-Arm Statute

Wisconsin chose to adopt an enumerated long-arm statute.⁹⁷ Wisconsin's statute describes the specific situations in which Wisconsin

96. For example, in *Kopke v. Hartrodt*, the primary issue argued by the justices of the Wisconsin Supreme Court was the meaning of "processing" under section 801.05(4)(b) of the Wisconsin long-arm statute. *Kopke v. Hartrodt*, 2001 WI 99, ¶ 15, 245 Wis. 2d 396, 629 N.W.2d 662. In that case, if "processing" included loading paper into a cargo container as part of the shipping and distribution process, then the long-arm statute authorized jurisdiction. *Id.* ¶¶ 11–13. If processing means bringing about a physical transformation of a product, then the long-arm statute does not authorize jurisdiction. *Id.* Problems with statutory construction of enumerated long-arm statutes are not limited to Wisconsin, however. These problems are illustrated by a comparison of the Illinois decision in *Gray v. Am. Radiator & Standard Sanitary Corp.*, 176 N.E.2d 761 (Ill. 1961), and the New York decision in *Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc.*, 209 N.E.2d 68 (N.Y. 1965). Similar to Wisconsin's law, each state statute authorized jurisdiction over defendants who committed a tortious act within the state. *Gray*, 176 N.E.2d at 762; *Longines-Wittnauer*, 209 N.E.2d at 74–76. In each case, the plaintiff was injured in the forum state as a result of the defendant's act or omission in another state. *Gray*, 176 N.E.2d at 762; *Longines-Wittnauer*, 209 N.E.2d at 74–76. The Illinois court held that the tort was committed in Illinois, stating that a tort occurs in the location where the last event takes place (i.e. where the injury occurs). *Gray*, 176 N.E.2d at 762. The court declared that the alleged negligence in manufacturing the valve could not be separated from the resulting injury and, therefore, Illinois's long-arm statute granted personal jurisdiction over the defendant because the tort was committed in Illinois. *Id.* at 763. Contrarily, the New York court held that New York's long-arm statute did not confer personal jurisdiction over the defendant because no tort was committed in New York. *Longines-Wittnauer*, 209 N.E.2d at 77. Rather, the court declared that the defendant's tortious act "indisputably occurred in the out-of-state manufacturing process in Kansas." *Id.* Since this decision, New York has amended its long-arm statute to cover such cases. See N.Y. C.P.L.R. § 302(a) (McKinney 2010).

97. See WIS. STAT. § 801.05. Wisconsin also has a statute which grants Wisconsin courts jurisdiction over "actions affecting the family." See § 767.01(1). This statute can also perform a "long-arm" function and grant Wisconsin courts jurisdiction over nonresidents, provided the subject matter of the case is a matter included as an "action affecting the family." See *id.* "Actions affecting the family" include things like divorce proceedings, legal separations, custody, property division, maintenance payments, and actions to enforce or modify a judgment or an order affecting the family. § 767.001(1). However, this statute does not authorize personal jurisdiction over people like Cole because restraining orders sought against intimate partners are not included in the definition of "actions affecting the family." See *id.* Accordingly, this statute may

courts can exercise personal jurisdiction.⁹⁸ Yet the statute's construction—and case law interpreting the statute—makes it unclear whether Wisconsin courts are authorized to exercise jurisdiction over someone like Tammy Cole. The following Subsections provide an analysis of Wisconsin's long-arm statute provisions.

1. WISCONSIN'S GENERAL JURISDICTION PROVISION DOES NOT GRANT JURISDICTION OVER NONRESIDENT ABUSERS

The general jurisdiction provision in Wisconsin's long-arm statute does not grant Wisconsin courts personal jurisdiction over people like Tammy Cole. Wisconsin's long-arm statute provides for general jurisdiction over a defendant only if certain requirements are met.⁹⁹ Wisconsin courts have jurisdiction if the defendant is served in Wisconsin,¹⁰⁰ or if at the time *the action is commenced*,¹⁰¹ the defendant is domiciled in Wisconsin¹⁰² or “engaged in substantial and not isolated activities” in Wisconsin.¹⁰³

This provision provides jurisdiction over an abuser who remains in Wisconsin after a divorce.¹⁰⁴ But because it requires courts to analyze contacts at the time the action commences, the provision precludes general personal jurisdiction over a nonresident who no longer is (or never was) engaged in substantial and not isolated activities in

grant Wisconsin courts jurisdiction over a nonresident for divorce proceedings, but the same court lacks jurisdiction over the same nonresident in a restraining order hearing if jurisdiction is not supported by a provision within Wisconsin's long-arm statute.

98. Section 801.05(1) describes the situations in which Wisconsin courts can exercise general personal jurisdiction. Subsections 801.05(2)-(13) describe the situation in which the courts can exercise specific personal jurisdiction.

99. See § 801.05.

100. § 801.05(1)(a).

101. § 801.05(1).

102. § 801.05(1)(b).

103. § 801.05(1)(d).

