

Jeff Mursau

STATE REPRESENTATIVE • 36TH ASSEMBLY DISTRICT

Assembly Committee on Public Safety and Criminal Justice
AB 253- Pen Registers and Trap and Trace Devices
August 18, 2021

Chairman Spiros and Committee Members:

Thank you for the opportunity to testify in support of Assembly Bill 253, related to pen registers and trap and trace devices.

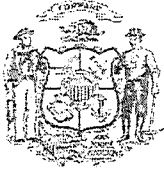
Some of you may not be familiar with what a “pen register” is! Simply put, it’s a wiretapping device that records or decodes electronic or other impulses that identify the numbers dialed or transmitted out on a telephone line. A “trap and trace device” captures the incoming electronic or other impulses that identify the originating number of an instrument or device from which a wire or electronic communication was sent.

Under current law, the attorney general or a district attorney can apply for a court order to install a pen register or a trap device for the purpose of a criminal investigation. Unfortunately, our current statutory definition is outdated and only describes using these devices over a telephone line. This is making it difficult for prosecutors and law enforcement to secure warrants for the placement of these devices to capture “over the air” or cell data that could be crucial to a criminal investigation.

Assembly Bill 253 will align our state law with federal warrant requirements for pen registers and trap and trace devices. Federal law has already adapted to the ever-changing times, but Wisconsin hasn’t. This is hampering our law enforcement community’s ability to effectively gather what could be critical information and it’s time for the law to change.

This Criminal Litigation Unit at the Wisconsin Department of Justice was directly involved in the drafting of this bill and supports it. The Wisconsin District Attorney’s Association is also registered in support. The Senate companion bill passed the full senate on a voice vote in June. I am hopeful that we will have the same support in the Assembly so we can get this bill signed into law and give our law enforcement community the necessary tools to keep up with technological advances.

Once again, thank you for holding a public hearing on this important piece of legislation. I am happy to answer any questions you may have.



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*Testimony before the Assembly Committee on Criminal Justice and Public Safety
State Senator André Jacque
August 18, 2021*

Chairman Spiros and Colleagues,

Thank you for the opportunity to testify as the author of Assembly Bill 253, which will align state and federal warrant requirements for pen registers and trap and trace devices. I first became aware of the need for this legislation after discussions with DOJ, the Wisconsin District Attorneys' Association, and local law enforcement, and I am pleased to have Rep. Mursau, Rep. Baldeh and others join me in this effort.

Under current law, a "pen register" is defined as a device that records or decodes electronic or other impulses that identify the numbers dialed or transmitted on a telephone line, and the attorney general or a district attorney can apply for a court order to install a pen register or a trap and trace device for the purpose of furthering a criminal investigation. However, with the current definition and evolving technology, state law enforcement and prosecutors are struggling with enforceability and applicability of warrants for the placement of pen registers when it comes to modern electronic devices' interactions with social media. With the growing popularity of social media for carrying out criminal activity, this has been a major hurdle for successful investigations.

Assembly Bill 253 expands our current statutory definition to achieve parity with federal law, which has already adapted to the times. By mirroring the federal definition of a "pen register" it will include a device *or process* that records or decodes dialing, *routing, addressing, or signaling information* transmitted on a telephone line *or by an instrument or facility from which a wire or electronic communication is transmitted*. These updates will provide clarity in light of technological advances to ensure social media communications are made available within the Wisconsin legal system when the existing standards for a warrant are met and aid members of law enforcement in successfully investigating crimes.

Thank you for your consideration of Assembly Bill 253.