

**2013 DRAFTING REQUEST**

**Assembly Amendment (AA-SB40)**

Received: 11/12/2013 Received By: phurley  
Wanted: As time permits Same as LRB:  
For: Garey Bies (608) 266-5350 By/Representing:  
May Contact: Drafter: phurley  
Subject: Criminal Law - law enforcement Addl. Drafters:  
Extra Copies:

Submit via email: YES  
Requester's email: Rep.Bies@legis.wisconsin.gov  
Carbon copy (CC) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Searches of persons on probation, parole, or extended supervision

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 11/12/2013	evinz 11/12/2013	rschluet 11/12/2013	_____			
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FE Sent For:

<END>

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/?	phurley	1 ceu 11/12/13	 11/12/13	==			

FE Sent For:  
<END>



## 2013 SENATE BILL 40

February 28, 2013 - Introduced by Senators LEIBHAM and PETROWSKI, cosponsored by Representatives ENDSLEY, JACQUE, KNODL, STONE, BORN, STROEBEL, LEMAHIEU, A. OTT, BROOKS, TITTL, MARKLEIN and SPIROS. Referred to Committee on Transportation, Public Safety, and Veterans and Military Affairs.

1     **AN ACT** *to create* 302.043 (4), 302.045 (3m) (e), 302.05 (3) (c) 4., 302.11 (6m),  
2             302.113 (7r), 302.114 (8g), 304.02 (2m), 304.06 (1r) and 973.09 (1d) of the  
3             statutes; **relating to:** searches by a law enforcement officer of a person on  
4             probation, parole, or extended supervision.

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### *Analysis by the Legislative Reference Bureau*

Under current law, with certain exceptions, if a person is convicted of a crime a court may withhold sentencing of the person or may impose a sentence but stay its execution and, in either case, place the person on probation. The court may impose conditions of probation. If a person violates a condition of probation, the person's probation may be revoked.

Under current law, a person who is released from confinement in a prison to parole or to extended supervision is subject to conditions set by the parole commission or by the Department of Corrections (DOC). If a person violates one of these conditions, his or her parole or extended supervision may be revoked and the person may be returned to prison.

This bill specifies that a person who is placed on probation or a person who is released from incarceration to parole or extended supervision is subject to having his or her person, residence, and any property under his or her control searched by a law enforcement officer at any time if the officer reasonably suspects that the person is committing, is about to commit, or has committed a crime or a violation of a condition of probation or release. Under the bill, a law enforcement officer may not conduct

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the search in an arbitrary, capricious, or harassing manner and must notify DOC as soon as practical after he or she conducts the search.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 302.043 (4) of the statutes is created to read:

2           302.043 (4) A person released under this section, his or her residence, and any  
3 property under his or her control may be searched by a law enforcement officer at any  
4 time during his or her period of supervision if the officer reasonably suspects that the  
5 person is committing, is about to commit, or has committed a crime or a violation of  
6 a condition of release to extended supervision. Any search conducted pursuant to  
7 this subsection shall be conducted in a reasonable manner and may not be arbitrary,  
8 capricious, or harassing. A law enforcement officer who conducts a search pursuant  
9 to this subsection shall, as soon as practicable after the search, notify the  
10 department.

11           **SECTION 2.** 302.045 (3m) (e) of the statutes is created to read:

12           302.045 (3m) (e) A person released under this subsection, his or her residence,  
13 and any property under his or her control may be searched by a law enforcement  
14 officer at any time during his or her period of supervision if the officer reasonably  
15 suspects that the person is committing, is about to commit, or has committed a crime  
16 or a violation of a condition of release to extended supervision. Any search conducted  
17 pursuant to this paragraph shall be conducted in a reasonable manner and may not  
18 be arbitrary, capricious, or harassing. A law enforcement officer who conducts a  
19 search pursuant to this paragraph shall, as soon as practicable after the search,  
20 notify the department.

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1           **SECTION 3.** 302.05 (3) (c) 4. of the statutes is created to read:

2           302.05 **(3)** (c) 4. A person released under this paragraph, his or her residence,  
3           and any property under his or her control may be searched by a law enforcement  
4           officer at any time during his or her period of supervision if the officer reasonably  
5           suspects that the person is committing, is about to commit, or has committed a crime  
6           or a violation of a condition of release to extended supervision. Any search conducted  
7           pursuant to this subdivision shall be conducted in a reasonable manner and may not  
8           be arbitrary, capricious, or harassing. A law enforcement officer who conducts a  
9           search pursuant to this subdivision shall, as soon as practicable after the search,  
10          notify the department.

11          **SECTION 4.** 302.11 (6m) of the statutes is created to read:

12          302.11 **(6m)** A person released under this section, his or her residence, and any  
13          property under his or her control may be searched by a law enforcement officer at any  
14          time during his or her period of supervision if the officer reasonably suspects that the  
15          person is committing, is about to commit, or has committed a crime or a violation of  
16          a condition of parole. Any search conducted pursuant to this subsection shall be  
17          conducted in a reasonable manner and may not be arbitrary, capricious, or  
18          harassing. A law enforcement officer who conducts a search pursuant to this  
19          subsection shall, as soon as practicable after the search, notify the department.