104. An abuser presumably stayed in Wisconsin if the abuser was served in Wisconsin or domiciled in Wisconsin. Being “served” generally means being delivered a summons and complaint. BLACK'S LAW DICTIONARY 1491 (9th ed. 2009). A summons is a paper that tells a defendant that he is being sued in a specific court. *Id.* at 1574. A defendant probably remained in Wisconsin if the summons and complaint were delivered to him in Wisconsin. “Domicile” generally refers to “the place where a man has his . . . permanent home or residence to which he intends to return whenever he is absent therefrom. It is not a residence for any special or temporary purpose but one intended to be permanent for an unlimited or indefinite period.” *In re Estate of Daniels*, 53 Wis. 2d 611, 615, 193 N.W.2d 847 (1972). A defendant domiciled in Wisconsin therefore either remained in Wisconsin, or at least intends to return to Wisconsin after being temporarily away. See *id.*

Wisconsin.¹⁰⁵ Although an abuser who left Wisconsin after a divorce or separation may have numerous historical or recent contacts with Wisconsin, the abuser is not subject to general jurisdiction unless engaged in substantial and not isolated activities within Wisconsin at the time the victim commences the restraining order action.¹⁰⁶

Wisconsin courts have declared that telephone calls alone do not constitute substantial and not isolated activities.¹⁰⁷ The long-arm statute therefore does not provide for general jurisdiction over people like Cole. Courts must instead look to establish personal jurisdiction under one of the specific personal jurisdiction provisions of the long-arm statute.¹⁰⁸

2. WISCONSIN'S SPECIFIC PERSONAL JURISDICTION PROVISIONS RELEVANT TO SOMEONE LIKE COLE

Wisconsin's specific personal jurisdiction provisions provide jurisdiction over all defendants who cause injuries through acts in Wisconsin,¹⁰⁹ and over certain defendants who cause injuries in Wisconsin through foreign acts.¹¹⁰ The following Subsections demonstrate the ambiguity of Wisconsin's specific personal jurisdiction provisions by comparing them with similar provisions from other states. This ambiguity provides insufficient guidance for trial courts when a nonresident abuser challenges the issuance of a restraining order by asserting that Wisconsin courts lack personal jurisdiction.

105. § 801.05(1).

106. *Id.* “[I]n determining whether a nonresident defendant’s contacts with Wisconsin are ‘substantial’ . . . ,” courts consider, *inter alia*, the “quantity of contacts,” the quality and nature of contacts, the “source of contacts” and their nexus with the “cause of action,” the “state’s interest,” and the “convenience of the parties.” 3 JAY E. GRENIG, WISCONSIN PRACTICE SERIES: CIVIL PROCEDURE § 105.2, at 57–58 (4th ed. 2010). A defendant’s contacts are generally “substantial and not isolated . . . if the defendant solicits, creates, nurtures, or maintains . . . a continuing business relationship with anyone in Wisconsin.” *Id.* at 58. “However, . . . a single contact with Wisconsin is sufficient . . . [in certain situations when] . . . the cause of action” arises out of the contact. *Id.* at 58–59.

107. *See* § 801.05(1)(d); *Cram v. Med. Coll. of Wis.*, 927 F. Supp. 316, 319–20 (E.D. Wis. 1996); *Dietrich v. Patients Comp. Fund*, 169 Wis. 2d 471, 480, 485 N.W.2d 614 (Wis. Ct. App. 1992); *Pavlic v. Woodrum*, 169 Wis. 2d 585, 590, 486 N.W.2d 533 (Wis. Ct. App. 1992).

108. *See* § 801.05.

109. § 801.05(3).

110. § 801.05(4).

a. Wisconsin's "local act or omission" provision does not grant personal jurisdiction over nonresident abusers

Wisconsin's statute granting jurisdiction for a local act or omission is more ambiguous than similar provisions in other states.¹¹¹ Section 801.05(3) of the Wisconsin Statutes provides for personal jurisdiction over nonresident defendants "[i]n any action claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant."¹¹² This provision grants Wisconsin courts jurisdiction over tortious acts that occur within Wisconsin.¹¹³ Wisconsin courts could have used this provision to assert jurisdiction over Tammy Cole only if Cole's threatening phone call into Wisconsin was considered an act that occurred within Wisconsin.¹¹⁴ Because it is ambiguous whether a phone call takes place in the jurisdiction from which it is placed, the jurisdiction in which it is received, or both,¹¹⁵ it is unclear whether Wisconsin courts could invoke this provision to exercise jurisdiction over someone like Cole based upon a threatening phone call from another state.

In contrast, many states have adopted statutes that clearly provide jurisdiction over nonresident defendants who cause injuries within the state, regardless of where the injurious act occurred.¹¹⁶ Utah's long-arm statute, for instance, provides jurisdiction over any person who causes "any injury within this state."¹¹⁷ Similarly, North Dakota's long-arm

111. § 801.05(3); *see, e.g.*, ME. REV. STAT. ANN. tit. 14, § 704-A(2)(B) (2003); MICH. COMP. LAWS ANN. § 600.705(2) (West 2011); MONT. CODE ANN. § 25-20-4(b)(1)(B) (2011); N.D. R. CIV. P. 4; S.D. CODIFIED LAWS § 15-7-2(2) (2011); UTAH CODE ANN. § 78B-3-205(3) (LexisNexis 2011).

112. *Id.*

113. *See Nagel v. Crain Cutter Co.*, 50 Wis. 2d 638, 643, 184 N.W.2d 876 (1971); *Federal Rural Elec. Ins. Corp. v. Inland Power & Light*, 18 F.3d 389, 395 (7th Cir. 1994). *Nagel* technically discussed Wisconsin Statute Section 262.05(3), but section 262.05 is the predecessor statute to Wisconsin's current long-arm statute, section 801.05, and the two statutes contain identical language. *Rasmussen v. Gen. Motors Corp.*, 2011 WI 52, ¶ 20 n.22, 335 Wis. 2d 1, 803 N.W.2d 623.

114. *See supra* notes 1–7 and accompanying text.

115. Cases from other jurisdictions have gone both ways. Some courts reject the notion that telephone calls occur in both the jurisdiction from which the call was placed and the jurisdiction in which the call was received. *See, e.g., Tavoulareas v. Comnas*, 720 F.2d 192, 193–94 (D.C. Cir. 1983); *Margoles v. Johns*, 483 F.2d 1212, 1218 (D.C. Cir. 1973). Meanwhile, other courts embrace the notion that telephone calls are acts that occur in multiple jurisdictions. *See infra* Part II.D.

