



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2013 Assembly Bill 556**

**Assembly Amendments 4 and 8**

*Memo published:* February 19, 2014      *Contact:* Jessica Karls-Ruplinger, Senior Staff Attorney (266-2230)

### CURRENT LAW

Under current law, 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 a thing that may constitute evidence of the offense for which he or she is detained. In addition, a juvenile may be strip searched if taken into custody under s. 938.19, Stats., and there are reasonable grounds to believe that the juvenile has committed an act which if committed by an adult would be covered under (1) or (2), above.

“Strip search” means a search in which a person's genitals, pubic area, buttock or anus, or a female person’s breast, is uncovered and either is exposed to view or is touched by a person conducting the search.

A strip search must comply with the following requirements:

- The person conducting the strip search must be of the same sex as the person detained, unless the search is a body cavity search.
- The detained person may not be exposed to the view of any person not conducting the search.
- The search may not be reproduced through a visual or sound recording.
- A person conducting the search must obtain the prior written permission of the chief, sheriff, or law enforcement administrator of the jurisdiction where the person is detained, or his or her designee, unless there is probable cause to believe that the detained person is concealing a weapon.

- A person conducting the search must prepare a report identifying the person detained; all persons conducting the search; the time, date, and place of the search; and the written permission, described above. The person conducting the search must provide a copy of the report to the person detained.

### **2013 ASSEMBLY BILL 556**

Assembly Bill 556 creates a new category of persons who can be strip searched. Under the bill, 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 other persons, may be strip searched, subject to the requirements under current law.

### **ASSEMBLY AMENDMENT 4**

Assembly Amendment 4 defines “jail” for purposes of the strip search law. Under the amendment, “jail” includes municipal prisons and rehabilitation facilities established under s. 59.53 (8), Stats., 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.

### **ASSEMBLY AMENDMENT 8**

Assembly Amendment 8 makes the following changes to the bill:

- 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 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.

### **BILL HISTORY**

Assembly Amendment 4 was offered by the Assembly Committee on Judiciary. On February 13, 2014, the committee recommended adoption of the amendment on a vote of Ayes, 9; Noes, 0. The committee also recommended passage of Assembly Bill 556, as amended, on a vote of Ayes, 6; Noes, 3.

Assembly Amendment 8 was offered by Representatives Craig, Neylon, Kooyenga, Sanfelippo, Knudson, Kessler, and Goyke. On February 18, 2014, the Assembly adopted Assembly Amendments 4 and 8 and passed the bill, as amended, on voice votes.

JKR:jal