



ANDRÉ JACQUE

STATE REPRESENTATIVE • 2nd ASSEMBLY DISTRICT

(608) 266-9870
Fax: (608) 282-3602
Toll-Free: (888) 534-0002
Rep.Jacque@legis.wi.gov

P.O. Box 8952
Madison, WI 53708-8952

TO: Members of the Assembly Committee on Judiciary

FROM: Rep. André Jacque

DATE: April 27, 2017

RE: Assembly Bill

Chairman Ott and colleagues on the Judiciary Committee:

Thank you for the opportunity to testify as the author of AB 178. Last session, Wisconsin enacted 2015 Act 183 (2015 AB 43/SB 29) at the request of local law enforcement to restore the ability to ask for 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. This bipartisan legislation passed unanimously through this committee and our Senate counterpart and passed each house on a voice vote.

As an extension of 2015 WI Act 183, this somewhat technical legislation will 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). AB 178 creates a new subsection to indicate that in these particular civil matters, a court commissioner would have the power to issue a search warrant.

Thank you for your consideration of Assembly Bill 178.



Supreme Court of Wisconsin

DIRECTOR OF STATE COURTS

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Patience D. Roggensack
Chief Justice

16 East State Capitol
Telephone 608-266-6828
Fax 608-267-0980

J. Denis Moran
Director of State Courts

Testimony
Of
Judge James Daley
Rock County Circuit Court

In Support of Assembly Bill 178,
Relating to Court Commissioner Powers in First Offense OWI Cases

Assembly Committee on Judiciary
Representative Jim Ott, Chair
April 27, 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 Assembly Bill 178 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. Circuit court commissioners are appointed by the chief judge of a judicial administrative district; the chief judge decides which of the authorized statutory powers that the circuit court commissioner will be allowed to perform. I have copied in the portion of the Supreme Court rule governing the appointment of circuit court commissioners at the end of my testimony.

AB 178 addresses an issue that we think was an unintended consequence of the passage of 2015 Wisconsin Act 83. Before the passage of Act 83, search warrants were only issued in criminal matters, including second or subsequent offense operating while intoxicated (OWI). 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 AB 178. 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.