116. *See, e.g.*, ME. REV. STAT. ANN. tit. 14, § 704-A(2)(B) (2003); MICH. COMP. LAWS ANN. § 600.705(2) (West 2011); MONT. CODE ANN. § 25-20-4(b)(1)(B) (2011); N.D. R. CIV. P. 4; S.D. CODIFIED LAWS § 15-7-2(2) (2011); UTAH CODE ANN. § 78B-3-205(3) (LexisNexis 2011).

117. UTAH CODE ANN. § 78B-3-205(3).

statute provides personal jurisdiction over any person who “[c]ommit[s] a tort within or outside this state causing injury to another person . . . within this state.”¹¹⁸

For instance, under Utah’s and North Dakota’s statutes, a court would unquestionably have jurisdiction to issue a restraining order against someone like Tammy Cole. The court would not need to determine the jurisdiction in which Cole’s phone call occurred because the statutes grant jurisdiction over nonresident abusers regardless of where the act causing injury occurred.¹¹⁹ Because Wisconsin’s statute grants jurisdiction only if the tortious act occurs in the state, Wisconsin’s statute is less clear.¹²⁰ Even more, the next Subsection demonstrates that Wisconsin’s other specific personal jurisdiction provision is also an unreliable source for establishing jurisdiction over someone like Cole.¹²¹

b. Unlike statutes in other states, the additional requirements of Wisconsin’s “foreign act, local injury” provision preclude personal jurisdiction over nonresident abusers

A statute providing jurisdiction when a person’s foreign act causes a local injury seems like the logical choice when seeking to establish jurisdiction over a nonresident who makes threats into a state. Wisconsin’s long-arm statute, however, grants jurisdiction over such nonresidents only if the nonresidents have additional contacts with Wisconsin that are unrelated to their acts that caused the injury.¹²² Wisconsin’s “local injury, foreign act” provision provides jurisdiction only if the defendant, at the time of injury, carries on “[s]olicitation or service activities” within Wisconsin¹²³ or manufactures products “used or consumed” in Wisconsin.¹²⁴ Unless the abuser also carries on

118. N.D. R. CIV. P. 4.

119. *See id.*; UTAH CODE ANN. § 78B-3-205.

120. *See* WIS. STAT. § 801.05(3) (2009–10).

121. *See* § 801.05(4).

122. *See id.*; *Fields v. Peyer*, 75 Wis. 2d 644, 250 N.W.2d 311 (1977).

123. § 801.05(4)(a).

124. § 801.05(4)(b). It seems as though this provision was drafted with “stream of commerce” jurisdiction in mind. “Stream of commerce” jurisdiction is a controversial theory that grants state courts jurisdiction over corporate defendants based solely on a defendant’s products entering the state through commerce and causing injury. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); *see also Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 U.S. 102 (1987); *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780 (2011). Under this theory, personal jurisdiction over the corporation exists based upon the product causing injury in Wisconsin if the corporate defendant solicited business in Wisconsin, or if the products the corporation manufactured reached Wisconsin after being placed into the stream of

solicitation or service activities in Wisconsin or manufactures products that are used or consumed in the state, this provision does not provide jurisdiction over a nonresident abuser like Cole.

The courts of some states clearly have jurisdiction over people like Cole because their “local injury, foreign act” provisions do not require additional contacts beyond the tortious act.¹²⁵ For example, Pennsylvania’s provision grants jurisdiction over anyone who causes “harm or tortious injury in [Pennsylvania] by an act or omission outside [Pennsylvania].”¹²⁶ Such a provision does not require courts to find additional, unrelated contacts with the state, and instead allows the state’s courts to exercise jurisdiction over people like Cole based solely on threatening phone calls into the state. In contrast, Wisconsin’s “local injury, foreign act” provision does not establish jurisdiction over someone like Cole because it requires other contacts in addition to the threatening communication.¹²⁷

Under the current long-arm statute, Wisconsin courts have jurisdiction over someone like Cole only if a tortious communication into Wisconsin from another state is considered an act occurring within Wisconsin. Such a finding would grant jurisdiction under Wisconsin Statutes Section 801.05(3).¹²⁸ However, trial courts are unlikely to reach this conclusion without statutory authority because existing case law is confusing.

C. The Role of Trial Courts and Whether a Phone Call into Wisconsin Is an Act Occurring in Wisconsin under Current Appellate Case Law

Overbroad declarations in non-restraining-order appellate cases will likely influence trial courts to dismiss cases against nonresident abusers for lack of personal jurisdiction. Restraining order hearings occur before trial court judges or court commissioners.¹²⁹ Because trial

commerce. The language of section 801.05(4)(b) suggests that the legislature was considering only corporate defendants, and not individual defendants, when it drafted this portion of the long-arm statute.

125. See MINN. STAT. § 543.19(4) (2010); 42 PA. CONS. STAT. § 5322(c) (2006).

126. 42 PA. CONS. STAT. § 5322(c).

127. See WIS. STAT. § 801.05(4).

128. See § 801.05(3).

129. See *Process for Obtaining a Restraining Order in Wisconsin*, WISCONSIN COALITION AGAINST DOMESTIC VIOLENCE, 5–8 (Nov. 2010), http://www.wcadv.org/sites/default/files/resources/Process_for_Obtaining_a_Restraining_Order.pdf. A “court commissioner” is a person appointed by a trial court judge to assist the judge in finding facts, hearing testimony, and resolving issues.

courts are law-applying courts,¹³⁰ trial court judges and commissioners are unlikely to declare that a phone call into Wisconsin is an act occurring in Wisconsin without authority from appellate courts or the legislature. Rather, appellate decisions in contexts unrelated to restraining order hearings are likely to confuse trial courts and influence them to dismiss cases against people like Cole for lack of personal jurisdiction.¹³¹ The following Subsections discuss the role of trial courts and examine the current influential appellate case law that would influence trial courts to conclude that they lack personal jurisdiction over people like Tammy Cole.

