

# DUEY STROEBEL

STATE REPRESENTATIVE • 60<sup>TH</sup> DISTRICT

## SB 447 Testimony

Chairman Grothman, senators of the Judiciary Committee, thank you for the opportunity today to testify on SB 447. This bill was inspired by my county sheriff and his staff when they brought their concerns to my attention.

Current Wisconsin law allows for law enforcement to conduct a strip search of an individual who is being arrested for a felony, certain misdemeanors, or if the law enforcement officer has probable cause to believe he or she has a weapon. The current law leaves large segments of the population of jails exempt from potential strip search and can be difficult or confusing to enforce. SB 447 proposes to allow for the strip search of a detainee, subject to all the current protections built into the law, if the detainee will be held in a jail with one or more other people.

This simple, uniform standard was recently upheld as constitutional in the 2012 US Supreme Court case of *Florence v. Board of Chosen Freeholders of county of Burlington*. In opening his majority opinion, Justice Kennedy stated, "Correctional officials have a legitimate interest, indeed a responsibility, to ensure that jails are not made less secure by reason of what new detainees may carry in on their bodies." This interest, as the Supreme Court goes on to explain, satisfies Fourth Amendment scrutiny. We crafted this bill to clearly be within the scope of the *Florence* decision, thus allowing the legislature's discussion to focus on the policy and not theoretical questions about constitutionality.

As members of law enforcement will testify later, contraband being smuggled into jails is a problem for the health and safety of both detainees and law enforcement. The current framework has the problem of holes in the statutory scheme. Various populations of detainees that pass through our county jails are currently not accounted for in current law. Some examples include individuals having their parole revoked, individuals who surrender to authorities, and individuals detained on some misdemeanor offenses, especially drug offenses. Those seeking to bring weapons, drugs, and other contraband into a jail are aware of the limitations in current statute. They can and do adjust their behavior to take advantage of these holes.

Senator Leibham has introduced a substitute amendment to SB 447 that would mirror two amendments made to AB 556 in the Assembly. Some of these changes addressed concerns my colleagues had with current law on strip searches and not with new policy in the bill, but we



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worked together to improve current law. Let me briefly discuss those changes, as their inclusion brought bipartisan support and AB 556 passed on a voice vote last week:

- 1) A legal definition to the term "jail" was added to the strip search statute to clarify that law enforcement is concerned with contraband at the county jails and not in temporary "lockup facilities."
- 2) Under the new provisions Juveniles were exempted from being subject to strip searches if they were arrested and held as juveniles.
- 3) The term "strip search" under the new provisions was defined to clearly exclude any touching of the detainee, unless assistance was required for a disabled individual or compliance was needed for a noncompliant detainee.
- 4) Any facility that performs strip searches is mandated to have policies and procedures on which its employees are trained.
- 5) If a strip search is being authorized by the new provisions of SB 447, the county shall wait 12 hours before performing the search. This allows for people being held on forfeitures or other non-serious offenses to make bail before being subject to a strip search.

SB 447 improves the safety of our state's jails while strengthening safeguards in the strip search law. SB 447 further provides a clear and effective standard that will allow Wisconsin's 72 counties to effectively control their county jails while making sure Wisconsin law conforms to the United States Constitution. Thank you.



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## CURRENT LAW

### May Strip Search if:

- 1) Arrested for Felony
  - 2) Arrested for 1 of 8 weapons/battery misdemeanors
  - 3) A Juvenile arrested for an offense under 1 or 2 above
  - 4) Probable Cause to believe person has something that may be evidence of offense for which person was detained
- Law enforcement MAY promulgate rules or procedures on strip searches
  - Law enforcement not required to train on said rules/procedures
  - Location requirement of strip searches not defined

SB 447/556 As Amended

Makes 3 reforms to enhance detainee protection effecting current law and allows a new criterion for strip searches subject to additional detainee protections

