



Van H. Wanggaard

Wisconsin State Senator

Testimony on Senate Bill 128

Thank you members of the committee for hearing Senate Bill 128 today. This bill is a technical fix to one of the drunk driving measures we passed last session, Act 183. Last Session, Senate Bill 29, which became Act 183, passed the Legislature on unanimous voice votes.

Because this is a technical issue, let me give you a little background on Act 183, and the reasons for passing it last session. Under then-recent U.S. Supreme Court decision, law enforcement generally must obtain a search warrant to draw blood in OWI cases. However, because Wisconsin does not treat first-time OWI as a criminal offense, courts could not issue warrants for blood draws. Act 183 corrected this issue, and allowed courts to issue search warrants in first-time OWI cases.

Over the last year, however, we found another technical issue that needs to be addressed. As you may be aware, court commissioners frequently handle first-time OWI cases. Similar to the issue raised in Act 183, the power of court commissioners to issue warrants applies only to criminal, not civil matters. As a result, because first offense OWI is a civil violation, court commissioners do not have the currently have the authority to issue search warrants for first offense OWI.

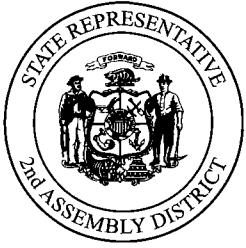
Senate Bill 128 corrects this oversight, and grants court commissioners the power to issue search warrants for first-time OWI cases. That is the only extension of search warrant powers in this bill.

As I mentioned, this is a technical bill to fix a glitch in 2015 Act 183. The Assembly companion bill, AB 178 passed committee unanimously, and it is my hope this committee will do the same quickly.

Thank you.

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TO: Members of the Senate Judiciary & Public Safety Committee
FROM: Rep. André Jacque
DATE: Sept. 5, 2017
RE: Senate Bill 128

Members of the Senate Judiciary & Public Safety Committee:

Thank you for the opportunity to testify in support of Senate Bill 128. Last session, Wisconsin enacted 2015 Act 183 (2015 AB 43/SB 29) at the request of local law enforcement to restore the ability to request a search warrant to draw blood (and obtain the most reliable evidence of blood alcohol concentration) for a first OWI offense, necessitated by the Supreme Court's *Missouri v. McNeely* decision and Wisconsin's status as the only state in the country that does not regard the first incidence of OWI as a crime. 2015 Act 183 passed unanimously through committee and passed each house on a voice vote.

SB 128 is an extension of 2015 WI Act 183 as a technical adjustment to allow circuit court commissioners to have the power to issue search warrants for 1st offense OWI and achieve greater efficiency for the court system. Court commissioners currently have the power to issue search warrants for blood draws for 2nd offense OWI and above under s. 757.69(1)(b), Stats. Unfortunately, since that subsection specifically says that court commissioners have that power "in criminal matters," it has been determined that this ability does not extend to OWI 1st offenses because they are civil (although this is only the case in Wisconsin). SB 128 creates a new subsection to indicate that in these particular civil matters, a court commissioner would have the power to issue a search warrant.

SB 128 was requested by the director of state courts on behalf of the Wisconsin court system. The bill's fiscal estimate notes that "SB 128 would likely shorten the amount of time law enforcement requires to obtain a search warrant for a civil violation of operating a motor vehicle while intoxicated, and it would expand the pool of persons available that can fulfill warrant requests. This would decrease costs to law enforcement agencies."

The Assembly companion bill to SB 128, AB 178, passed the Assembly Judiciary Committee on a unanimous bi-partisan vote earlier this session. Thank you for your consideration of Senate Bill 128.



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Hon. Randy R. Koschnick
Director of State Courts

Testimony
Of
Judge James Daley
Rock County Circuit Court

In Support of Senate Bill 128
Relating to Court Commissioner Powers in First Offense OWI Cases

Senate Committee on Judiciary and Public Safety
Senator Van Wanggaard, Chair
September 5, 2017

Thank you very much. My name is James Daley. I have been a circuit court judge in Rock County since 1989. Since 2013, I have served as the Chief Judge of the District Five Judicial Administrative District, comprised of Dane, Green, Lafayette and Rock Counties. I am appearing here in support of Senate Bill 128 relating to the powers of circuit court commissioners.

Circuit court commissioners are officers of the court who are appointed to perform certain limited judicial functions within the court system. They are county employees whose positions are authorized by the County Board, pursuant to s. 757.68, Wis. Stats. Their potential powers and duties are described in s. 757.69, Stats. Circuit court commissioners are appointed by the chief judge of a judicial administrative district, and the chief judge decides which of the authorized statutory powers that the circuit court commissioner will be allowed to perform. For your information, I have copied in the portion of the Supreme Court rule governing the appointment of circuit court commissioners at the end of my testimony.

SB 128 addresses an issue that we think was an unintended consequence of the passage of 2015 Wisconsin Act 183. Last session's Act 183 authorized a court to issue a warrant, upon probable cause, for the search or seizure of anything that is the fruit of or has been used in the commission of an operating while intoxicated (OWI) offense, whether criminal or noncriminal. That means that search warrants may now be issued for drawing a person's blood in suspected first OWI offenses.

Before the passage of Act 183, search warrants were only issued in criminal matters, including second or subsequent OWI offenses. Signing search warrants in criminal matters is one of the authorized statutory powers that can be performed by circuit court commissioners. In my experience, most commissioners already perform this function.

It was only after the passage of 2015 Act 183 that we realized the language of the existing s. 757.69(1)(b), Stats. was too restrictive and would not allow a circuit court commissioner the power to sign a search warrant in first offense OWI. This is because first offense OWI is a civil matter, and the current language specifically refers to signing search warrants “in criminal matters.”

Because of this limitation, we are currently constrained in how we can schedule judges and court commissioners to, in effect, be “on call” to sign search warrants in the evenings and on weekends. It would be a more efficient use of our judicial resources if we could assign one person who would be authorized and empowered to handle all search warrants – whether for first offense OWI or for any other level of OWI.

Therefore, we ask for your support of SB 128. We think it is a logical extension of what the Legislature authorized in 2015 WI Act 183. It will provide greater flexibility to the court system to perform this important duty.

I would be happy to take questions. Thank you.

SCR 75.02 Appointment; authorization.

- (1) The chief judge of a judicial administrative district shall appoint within the district, as authorized by law, officers of the court to perform limited judicial and quasi-judicial functions under the direction and authority of the chief judge and the judges of the circuit. These officers of the court shall be selected on the basis of merit through a process approved by the chief judge and the circuit court judges of the counties in which the officers will serve. The chief judge may appoint, under this subsection, only persons who are licensed to practice law in this state, are in good standing, and who have been licensed to practice law in any state for 3 years immediately before the appointment, except as otherwise provided by statute.

- (2)(a) The chief judge shall, by order, authorize each person appointed under sub. (1) to perform one or more specific duties allowed court commissioners by statute and approved by the supreme court.