1. TRIAL COURT DECISIONS ARE BASED ON LEGAL AUTHORITY FROM STATUTES AND APPELLATE COURT CASES

While appellate courts often change or “make” law, trial courts are obligated to apply only existing statutes or case precedents to the facts of a case.¹³² Trial courts are discouraged from making law of their own authority and must apply only controlling law that exists on the issue before them.¹³³ Without controlling law created by an appellate court or the state legislature declaring that a phone call takes place in both the jurisdiction in which the call was placed and the jurisdiction in which the call was received, Wisconsin trial courts are unlikely to engage in legal ingenuity to find jurisdiction over a nonresident abuser.

Even if one Wisconsin trial court engages in legal ingenuity and finds jurisdiction, the decision would not clarify the law. Trial courts do not typically issue opinions.¹³⁴ Even when they issue opinions, trial court decisions are not binding precedent.¹³⁵ To stay within their law-application role, trial courts therefore need guiding authority from an

130. In our legal system, trial courts are not supposed to engage in legal ingenuity when reaching decisions. Rather, trial courts are to make decisions strictly based upon authority provided by state legislatures, state agencies, or appellate courts. Appellate courts issue written opinions to guide the lower courts in interpreting laws, and trial courts are to apply the law as written rather than search for creative resolutions to ambiguous areas of law.

131. See discussion *infra* Part II.C.2.

132. *Pryor v. Reno*, 998 F. Supp. 1317, 1330 (M.D. Ala. 1998).

133. *Id.*

134. Armstrong, Teasdale, Schlafly & Davis, *Are Emotional Distress Claims Back?*, MO. EMP. L. LETTER (M. Lee Smith Publishers & Printers), Dec. 1997 (“As is the custom and practice in the trial courts, the judge did not issue an opinion setting forth the reasons for the dismissal.”).

135. *Fenske v. Pub. Emp. Ret. Sys. Bd. of Admin.*, 163 Cal. Rptr. 182 (Ct. App. 1980).

appellate court or the state legislature to consistently find jurisdiction over people like Cole.¹³⁶

2. CURRENT APPELLATE CASE LAW TO GUIDE TRIAL COURT DECISIONS

There is no Wisconsin case law addressing whether threatening phone calls into Wisconsin are sufficient to establish personal jurisdiction.¹³⁷ But broad declarations made by Wisconsin appellate courts in other contexts may inappropriately influence trial court decisions. Some appellate case law appears to preclude a finding of personal jurisdiction over a nonresident who makes threatening phone calls into Wisconsin.¹³⁸ In *Cram v. Medical College of Wisconsin*¹³⁹ and *Dietrich v. Patients Compensation Fund*,¹⁴⁰ Wisconsin appellate courts definitively declared that phone calls alone are insufficient to establish jurisdiction.¹⁴¹ Such broad statements are likely to influence overburdened and busy Wisconsin trial courts engaging in their proper, but limited, law-application role to declare that personal jurisdiction does not exist over someone like Cole.¹⁴²

Despite these broad statements about the insufficiency of telephone calls in establishing jurisdiction, appellate courts have never addressed *tortious* or *threatening* phone calls made into Wisconsin. The cases involved only isolated, nontortious, and normal social or business phone calls, which rightly cannot provide a basis for personal

136. *In re M.F.*, No. E042948, 2008 WL 888544, at *3 (Cal. Ct. App. Apr. 3, 2008) (declaring that, even when an issue is moot in the case in front of it, an appellate court “should nonetheless issue an opinion to ‘guide’ the trial courts” especially when the issue is “capable of repetition” in the trial courts, but is unlikely to come before the appellate court again).

137. When I worked on the restraining order case referenced *supra* note 30, I worked with the attorney to research and write her brief on the issue of personal jurisdiction over the alleged nonresident abuser. However, the practitioner and I discovered that no case law addressed whether threatening phone calls into Wisconsin are sufficient to establish personal jurisdiction. My research revealed no new cases addressing the issue.

138. *See, e.g., Cram v. Med. Coll. of Wis.*, 927 F. Supp. 316 (E.D. Wis. 1996); *Dietrich v. Wis. Patients Comp. Fund*, 169 Wis. 2d 471, 485 N.W.2d 614 (Ct. App. 1992).

139. 927 F. Supp. 316 (E.D. Wis. 1996).

140. 169 Wis. 2d 471, 485 N.W.2d 614 (Ct. App. 1992).

141. *Cram*, 927 F. Supp. at 320 (“I do not believe that two phone calls to individuals in the state constitutes ‘an act or omission within this state.’”); *Dietrich*, 169 Wis. 2d at 480 (“[T]elephone calls received by a defendant do not, standing alone, constitute contact with Wisconsin sufficient to establish a basis for personal jurisdiction.”).

142. *See supra* notes 138–141 and accompanying text.

jurisdiction.¹⁴³ So despite the broad declarations of *Cram* and *Dietrich*,¹⁴⁴ these precedents should not control the question of whether Wisconsin courts have jurisdiction over nonresident abusers like Tammy Cole.