### May Strip Search If:

- 1) Arrested for Felony
  - 2) Arrested for 1 of 8 weapons/battery misdemeanors
  - 3) A Juvenile arrested for an offense under 1 or 2 above
  - 4) Probable Cause to believe person has something that may be evidence of offense for which person was detained
  - 5) Detainee will be held with 1 or more other detainees AND meeting extra protections listed below
- Law enforcement **MUST** promulgate rules or procedures on strip searches
  - Law enforcement required to train on said rules/procedures
  - Strip searches can only happen at a county jail or mental health facility, not temporary lockups
  - Restrictions to searches under #5
  - Cannot search a juvenile arrested and held as a juvenile
  - Strip Search may not include touching unless subject is noncompliant or needs assistance
  - Cannot strip search until 12 hours have elapsed



02-25-2014

## Public Hearing for 2014 SB447

I would like to thank you for the opportunity to speak before this committee on this very sensitive topic of "Strip Search" that has been known to be a serious "Officer Safety" concern and that is why I am here today.

I am here today as I need your help. I understand the controversy over strip searches. I would like to refer to this as a thorough search as oppose to what the statue has labeled it. The fact of the matter is we in law enforcement struggle with this on a daily basis. In my near two-decades of experience in law enforcement, from two-states and three-different agencies, I have seen, personally, what an arrested subject will do in order to conceal and introduce contraband in a secure facility (Jail). A subject will tape contraband to their buttock, groin, scrotum, inner thigh and even up their anus. A female can use the security of her bra to easily introduce contraband. I apologize for the graphic nature of what I am about to say but I have seen a loaded .22 cal handgun, fall from the undergarments of a female detainee once inside the sallyport of the secure facility. When asked, the female stated that she had it concealed in her vagina.

I am currently the Jail Training Sergeant for the Racine County Sheriff's Office which is the third-largest Jail in the state and am seeing the result of this, as contraband is entering our secure facility more frequently. As we have nearly 10,000 bookings each year, with the potential of repeat offender's that know our admission process, this could allow them easy access to introduce contraband into our secure facility.



With the way the current law is written, we are only able to perform a strip search when an individual has been arrested for any felony, for certain misdemeanors, which are primarily weapons-related offenses and everyone else is not (Probation and Parole) and that is the problem and why I truly need your help.

With that said, if a pre-sentenced detainee does not fall into one of the above-mentioned categories, he or she cannot be stripped searched. This brings me to my point and this is where I need the help of this committee. As the law makers of our great state of Wisconsin, I am asking that you consider changing the verbiage with the amendments brought forth under AB 556 to indicate that all detainees entering a jail are subject to a strip search after the 12-hour rule, no matter the crime or whether they are sentenced or pre-sentenced; with the exception of the current above-mentioned criteria that is currently law.

I would like to emphasize and make myself very clear that we at the Racine County Sheriff's Office would never use this as a form of punishment, nor is meant to embarrass anyone rather to have it as a preventative measure from allowing any and all contraband to enter our secure facility. We understand the 4<sup>th</sup> amendment in regards to "Unreasonable search and seizures" and would not deviate from the current protocol in regards to how the strip searches would be performed.

Our staff would be thoroughly trained in order to make sure the same sex is performing said "visual" search in a private room, away from others view and it would not be recorded in anyway. When it comes to the sensitive topic of in-custody "Juvenile's," we at the Racine County Sheriff's Office have a current protocol in

place to reflect current statute. Juveniles from the age of 10 to 14 would never see the inside of our facility as we have an acting working system in place with the District Attorney's Office and Juvenile Intake (HSD). Please understand that under current law, a juvenile from the age of 10 to 17 who commit murder, attempted murder, battery in a correctional facility or to a probation agent or have an open adult court case after adjudication would immediately fall under adult court jurisdiction (Wis. Stat. § 938.183). We only currently house juveniles, who are 15 to 17 years of age, have been adjudicated in juvenile court and have been convicted, sentenced and waived into adult court jurisdiction (Wis. Stat. § 938.209). We continue to mandate annual training and have the already in place policy and procedure to reflect said.

