



## State Senator Sheila Harsdorf

Date: October 22, 2015

To: Senate Committee on Judiciary and Public Safety

Fr: Senator Sheila Harsdorf

Re: Senate Bill 248 – Strip searches of certain detained persons

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Dear Senator Wanggaard and Committee Members:

Thank you for holding a public hearing on Senate Bill 248 (SB 248), which seeks to eliminate an administrative hurdle for law enforcement in processing individuals that have been detained at local jails.

During the 2013-14 legislative session, the State Legislature passed 2013 Wisconsin Act 317 to provide county sheriffs and law enforcement with the ability to strip search lawfully detained individuals to ensure the safety of jail staff and other inmates. This legislation also brought state statutes in line with a U.S. Supreme Court ruling that affirmed law enforcement's ability to strip search individuals prior to admitting them to the general jail population.

A provision included in Act 317 prohibits strip searches by law enforcement unless the detainee will be held for at least twelve hours. This mandate that law enforcement may only perform searches on those that will be held longer than twelve hours has created significant challenges for many sheriff's departments and law enforcement agencies around the state.

Specifically, when an individual is detained there is often a delay before they are brought before a judge. Therefore, law enforcement does not know how long they might be required to hold a detainee. Individuals that have been detained cannot be released into the general jail population until they have been searched to prevent weapons or other contraband from entering the jail area. Not performing a thorough search puts both jail staff and other inmates at risk of injury or death. As a result, these detainees must be held separately in individual cells by law enforcement.

Additionally, many law enforcement agencies do not have the capacity to hold detainees in individual cells until they have determined if they will be required to hold an individual for twelve hours. Many jails have a limited number of individual cells, which are used for a variety of purposes, including intakes, discharges, mental health holds, and medical reasons. Not allowing law enforcement to strip search individuals that might not be held for twelve hours further complicates the use of available individual cells.

SB 248 seeks to remove the mandate that detainees be held for twelve hours before they can be searched in an effort to remove this burden on local jails and law enforcement. This legislation is supported by Wisconsin Sheriffs and Deputy Sheriffs Association, Badger State Sheriffs Association, and County Law Enforcement Professionals of Wisconsin.

Thank you again for your time and consideration of this legislation. I urge your support of this proposal.



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# JOEL KLEEFISCH

STATE REPRESENTATIVE • 38<sup>TH</sup> ASSEMBLY DISTRICT

## **Senate Bill 248** **Relating to: Strip Searches of Certain Detained Persons**

*Senate Committee on Judiciary and Public Safety*

Thank you Chairman Wanggaard and members of the Committee for holding a hearing today on Senate Bill 248, which relates to searching certain detained individuals.

Last session, the state Assembly Passed Assembly Bill 556. During the floor debate, Assembly Amendment 8 was adopted and added to the bill. That amendment made numerous changes to the bill related to preserving the civil liberties of individuals being detained in our prison system. The amendment provided that a juvenile is not subject to the strip search requirement, that strip searching may not include touching, that each law enforcement agency to establish written policies concerning strip searches, and that each facility wait 12 hours to strip search an individual.

This 12 hour hold requirement has posed significant safety impacts on many of Wisconsin's Jails, and at the request of law enforcement we have introduced this legislation to address their concerns.

Senate Bill 248 removes the 12 hour hold provision that was added on the floor; it does not change the other provisions that were added. This bill will improve the jail staff's ability to manage their own intake and booking process, and will ensure the safety of everyone in the jail setting, without compromising the civil liberties of the individual being held.

Strip searches are done to protect the detainee, other inmates, and jail staff. They prevent the smuggling in of weapons, drugs and other dangerous contraband. In order to ensure the safety of the jail, and to comply with the 12 hour hold requirement; jails have been forced to hold persons in individual cells until the 12 hour clock is up and they can be thoroughly searched and moved. This is problematic, as many counties do not have the capacity to have multiple cells left open for potential incoming detainees that must wait 12 hours to be properly searched.

Once again, thank you for your time today, I am happy to answer any questions.



# Wisconsin State Public Defender

17 S. Fairchild St. - 5<sup>th</sup> Floor  
PO Box 7923 Madison, WI 53707-7923  
Office Number: 608-266-0087 / Fax Number: 608-267-0584  
www.wisspd.org

**Kelli S. Thompson**  
State Public Defender

**Michael Tobin**  
Deputy State  
Public Defender

October 22, 2015

Senator Van Wanggaard  
Chairman, Senate Committee on Judiciary and Public Safety  
P.O. Box 7882  
Madison, WI 53707

Dear Senator Wanggaard,

The State Public Defender (SPD) has philosophical concerns with Senate Bill 248. 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.

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.

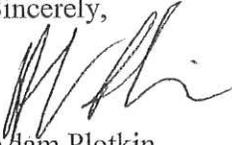
If the stated need for SB 248 is to reduce backlogs of individuals held outside of general population for twelve hours, we suggest that the committee seek answers to the following questions:

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?

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Answers to these questions may help the committee when balancing constitutional rights against the provisions in Senate Bill 248 as it impacts Act 317.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Plotkin', written in a cursive style.

Adam Plotkin  
Legislative Liaison  
Office of the State Public Defender



# WISCONSIN SHERIFFS & DEPUTY SHERIFFS ASSOCIATION

**To:** Chairperson Van Wanggaard  
Members, Senate Committee on Judiciary and Public Safety

**From:** Wisconsin Sheriffs and Deputy Sheriffs Association

**Date:** October 22, 2015

**Re:** **Support Senate Bill 248 - Eliminate the Twelve-Hour Strip Search Hold**

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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. The Badger State Sheriffs' Association (BSSA) is made up of the 72 Wisconsin Sheriffs and promotes state-wide law enforcement and public safety initiatives that assist sheriffs with providing professional, prepared, and up-to-date services to the citizens of each County and the State of Wisconsin.

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 SB 248 and fully support its passage.

**Wisconsin Sheriffs and Deputy Sheriffs Association request your support for SB 248 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.

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