20          **SECTION 5.** 302.113 (7r) of the statutes is created to read:

21          302.113 **(7r)** A person released under this section, his or her residence, and any  
22          property under his or her control may be searched by a law enforcement officer at any  
23          time during his or her period of supervision if the officer reasonably suspects that the  
24          person is committing, is about to commit, or has committed a crime or a violation of  
25          a condition of release to extended supervision. Any search conducted pursuant to

**SENATE BILL 40****SECTION 5**

1 this subsection shall be conducted in a reasonable manner and may not be arbitrary,  
2 capricious, or harassing. A law enforcement officer who conducts a search pursuant  
3 to this subsection shall, as soon as practicable after the search, notify the  
4 department.

5 **SECTION 6.** 302.114 (8g) of the statutes is created to read:

6 302.114 (8g) A person released under this section, his or her residence, and any  
7 property under his or her control may be searched by a law enforcement officer at any  
8 time during his or her period of supervision if the officer reasonably suspects that the  
9 person is committing, is about to commit, or has committed a crime or a violation of  
10 a condition of release to extended supervision. Any search conducted pursuant to  
11 this subsection shall be conducted in a reasonable manner and may not be arbitrary,  
12 capricious, or harassing. A law enforcement officer who conducts a search pursuant  
13 to this subsection shall, as soon as practicable after the search, notify the  
14 department.

15 **SECTION 7.** 304.02 (2m) of the statutes is created to read:

16 304.02 (2m) A person released under this section, his or her residence, and any  
17 property under his or her control may be searched by a law enforcement officer at any  
18 time during his or her period of supervision if the officer reasonably suspects that the  
19 person is committing, is about to commit, or has committed a crime or a violation of  
20 a condition of parole. Any search conducted pursuant to this subsection shall be  
21 conducted in a reasonable manner and may not be arbitrary, capricious, or  
22 harassing. A law enforcement officer who conducts a search pursuant to this  
23 subsection shall, as soon as practicable after the search, notify the department.

24 **SECTION 8.** 304.06 (1r) of the statutes is created to read:





State of Wisconsin  
2013 - 2014 LEGISLATURE



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ASSEMBLY AMENDMENT <sup>A</sup>  
TO ASSEMBLY BILL ~~59~~ <sup>40</sup>  
*SENATE*

June 12, 2013 - Offered by Representative BIES.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 1: before that line insert:

3 "SECTION 1g. 175.55 of the statutes is created to read:

4 **175.55 Searches of persons on probation, parole, or under extended**  
5 **supervision. (1)** In this section:

6 (a) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

7 (b) "Search" means a search authorized under s. 302.043 (4), 302.045 (3m) (e),  
8 302.05 (3) (c) 4., 302.11 (6m), 302.113 (7r), 302.114 (8g), 304.02 (2m), 304.06 (1r), or  
9 973.09 (1d).

10 **(2)** Each law enforcement agency shall adopt a written policy for conducting  
11 a search. The policy shall require all of the following:

12 (a) A law enforcement officer who wishes to conduct a search to receive training  
13 on the policy established under this section before he or she conducts a search.

1 (b) Except as provided in par. (c), the law enforcement officer who wishes to  
2 conduct a search to submit, to his or her supervisor, a written summary of the facts  
3 or circumstances that form the basis for reasonable suspicion to conduct the search.

4 (c) In the existence of exigent circumstances, the law enforcement officer who  
5 wishes to conduct a search to present, to his or her supervisor, a verbal summary of  
6 the facts or circumstances that form the basis for reasonable suspicion to conduct the  
7 search. A law enforcement officer who receives approval for a search after providing  
8 a summary under this paragraph shall, as soon as practicable after the search occurs,  
9 reduce the summary to writing.

10 (d) A supervisor of the law enforcement officer who wishes to conduct a search  
11 to review the summary of the facts submitted under par. (b) or (c) and to grant  
12 approval to the search before the search occurs. A supervisor may not grant approval  
13 to a law enforcement officer who has not received the training required under par.  
14 (a).”.

15 **2.** Page 2, line 1: delete “SECTION 1” and substitute “SECTION 1r”.

16 **3.** Page 2, line 7: delete “conducted in a reasonable manner” and substitute  
17 “approved according to the policy established under s. 175.55, conducted in a  
18 reasonable manner,”.

19 **4.** Page 2, line 17: delete “conducted in a reasonable manner” and substitute  
20 “approved according to the policy established under s. 175.55, conducted in a  
21 reasonable manner,”.

22 **5.** Page 3, line 7: delete “conducted in a reasonable manner” and substitute  
23 “approved according to the policy established under s. 175.55, conducted in a  
24 reasonable manner,”.