Our goal is not to dehumanize anyone or discriminate anyone but rather to accomplish an additional layer of safety and security to every person inside the Racine County Jail; not just law enforcement but also the inmate's, contracted staff, members of the Racine County Courts, Racine Public Defender's Office and any visitor.

In so doing, this will undoubtedly make an impact on safety and security for every jail across this great state. The law enforcement community and I would like to thank you in advance and I will now welcome any questions that this committee may have.

Under s.968.255(1)(b) strip search is defined as "...a search in which a detained person's genitals, pubic area, buttock or anus or a detained female person's breast, is uncovered and either is exposed to view or is touched by a person conducting the search."

Search is defined by the Wisconsin Department of Justice, Law Enforcement Standards Board for Defense and Arrest Tactics (DAAT) on pg. 83 (2007) as the following: **Search**

The term "searching" is often applied both to frisks and to searches, but the two are quite distinct. A frisk is a pat down of a subject's outer clothing for the purpose of discovering any concealed weapons. It is done solely for officer safety. A search is a thorough checking of the subject, including emptying the pockets of the clothing, looking for weapons, contraband, or evidence of a crime.

Prepared by:

Jail Training Sergeant

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For:

Sheriff Christopher Schmaling

Racine County Sheriff's Office





## WISCONSIN SHERIFFS & DEPUTY SHERIFFS ASSOCIATION

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### Memorandum

To: Members, Senate Committee on Judiciary and Labor  
From: Wisconsin Sheriffs & Deputy Sheriffs Association, Badger State Sheriffs Association  
Date: February 25, 2014  
Re: **AB 556/SB 447 – Amending Wisconsin’s Strip Search Law to Protect Law Enforcement and Inmates**

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#### **Background: U.S. Supreme Court Decision Finding Strip Searches of Arrestees Constitutional**

On April 2, 2012, the United States Supreme Court decided in *Florence v. Board of Chosen Freeholders of County of Burlington et al.*<sup>1</sup> that jail administrators may require all arrestees who are committed to the general population of a jail to undergo visual strip searches not involving physical contact by corrections officers without having to show probable cause.

The Court explained the significant dangers associated with some detainees attempting to smuggle weapons, drugs, or other contraband into the jail. As the Court noted, “correctional officers have had to confront arrestees concealing knives, scissors, razor blades, glass shards, and other prohibited items on their person, including in their body cavities.”<sup>2</sup>

The Court also explained that such searches are necessary to prevent new detainees from introducing lice or contagious infections. By allowing strip searches, correctional officers are able to identify and treat wounds or other injuries that could spread such diseases to the other detainees. Therefore, the Court held that such searches do not violate the 4<sup>th</sup> Amendment of the U.S. Constitution.

#### **Current Wisconsin Law Regarding Strip Searches**

Under current Wisconsin law, a person may be strip searched when arrested for any felony, for certain misdemeanors,<sup>3</sup> or for any misdemeanor or civil violation if there is probable cause to believe that the person is concealing a weapon or something that would constitute evidence of the offense for which he or she has been detained.

Wisconsin law further provides that the person conducting the strip search must be the same sex as the person being searched, unless the body cavity search is conducted by a physician, physician assistant, or registered nurse. The person conducting the search must also obtain prior written permission from the chief, sheriff, or law enforcement administrator for that jurisdiction. In addition, the person conducting the search must prepare and provide to the detainee a written report that sets forth the details of the search and its authorization.

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<sup>1</sup> 556 U.S. \_\_\_\_ 2012, Slip Opinion 10-945, available at <http://www.supremecourt.gov/opinions/11pdf/10-945.pdf>.

<sup>2</sup> Id. at 11.

<sup>3</sup> Wis. State. §§ 167.30 (1), 940.19, 941.20 (1), 941.23, 941.237, 941.24, 948.60, or 948.61.