While Wisconsin appellate courts have never had the opportunity to distinguish tortious from nontortious phone calls as a basis for personal jurisdiction, they have determined that personal jurisdiction exists over nonresidents who use other means of communication to engage in tortious or threatening behavior.¹⁴⁵ Courts have declared that personal jurisdiction exists over defendants who send threatening letters from other states that cause injury inside Wisconsin.¹⁴⁶ In this context courts have found personal jurisdiction on the basis that these letters—although written and sent from outside Wisconsin—were tortious acts that occurred within Wisconsin.¹⁴⁷

Because e-mail and social networking sites are analogous to traditional letters, it is possible that these authorities may influence trial courts to find personal jurisdiction over abusers who use e-mail or social networking to threaten people inside Wisconsin. Despite these authorities, however, broad declarations like those in *Cram* and *Dietrich* are likely to influence a trial court's law-application function when the question is whether threatening *phone calls* made into Wisconsin can provide a basis for exercising jurisdiction in a restraining order case.¹⁴⁸ Trial courts are likely to dismiss a case based on threatening phone calls for lack of personal jurisdiction. At best,

143. See *Cram*, 927 F. Supp. at 318, 320; *Dietrich*, 169 Wis. 2d at 475–77; *Pavlic v. Woodrum*, 169 Wis. 2d 585, 590, 486 N.W.2d 533 (Wis. Ct. App. 1992).

144. 927 F. Supp. 316; 169 Wis. 2d 471.

145. See *State v. Advance Mktg. Consultants, Inc.*, 66 Wis. 2d 706, 225 N.W.2d 887 (1975) (finding that fraudulent advertisements placed in Wisconsin by foreign citizens were sufficient to establish jurisdiction under Wisconsin's long-arm statute); *Stein v. Ill. State Assistance Comm.*, 194 Wis. 2d 775, 785–86, 535 N.W.2d 101 (Ct. App. 1995) (threatening letters sent from outside Wisconsin received by victim inside Wisconsin sufficient to establish jurisdiction under Wis. STAT. § 801.05(3) (2009–10), which requires an act to occur within Wisconsin). *Advance Marketing* technically discussed Wisconsin Statute Section 262.05, but section 262.05 is the predecessor statute to Wisconsin's current long-arm statute, section 801.05, and the two statutes contain identical language. See *supra* note 113.

146. See, e.g., *Stein*, 194 Wis. 2d at 786.

147. See *Advance Mktg. Consultants*, 66 Wis. 2d at 715–16; *Stein*, 194 Wis. 2d at 785–86.

148. Subsequent courts often are heavily influenced by broad statements of law or policy that appear to control more particularized issues within the scope of the broad statement. See, e.g., *First Merit Bank v. Wood*, No. 09CA009586, 2010 WL 1228966, at ¶¶ 16–19, 2010-Ohio-1339 (Ohio Ct. App. Mar. 31, 2010) (Carr, J., dissenting) (arguing that the majority relies upon broad statements of law that should not control the particularized issue of the case).

courts are required to reach a conclusion with insufficient—and apparently conflicting—authority.

D. States with Long-Arm Statutes Similar to Wisconsin’s Have Found Jurisdiction Based on a Tortious Phone Call into the State

Other states with statutes nearly identical to (and equally as ambiguous as) Wisconsin’s statute¹⁴⁹ have found jurisdiction over nonresidents based on tortious phone calls into the state.¹⁵⁰ New York and Florida have adopted the theory that phone calls are acts that occur in both the jurisdiction from which they are placed and the jurisdiction in which they are received.¹⁵¹ These legal conclusions were either declared by an appellate court or by a trial court that relied on a statute.¹⁵² Because Wisconsin trial courts have no appellate or statutory authority to make such a declaration, they are unlikely to exercise jurisdiction based on this theory.

1. FLORIDA’S SUPREME COURT RULED THAT TORTIOUS PHONE CALLS INTO FLORIDA ARE ACTS OCCURRING WITHIN FLORIDA

Like Wisconsin’s long-arm statute, Florida’s long-arm statute grants jurisdiction over nonresident defendants who “commit[] a

149. See FLA. STAT. § 48.193(1)(b) (2012); N.Y. C.P.L.R. § 302(a)(3) (McKinney 2010).

150. *Internet Solutions Corp. v. Marshall*, 39 So. 3d 1201, 1208 (Fla. 2010); *Wendt v. Horowitz*, 822 So. 2d 1252, 1260 (Fla. 2002); see *Anthony T. v. Anthony J.*, 510 N.Y.S.2d 810 (Fam. Ct. 1986).

151. See *Internet Solutions*, 39 So. 3d at 1208 (declaring that whether an act occurs in Florida “is straightforward when the case concerns telephonic communications, written communications, or electronic communications in the form of e-mails or facsimiles, because those communications are directed to reach a specific recipient in a specific forum; in other words, it is clear that the nonresident defendant’s communications were made into Florida”); *Wendt*, 822 So. 2d at 1260 (declaring that “in order to ‘commit a tortious act’ in Florida, a defendant’s physical presence is not required. [Rather], ‘committing a tortious act’ in Florida . . . can occur through the nonresident defendant’s telephonic, electronic, or written communications into Florida”); *Anthony T.*, 510 N.Y.S.2d at 811–12 (relying on a New York statute to declare that a phone call occurs in both the jurisdiction from which it was placed and the jurisdiction in which it was received, then finding no personal jurisdiction for reasons not relevant to this Comment); *In re C.V. v. T.B.*, 853 N.Y.S.2d 510 (Fam. Ct. 2008) (finding that jurisdiction would likely apply based solely on tortious phone calls into New York).

