



WISCONSIN SHERIFFS & DEPUTY SHERIFFS ASSOCIATION

To: Chairperson Rob Hutton
Members, Assembly Committee on Corrections
From: Wisconsin Sheriffs and Deputy Sheriffs Association
Date: January 14, 2016
Re: **Support Assembly Bill 340 - Eliminate the Twelve-Hour Strip Search Hold**

The Wisconsin Sheriffs and Deputy Sheriffs Association (WS&DSA) is a statewide organization created in 1945 and works to facilitate law enforcement, prevent crime, apprehend criminals and protect life and property of the citizens of Wisconsin.

Wisconsin Sheriffs and Deputy Sheriffs Association request your support for AB 340 to eliminate the twelve-hour hold. This change would enhance the Sheriff's and jail staff's ability to manage the intake process and limited holding cell space, while ensuring the safety and health of the inmates and the jail staff.

Last session, 2013 Wisconsin Act 317 (Act 317) expanded who may be strip searched. Pre-Act 317, a person may be strip searched if arrested for (1) any felony, (2) certain battery or weapons-related misdemeanors, or (3) any misdemeanor, any other violation of state law punishable by forfeiture, or any local ordinance if there is probable cause to believe the person is concealing a weapon or evidence of the offense for which he or she is detained.

Act 317 expanded who may be strip searched to a person arrested or otherwise lawfully detained or taken into custody if the person will be incarcerated, imprisoned, or otherwise detained in a jail or prison with one or more persons and meets other requirements in the law. However, an amendment was added that specified a detainee may be strip searched under the new category created by Act 317 only if the detainee will be incarcerated, imprisoned, or otherwise detained in the jail or prison for twelve or more hours. This "twelve-hour hold" provision is having a significant impact on the safety of many of Wisconsin's jails. Senate Bill 248 removes the twelve-hour hold provision.

The twelve-hour hold provision has adversely affected many counties' ability to operate an efficient and safe jail. Many counties do not have the capacity to hold multiple individuals for twelve hours prior to moving them into cells with other incarcerated individuals. Holding cells are typically detached from the general population and are used for single individuals. In addition, especially in smaller jails, holding cells are utilized for multiple purposes, including during discharge and for medical and mental health reasons. On a near daily basis jail staff in many counties must introduce detainees into the jail, without a strip search, because of space constraints. For example, St. Croix County's staff were forced to introduce detainees who had not been strip searched into the general population because receiving cells were at capacity:

- In July, 29 out of 31 days;
- In August, 22 days out of 31 days;
- In September, 22 days out of 30 days.

The twelve-hour hold provision puts a burden on jail staff to manage limited holding cell space, and the hold potentially compromises safety in the jail.

Act 317 provided jail staff to perform strip searches of pretrial detainees to prevent the smuggling in of weapons, drugs and other contraband. Strip searches are conducted to protect the detainee, other inmates, and jail staff. The twelve-hour hold provision limits the ability of law enforcement to ensure the jails are free of dangerous weapons, drugs and disease. Items that have been found during a strip search at a jail include baggies of pills, cocaine, marijuana, syringes, heroin, and other contraband. In addition, it slows down the booking process, leaving jail staff, the individual and other inmates at risk.

On behalf of the WS&DSA, we thank Senator Harsdorf and Representative Kleefisch for introducing AB 340 and fully support its passage.

If you have any questions, please contact either Rebecca Ballweg, Caty McDermott, or R.J. Pirlot of the Hamilton Consulting Group at (608) 258-9506.



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January 13, 2016

Representative Rob Hutton
Chairman, Assembly Committee on Corrections
P.O. Box 8952
Madison, WI 53701

Dear Representative Hutton,

The State Public Defender (SPD) has philosophical concerns with Assembly Bill 340. In the 2013 session, the SPD had significant concerns with the legislation that became 2013 Wisconsin Act 317. These concerns resulted in Assembly Amendment 8 to Assembly Bill 556, which put in place a number of limitations to recognize Fourth and Eighth Amendment protections in the significantly expanded ability to physically strip search detainees. One of those provisions was a twelve hour delay post-detention and pre-general population to allow for the individuals who are brought to a holding facility but released relatively quickly to avoid the invasive strip search.

We respectfully request that the committee consider the ramifications of removing the twelve hour delay without data to show that it is necessary. For Act 317, all available evidence suggested that there was not a significant amount of contraband being taken into jails after arrest of individuals. Without a reasonable individual suspicion to justify the search, one might expect that routine strip searching must be supported by quantitative evidence of efficacy.

In *Florence v. Board of Chosen Freeholders of County of Burlington*, 132 S.Ct. 1510, 1528 (2012), the Court notes that a pilot study conducted 23,000 strip searches over a four year period. This resulted in five instances of contraband being found. In four of the five cases, reasonable suspicion to conduct a search could have been obtained, leaving one instance of 23,000 strip searches which found contraband. *Strip searches for inmates entering Gen. Pop. do NOT VIOLATE*

In *Shain v. Ellison*, 271 F.3d 56, 60 (C.A.2 2001), the decision includes data of 75,000 body cavity searches over five years (which is more intrusive than authorized in Act 317) which resulted in sixteen cases of the discovery of contraband. *4th Amendment (may be exception when not in contact with others)*


If the stated need for SB 248 is to reduce backlogs of individuals held outside of general population for twelve hours, we suggest that the committee seek answers to the following questions:

1. Since enactment of 2013 Act 317, how many individuals were detained in holding facilities throughout Wisconsin?
2. Of those detained, how many were subject to a strip search under the terms of Act 317?
3. Of the individuals strip searched, how many were found to be in possession of contraband and what was the type of contraband?
4. Since the enactment of Act 317, how many times has an overcrowding situation occurred as a result of needing to keep detainees out of general population prior to a strip search at twelve hours?

January 13, 2016

Answers to these questions may help the committee when balancing constitutional rights against the provisions in Assembly Bill 340 as it impacts Act 317.

Sincerely,



Adam Plotkin
Legislative Liaison
Office of the State Public Defender