### **AB 556/SB 447 – Amending Current Law to Allow Strip Searches of Arrestees**

Based on the U.S. Supreme Court’s decision in *Florence*, AB 556/SB 447 amends Wisconsin’s current law to allow a person to be strip searched if lawfully arrested or detained by law enforcement and if the person will be incarcerated or detained in a jail or prison with one or more persons.

AB 556/SB 447 keep in place the current protections for those strip searched, such as:

- ensuring the person conducting the search is of the same sex as the detainee;
- preventing the detainee from being exposed to the view of any person who isn’t conducting the search;
- prohibiting the search from being visually or audibly recorded;
- requiring the person conducting the search to obtain prior written permission of the chief, sheriff, or law enforcement administrator in that jurisdiction, unless there is probable cause that the detainee is concealing a weapon; and,
- requiring the person conducting the search to prepare a report and provide a copy of the report to the detainee.

### **Assembly Amendments 4 and 8**

In addition to the protections described above, Assembly Amendments 4 and 8 make additional changes to AB 556. Specifically, Amendment 4 defines “jails” and “lockup facilities” as follows:

- “Jail” includes municipal prisons and rehabilitation facilities established under s. 59.53 (8) by whatever name they are known, but does not include lockup facilities.
- “Lockup facilities” means those facilities of a temporary place of detention at a police station that are used exclusively to hold persons under arrest until they can be brought before a court and that are not used to hold persons pending trial who have appeared in court or have been committed to imprisonment for nonpayment of fines or forfeitures.”

According to the Legislative Council memorandum,<sup>4</sup> Amendment 8 makes the following changes:

- Provides that the new category of detainees, created by the bill, who can be strip searched does not include a juvenile who is taken into custody under s. 938.19, Stats., and held in custody under s. 938.209, Stats. Thus, a juvenile who is taken into and held in custody and who will be placed with one or more other persons is not subject to a strip search under the bill. The amendment does not change the provision in current law allowing a juvenile to be strip searched if taken into custody for any felony or for certain battery or weapons-related misdemeanors.
- Provides that, for a detainee who is strip searched under the new category created by the bill, the strip search may not include touching, unless the touching is necessary to gain

<sup>4</sup> <https://docs.legis.wisconsin.gov/2013/related/lcamendmemo/ab556.pdf>.



the detainee's cooperation with the search or to assist a disabled detainee's cooperation with the search.

- Provides that a detainee may be strip searched under the new category created by the bill only if the detainee will be incarcerated, imprisoned, or otherwise detained in the jail or prison for 12 or more hours.
- Requires each law enforcement agency, and each facility where a strip search may be conducted, to establish written policies and procedures concerning strip searches and to provide annual training regarding the policies and procedures to any employee or agent who may conduct a strip search.

### **Wisconsin Should Pass AB 556/SB 447 to Protect Wisconsin Law Enforcement and Inmates**

Under current Wisconsin law<sup>5</sup> strip searches are prohibited for detainees who are not charged with a felony, or a specifically enumerated misdemeanor, or for whom there is not probable cause to believe they are concealing a weapon or evidence of their crime. Therefore, while a policy allowing for strip searches of all pretrial detainees who are to be placed in the general population is constitutional under U.S. Supreme Court precedent, it would still violate Wisconsin's current strip search law.

As explained in great detail by the U.S. Supreme Court, it is imperative for law enforcement to be allowed to perform strip searches in order to protect correctional officers and the other detainees. The Supreme Court also cited to evidence that the seriousness of an offense is a poor predictor of who has contraband and that even people arrested for minor crimes can "turn out to be the most devious and dangerous criminals."<sup>6</sup> Thus, limiting strip searches only to a small class of detainees does not adequately protect law enforcement or the other detainees.

### **Conclusion**

Wisconsin law enforcement should be allowed to perform strip searches of pretrial detainees to prevent the smuggling in of weapons, drugs, and other contraband. Such searches also help prevent the spread of diseases to other inmates. AB 556/SB 447 is carefully drafted to allow law enforcement the right to perform such searches, but also keeps in place important protections for detainees.