152. The Florida cases were Florida Supreme Court cases. See *Wendt*, 822 So. 2d 1252; *Internet Solutions*, 39 So. 3d 1201. In the New York cases, the trial court relied on state statutes. See *Anthony T.*, 510 N.Y.S.2d 810; *C.V.*, 583 N.Y.S.2d 510.

tortious act *within [the] state*.”¹⁵³ The Florida Supreme Court, unlike the Wisconsin Supreme Court, had the opportunity to provide guidance to state trial courts analyzing whether jurisdiction exists over nonresidents who make tortious communications into Florida.¹⁵⁴ In a legal malpractice case against nonresident lawyers who provided incorrect legal advice through phone calls and letters into Florida from Michigan, the Florida Supreme Court declared that Florida’s long-arm statute could grant personal jurisdiction over the nonresident lawyers because their communications into Florida could be considered tortious acts committed *in Florida*.¹⁵⁵ Florida trial courts now have clear authority to exercise jurisdiction over people like Tammy Cole and perpetrators of less severe forms of domestic violence.

2. A NEW YORK TRIAL COURT FOUND JURISDICTION BASED ON STATUTORY AUTHORITY

New York’s long-arm statute is also similar to Wisconsin’s.¹⁵⁶ Unlike Wisconsin trial courts, however, New York trial courts faced with challenges to jurisdiction by nonresidents who make tortious communications into New York can rely upon statutes to find jurisdiction.¹⁵⁷ Wisconsin trial courts do not have support from such statutory authority.

Although not a personal jurisdiction statute, a New York criminal procedure statute provides that “[a]n oral or written statement made by a person in one jurisdiction to a person in another jurisdiction by means of telecommunication, mail or any other method of communication is deemed to be made in each such jurisdiction.”¹⁵⁸ Trial courts in New York therefore need only engage in basic law-application to determine that a phone call placed outside New York occurs within New York.¹⁵⁹ Backed by this statutory authority, the court in *Anthony T. v. Anthony*

153. FLA. STAT. § 48.193(1)(b) (emphasis added).

154. *Wendt*, 822 So. 2d 1252.

155. *Id.* at 1260 (declaring that telephonic communications into Florida could be considered tortious acts if “the cause of action . . . ar[ose] from the communications”). The Florida Court of Appeals had rejected personal jurisdiction in the case. *Id.* at 1256. In a subsequent case, the Florida Supreme Court stated that whether a phone call into Florida is an act occurring in Florida is “straightforward” because phone calls “are directed to reach a specific recipient in a specific forum.” *Internet Solutions*, 39 So.3d at 1208.

156. Compare N.Y. C.P.L.R. § 302 (McKinney 2010), with WIS. STAT. § 801.05 (2009–10).

157. See, e.g., *C.V.*, 853 N.Y.S.2d 510.

158. N.Y. CRIM. PROC. LAW § 20.60(1) (McKinney 2003).

159. See, e.g., *Anthony T.*, 510 N.Y.S.2d 810.

J. declared that “[t]hough the respondent may have made the phone calls from Florida, the act of harassment occurred when the phone rang in petitioner’s home and respondent’s words were heard by petitioner in his home in [New York].”¹⁶⁰ In *C.V. v. T.B.*,¹⁶¹ New York courts found personal jurisdiction based solely on harassing and threatening phone calls made from Connecticut to the petitioner in New York.¹⁶²

E. Summary of Legal Factors and the Likely Outcome of a Case in Wisconsin

Despite the authority from foreign jurisdictions, the State of Wisconsin probably would not have been able to protect Vance Evans from Tammy Cole. Given the overbroad declarations of *Cram* and *Dietrich*, Wisconsin trial courts will likely conclude that they lack jurisdiction over people like Cole.¹⁶³ Although it seems logical that a Wisconsin court should be able to exercise jurisdiction over a nonresident person who intentionally injures a Wisconsin resident, the construction of Wisconsin’s long-arm statute leaves Wisconsin courts without a clear basis for exercising jurisdiction.¹⁶⁴ Furthermore, the case law is confusing at best, and, at worst, appears to directly preclude jurisdiction over someone like Cole.¹⁶⁵ Because personal jurisdiction in restraining order cases is determined by the law-applying trial courts, the ambiguity in the statutes and case law leaves Wisconsin victims without recourse. Wisconsin trial courts need guidance from lawmaking authorities to offer Wisconsin residents adequate protection.

160. *Id.* at 811.

161. *In re C.V. v. T.B.*, 853 N.Y.S.2d 510 (Fam. Ct. 2008).

162. *Id.* at 511–12 (declaring that, based solely upon tortious phone calls from outside New York, “[t]he Court would likely find the [phone calls] would, indeed, confer personal jurisdiction over the respondent”). Like Florida and New York, federal courts analyzing criminal conspiracy cases follow the theory that a phone call is an act that occurs in both the jurisdiction from which the call was placed and the jurisdiction in which the call was received. *See U.S. v. Caldwell*, 16 F.3d 623, 624–25 (5th Cir. 1994). In criminal law, a conspiracy is an agreement to break the law made between two or more persons. If a criminal conspiracy defendant places a conspiracy-related phone call from Illinois into Wisconsin, the phone call constitutes an act occurring in Wisconsin. *See id.* Therefore, even if the defendant was never physically present in Wisconsin, federal courts can exercise jurisdiction in Wisconsin based upon the phone call into Wisconsin. *See id.*

163. *See supra* notes 137–148 and accompanying text. As I mentioned *supra* note 30, this was the result the court reached in the case I worked on during the summer of 2011. Accordingly, the trial court did not even reach the merits of our client’s claim that the nonresident harassed, abused, and threatened her through telephonic communication.

164. *See Wis. STAT.* § 801.05 (2009–10).

165. *See supra* notes 137–148 and accompanying text.

