

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1407/P1dn
JEO:kmg:km

April 15, 1999

Tony Streveler:

I put a few 4–star notes (***NOTE:*) in the draft to ask questions or raise issues about specific provisions of the draft.

Also, note that this draft does *not* include language authorizing DOC to issue an arrest warrant for persons not on field supervision who have not complied with the registration requirements. While I haven't yet had time to finish my research on the issue, I think that there may be a potential constitutional problem with allowing DOC to issue an arrest warrant for persons not complying with s. 301.45, stats. Specifically, the constitution requires that an arrest warrant be issued based on a finding of probable cause made by "a neutral and detached magistrate". *Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972); *Coolidge v. New Hampshire*, 403 U.S. 443, 450 (1971); see also *State v. Koch*, 175 Wis. 2d 684, 698 (1993). Given DOC's role in prosecuting a person who fails to comply with s. 301.45, stats., I am not sure that it would be considered "neutral and detached" for purposes of the constitutional requirement.

While DOC does currently issue "apprehension warrants" for parolees and probationers who have absconded, the rationale for allowing such warrants is that parolees and probationers are in the legal custody of DOC and thus have only a conditional liberty and diminished expectations of privacy that justify departure from the formal warrant requirements under the constitution. *State v. Pittman*, 159 Wis. 2d 764, 770–72 (Ct. App. 1990). Someone who is no longer on field supervision is also no longer subject to a merely conditional liberty and has a higher expectation of privacy (at least relative to persons on supervision; it may be that a court would find that a person who is required to register under s. 301.45, stats., has diminished expectations of privacy relative to the general population of law-abiding citizens).

In any event, let me know whether you want the draft to include the authority of DOC to issue warrants. I will then finish looking at the issue, after which I can give you a more definitive answer on the constitutional implications and, if necessary, draft the language in a way that minimizes constitutional problems.

Let me know if you have any questions or changes.

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