***Therefore, the Wisconsin Sheriffs & Deputy Sheriffs Association and Badger State Sheriffs Association respectfully request the Assembly Judiciary to recommend passage of AB 556.***

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<sup>5</sup> Wis. Stat. § 968.255.

<sup>6</sup> *Florence*, Slip Opinion at 14.





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## ASSEMBLY FLOOR MEMORANDUM TUESDAY, FEBRUARY 18, 2014

### ASSEMBLY BILL 556

The State Public Defender opposes the expansion of the ability to conduct physical strip searches of individuals arrested and booked into the general population of a Wisconsin prison or jail. Attached is testimony submitted to the Assembly Committee on Judiciary.

Briefly, the bill authorizes the physical strip search of any person over age 10 who is arrested for any offense, regardless of whether it carries a forfeiture, misdemeanor or felony penalty.

At the committee hearing on AB 556, representatives of several law enforcement agencies confirmed that in order to minimize the risk of lawsuits based on unequal enforcement, they would have to physically strip search every person arrested and booked into general population.

United States Chief Justice John Roberts and Associate Justice Samuel Alito both wrote concurring opinions in *Florence v. Burlington* to clarify that the decision in that case allowing for visual strip searches should not be taken as a blanket authorization to strip search everyone who is arrested.

The stated goal of preventing contraband from being brought into prison is a worthy goal. A study in New York showed that out of 23,000 strip searches, contraband was found in 5 instances. While this bill would limit some contraband from entering Wisconsin jails, it will not eliminate it, and any positive impact comes at the expense of fundamental, constitutional civil liberties.

Assembly Amendment 4 makes a limited improvement in the bill by defining at which facility a strip search may take place.

Without limits preventing either physical (rather than visual) strip searches, excluding juveniles, or limiting its use to arrests for crimes which carry a criminal (rather than civil) penalty, the impact of Assembly Bill 556 is a severe infringement on 4th Amendment protections against unreasonable search and seizure. With over 340,000 arrests in 2012, including 68,385 arrests of juveniles between the age of 10 and 17, the impact will be significant.

If you have any questions, please feel free to contact Adam Plotkin, Legislative Liaison, at 608-264-8572 or 608-235-1779.



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December 19, 2013

Representative Jim Ott  
Chairman, Assembly Committee on Judiciary  
317 North, State Capitol  
Madison, WI 53708

Dear Chairman Ott and members,

The State Public Defender has concerns with the scope of the proposal in Assembly Bill 556.

Specifically, Section 2 of the bill allows for a physical strip search to be conducted of any person - adult or juvenile - arrested for any offense, whether punishable by a crime or a civil forfeiture, if they will be placed in the general population of a detention facility. Our concerns focus on both the population affected and the range of offenses which would now qualify for a strip search.

The bill would allow any person, regardless of age, to be strip searched. This means that anyone over the age of 10 who is arrested and booked into the general population of a detention facility has the potential to be physically strip searched. And by allowing this for any arrestable offense, broad discretion is granted to law enforcement to perform a physical strip search. The use of a physical strip search may seem justified in some of these situations, but given the frequency with which arrests are made for civil and misdemeanor disorderly conduct, it is not hard to envision a scenario in which this power would be abused. The impact of a physical strip search, particularly on a juvenile, is likely to have long lasting impacts in terms of recidivism and increased criminogenic behavior.

Correctional officials certainly have a significant interest in keeping jails and other detention centers safe and free of weapons and other contraband. And Wisconsin citizens, including those who have been arrested, have a constitutional right to be free from unreasonable searches.

The United States Supreme Court recently addressed the issue of strip searches in *Florence v. Burlington*, 132 S. Ct. 1510 (2012). In that case, the Court considered whether the Fourth Amendment permits suspicionless strip searches of every individual arrested. In a 5-4 decision, the court concluded that correctional officials could strip search individuals under the circumstances presented, but the holding was limited to its facts - only visual (as opposed to hands-on) strip searches were approved, and only of those arrestees who were committed to the general jail population.