III. THE WISCONSIN LEGISLATURE SHOULD ACT TO ENSURE JURISDICTION EXISTS OVER NONRESIDENT ABUSERS

The Wisconsin Legislature is in the best position to provide trial courts with the guiding authority they need. Guiding authority may come from either appellate courts or the legislature, but nonlegal factors make it unlikely that Wisconsin appellate courts will have the opportunity to provide guidance to the trial courts.¹⁶⁶ Before proposing a statute for the Wisconsin Legislature to adopt, this Section discusses why the legislature is in the best position to ensure Wisconsin courts can exercise personal jurisdiction over nonresident abusers.

A. Wisconsin Appellate Courts Probably Will Not Have the Opportunity to Provide Guiding Authority to the Trial Courts

While the question of whether jurisdiction exists over nonresident abusers like Tammy Cole has reached the appellate courts of other states in a few random circumstances,¹⁶⁷ the issue is unlikely to reach the Wisconsin appellate courts. Most abuse victims are low-income and cannot afford to hire an attorney.¹⁶⁸ Nonprofit legal assistance programs have insufficient resources to meet the restraining order needs of Wisconsin's low-income population.¹⁶⁹ Even when the complexity of a restraining order case requires an attorney's assistance, this need is usually unmet,¹⁷⁰ and victims are left to navigate the trial courts alone.¹⁷¹ Victims without attorneys are much less successful in the trial

166. Litigation over personal jurisdiction in restraining order cases has reached appellate courts of other states in a few, unusual instances. *See, e.g., Dobos v. Dobos*, 901 N.E.2d 248, 250 (Ohio Ct. App. 2008); *Haas v. Semrad*, No. L-06-1294, 2007 WL 1653032, at ¶¶ 5–8, 2007-Ohio-2828 (Ohio Ct. App. June 8, 2007). However, the issue of personal jurisdiction in restraining order cases very rarely reaches appellate courts. *See In re. C.V. v. T.B.*, 853 N.Y.S.2d 510, 511–12 (N.Y. Fam. Ct. 2008) (describing the fact that trial courts have little guidance on this issue because of the “paucity of precedent” in this area of law).

167. *See, e.g., Dobos*, 901 N.E.2d at 250; *Haas*, No. L-06-1294 at ¶¶ 5–8.

168. *See* STATE BAR OF WIS., *supra* note 20, app. 8, at 22 (stating that women with household incomes below 200% of the poverty line make up about 85% of domestic violence victims); *see also* Sack, *supra* note 11, at 833 (“[T]he vast majority of [restraining order] petitions are brought [without an attorney].”). In criminal cases, the Sixth Amendment right to counsel requires that courts appoint counsel to low-income individuals. U.S. CONST. amend. VI. However, this right to taxpayer-funded counsel applies only to criminal defense and not to victims of abuse who seek a restraining order.

169. STATE BAR OF WIS., *supra* note 20, app. 8, at i.

170. *Id.*

171. *Id.* at 2.

courts.¹⁷² Navigating the appellate courts is even more complex,¹⁷³ which is likely to deter unrepresented victims from appealing adverse trial court outcomes.

Further, appealing a trial court's decision is impractical for victims seeking restraining orders. The purpose of a restraining order is to provide relief and protection against an *imminent* threat.¹⁷⁴ But the appeals process takes a long time.¹⁷⁵ Because the value and necessity of a restraining order decreases as time passes,¹⁷⁶ there is little utility in pursuing a restraining order through the complex and lengthy appeals process.

Given the cost, complexity, and time delay of the appeals process, it is impractical for abuse victims to appeal a trial court decision denying a restraining order for lack of personal jurisdiction. Without an appeal, the Wisconsin appellate courts will not have the opportunity to provide guiding authority for the trial courts. Even if the issue of personal jurisdiction over a nonresident abuser eventually reaches the appellate courts, victims faced with threats from nonresident abusers should not have to wait for an indefinite period of time for the Wisconsin government to have the ability to protect them. The Wisconsin Legislature is therefore in the best position to act swiftly and authoritatively to provide guidance to the trial courts.

172. To illustrate, it is estimated that over 1,200 additional restraining orders would be issued in Wisconsin each year if victims had adequate legal representation. *Id.* at 36–37.

173. David R. Schanker, *Introductory Letter* to CLERK OF THE WIS. SUPREME COURT AND COURT OF APPEALS, GUIDE TO APPELLATE PROCEDURE FOR THE SELF-REPRESENTED (2008) (describing the appeals process as “complex.”).

174. See *supra* notes 9–14 and accompanying text (describing how domestic violence occurs most frequently shortly after separation or divorce). Accordingly, delays caused by the appellate process limit the effectiveness of and need for restraining orders if the risk of violence decreases as more time passes following the separation or divorce.

175. The first step in appealing a trial court's decision is to file a notice of appeal. WIS. STAT. § 809.10(1)(a) (2009–10). For the four Wisconsin Courts of Appeals, the average length of time it took to issue an opinion after the notice of appeal was filed was 347 days in 2011. WIS. COURT OF APPEALS, COURT OF APPEALS ANNUAL REPORT: CASE LOAD STATISTICS 2 (2011), available at <http://www.wicourts.gov/ca/DisplayDocument.pdf?content=pdf&seqNo=78349>. In short, a victim denied a restraining order in the trial court due to lack of personal jurisdiction would need to wait nearly a year before the trial court's decision could be overturned and the restraining order could be issued.

176. See *supra* notes 10–12 and accompanying text (discussing how the threat of harm is greatest immediately after separation).