There is a fundamental difference between the procedures for strip searches approved in *Florence* and those proposed in this bill. The *Florence* Court chose not to address the question of whether a more physically invasive strip search would be constitutional. Because Wisconsin allows for physical contact during a strip search, the expansion envisioned in this bill may not



meet the criteria of the *Florence* decision. Chief Justice Roberts and Justice Alito, in concurring opinions, each wrote separately to caution that the court was not deciding that it would be reasonable to subject arrested individuals to visual-only strip searches if it was not necessary or appropriate to place them in the general jail population - for example, before an initial appearance in court, or if they were to be held in segregation. And *Florence* passed judgment of strip searches of adults, not juveniles.

The dissent in *Florence* considered an additional important issue: whether suspicionless strip searches of individuals arrested for minor offenses are necessary to meet the goal of increasing safety in jails and other detention facilities. A New York Federal District Court conducted a study of 23,000 persons admitted to a county correctional facility over a 5-year period. Each of these individuals underwent a strip search; of these 23,000 individuals, the County found three incidents of drugs recovered from an inmate's body cavity and two incidents of drugs falling from an inmate's underwear. In a separate study involving a county jail, data showed that body-cavity strip searches of 75,000 new inmates led to the discovery of contraband in 16 instances. The record further showed that 13 of the 16 contraband items would have been detected in a pat-down or search of shoes and outer clothing. The reality is that the vast majority of contraband can be discovered through less invasive pat-down searches, or strip searches based on reasonable suspicion that the individual possesses contraband.

This impact of allowing searches of every detained juvenile is particularly concerning. Young people are particularly vulnerable to emotional harm and humiliation because they are in the process of developing their sense of self. Demeaning treatment by adults sends mixed messages about the purpose of the justice system. For youth of color, such humiliation may be experienced as racism, which is extremely harmful to the development of a positive identity.

Almost every court-involved juvenile has experienced severe trauma, including the death of family members, physical and sexual abuse, and exposure to street violence. Many of their difficulties - distrusting others, fearfulness, aggression, and other issues - are caused by untreated trauma. The majority of girls in the delinquency system, as well as many boys, are victims of sexual abuse. Forcing these children to remove their clothes and allowing a stranger to touch them in a physically invasive manner will make them feel once again that they cannot control hurtful things that happen to them and will likely further traumatize them.

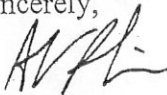
There is a better way to balance the needs of correctional facilities and the rights of citizens to be free from unreasonable searches. The two most significant concerns expressed by jail staff in conducting physical strip searches are weapons and drug related pieces of contraband. We have suggested to the author that removing Section 2 of the bill and instead further amending s. 968.255(1)(a)2. to include misdemeanor violations of Chapter 961, the Uniform Controlled Substances Act, would achieve the goals of finding contraband without potentially subjecting every individual to a strip search. With this suggested change to current law, jail staff would have the authority to physically strip search any person arrested for any felony or a misdemeanor weapon or drug violation. Current law also grants jail staff broad latitude to conduct physical strip searches in any case if they have probable cause to believe that the detainee is concealing a weapon or any evidence related to the offense for which they were detained (see s. 968.255(1)(a)4.).



As a cautionary tale, we recall the recent convictions of several former Milwaukee Police Officers accused of conducting illegal strip searches of suspects in criminal investigations, and the ensuing civil lawsuits pending for money damages caused by their actions. While this is clearly an extreme case, by expanding the ability to perform physical strip searches the possibility for abuse under the new guidelines expands as well.

As *Florence* itself indicates, in Chief Justice Roberts and Justice Alito's concurrences, the decision should not be taken as free license to allow physical strip searches in all cases. AB 556 goes beyond the scope of the decision and tips the scale of balance away from civil liberties and against jail safety and administrative efficiency of jail staff.

Sincerely,



Adam Plotkin  
Legislative Liaison