B. A Statutory Solution to Guide the Trial Courts

The Wisconsin Legislature should enact a statute to ensure that the State of Wisconsin will be able to protect the next abuse victim seeking a restraining order against a nonresident abuser. If it had passed, the bill proposed by the 2011-12 Wisconsin Legislature would have left some holes in Wisconsin's long-arm statute.¹⁷⁷ The 2013-14 Wisconsin Legislature should adopt a statute that holistically eliminates the flaws in the state's long-arm statute. The most effective statute would be one similar to New York's criminal law statute.¹⁷⁸ New York's statute reads, in pertinent part:

§ 20.60 Geographical jurisdiction of offenses; communications and transportation of property between jurisdictions

For purposes of this article:

1. An oral or written statement made by a person in one jurisdiction to a person in another jurisdiction by means of telecommunication, mail or any other method of communication is deemed to be made in each such jurisdiction.¹⁷⁹

At the very least, Wisconsin needs a statute declaring that a communication into Wisconsin from another state is an act that occurs in both states. Such a statute would holistically eliminate the flaw in Wisconsin's long-arm statute by allowing the state's trial courts to invoke Wisconsin Statutes Section 801.05(3) to exercise jurisdiction over nonresidents whose tortious communications into Wisconsin injure the state's citizens.¹⁸⁰ Because the court would then possess clear authority to find that a tortious phone call into Wisconsin from another state is an act occurring in Wisconsin, the long-arm statute's ambiguity would be defeated. Wisconsin trial courts could then perform their proper law-applying role and find jurisdiction over people like Tammy Cole.

The statute proposed in this Comment is the best way to holistically mend the flaw in Wisconsin's long-arm statute. Alternatively, the Wisconsin Legislature could adopt a statute identical

177. See *supra* notes 31-34 and accompanying text; *infra* notes 184-185 and accompanying text.

178. See *supra* note 158 and accompanying text.

179. N.Y. CRIM. PROC. LAW § 20.60(1) (McKinney 2011).

180. WIS. STAT. § 801.05(3).

to the one proposed by the 2011-12 Legislature.¹⁸¹ More dramatically, the legislature could replace Wisconsin's enumerated long-arm statute with a "limits of due process" statute¹⁸² or revise the enumerated provisions to match those of other states.¹⁸³ All of these options would provide jurisdiction over nonresident abusers like Tammy Cole. But the statute proposed in this Comment is the best approach.

The bill proposed by the 2011-12 Legislature granted jurisdiction over nonresidents whose communications from other states have an effect in Wisconsin, but the bill expressly limits its application to restraining order matters.¹⁸⁴ The bill would not eliminate the long-arm statute's flaw when applied to non-restraining order matters. The statute proposed in this Comment is not limited to specific types of actions and thus fixes the long-arm statute in a more holistic manner.¹⁸⁵ In addition, adopting a "limits of due process" statute, or enumerated statutes similar to those of other states, could unintentionally and significantly alter Wisconsin's relationship with nonresidents. Such drastic changes would upset the entire area of law, and suddenly grant Wisconsin courts jurisdiction over individuals or companies that have structured their activities to avoid being subject to litigation in Wisconsin. A simple legislative enactment like the one proposed in this Comment is a cleaner and less invasive approach.

To ensure that the statute does not significantly alter other substantive areas of Wisconsin law, the statute should begin with a phrase that states its particular purpose. Specifically, the legislature should limit the statute's application to establishing personal jurisdiction under Wisconsin Statutes Section 801.05(3). For example, the statute could read:

181. See *supra* notes 31–34 and accompanying text.

182. See *supra* notes 90–93 and accompanying text.

183. See *supra* notes 116–121 and accompanying text.

184. See 2011 Assemb. B. 247, 100th Leg. (Wis. 2011), available at <https://docs.legis.wisconsin.gov/2011/related/proposals/ab247.pdf>. In particular, the bill reads in pertinent part: "AN ACT to create 801.05 (11m) and 813.015 of the statutes; relating to: jurisdiction in matters relating to domestic abuse restraining orders and injunctions, child abuse restraining orders and injunctions, and harassment restraining orders and injunctions."

185. For example, the 2011–12 legislative bill would not provide Wisconsin courts personal jurisdiction over the Michigan lawyers in the Florida legal malpractice case described *supra* Part II.D.1, but the statute proposed in this Comment would. Similarly, the statute proposed in this Comment would provide jurisdiction over nonresidents who injure people in Wisconsin by engaging in libel, defamation, fraud, or misrepresentations through telephonic communications into Wisconsin. The statute proposed by the 2011–12 Legislature would not.

For purposes of establishing specific personal jurisdiction under Section 801.05(3) of the Wisconsin Statutes:

An oral or written statement made by a person in one jurisdiction to a person in another jurisdiction by means of telecommunication, mail or any other method of communication is deemed to be made in each such jurisdiction.¹⁸⁶

Such a statute would allow victims like Vance Evans to obtain state-sanctioned protection against nonresident abusers, would provide jurisdiction over all nonresidents who injure Wisconsin residents through communications into the state, and would not unintentionally impact other well-settled and properly functioning areas of the law.

CONCLUSION

Domestic violence remains an epidemic and contemporary dynamics have increased the risk of interstate domestic violence. The federal government attempted to combat this threat when it enacted VAWA. Yet one of the important provisions of VAWA—the Full Faith and Credit clause—can only be effective if state courts have the authority to issue restraining orders against abusers. To ensure that the State of Wisconsin can offer sufficient protection to its residents, the 2013-14 Wisconsin Legislature should enact a statute similar to the one proposed in this Comment. Such a statute would clarify the law and guarantee that Wisconsin trial courts recognize their authority to issue restraining orders against nonresidents who threaten to harm Wisconsin residents. By guaranteeing such protection, the State of Wisconsin would be able to perform its most basic function of “render[ing] security to its subjects.”¹⁸⁷

186. N.Y. CRIM. PROC. LAW § 20.60(1) (McKinney 2011).

187. *Lanzetta v. New Jersey*, 306 U.S. 451, 455 (1939) (quoting *State v. Gaynor*, 197 A. 360, 363 (N.J. 1938)).