



2023 SENATE BILL 438

September 20, 2023 - Introduced by Senators JAMES, JACQUE, MARKLEIN, QUINN, STROEBEL, WANGGAARD and NASS, cosponsored by Representatives BODDEN, BEHNKE, BINSFELD, BRANDTJEN, BROOKS, CALLAHAN, DITTRICH, DONOVAN, GOEBEN, MAXEY, MICHALSKI, O'CONNOR, RETTINGER, SAPIK, SPIROS, TUSLER and WICHGERS. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT** *to renumber* 302.375 (3) (a); *to renumber and amend* 302.375 (3) (b);
2 and *to create* 51.22 (6), 302.375 (3) (ag), 302.375 (3) (bm), 938.505 (3), 968.255
3 (1) (au) and 973.09 (4) (d) of the statutes; **relating to:** definition of “sex” for the
4 purpose of placing prisoners and conducting strip searches.

Analysis by the Legislative Reference Bureau

Current law prohibits placing or keeping together prisoners of different sexes within a prison, jail, or county house of correction. A person who violates the prohibition must be fined not more than \$500 or imprisoned for not more than six months, or both.

Current law regulates strip searches that are performed on persons who are being detained following an arrest for certain crimes or under certain circumstances. One restriction on such strip searches is that the person conducting the search must be of the same sex as the detainee.

This bill defines “sex” for the above provisions. Under the bill, “sex” means an individual’s sex at birth, as being male or female, according to distinct reproductive roles as manifested by sex and reproductive organ anatomy, chromosomal makeup, and endogenous hormone profiles.

The current law regulations on strip searches described above do not apply if the person is incarcerated following a conviction, placed in a juvenile correctional facility or a secured residential care center for children and youth, committed to a facility for mental health reasons, or confined as a condition of probation. Under the bill, a person conducting a strip search on such a person must be of the same sex

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unless the strip search is conducted due to exigent circumstances. The bill also applies the definition of “sex” created in this bill to this requirement.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 51.22 (6) of the statutes is created to read:

2 51.22 **(6)** (a) In this subsection:

3 1. “Sex” has the meaning given in s. 968.255 (1) (au).

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

7 (b) Unless exigent circumstances require an immediate search, no person may
8 conduct a strip search on a patient unless the person conducting the strip search is
9 of the same sex as the patient.

10 **SECTION 2.** 302.375 (3) (a) of the statutes is renumbered 302.375 (3) (am) 1.

11 **SECTION 3.** 302.375 (3) (ag) of the statutes is created to read:

12 302.375 **(3)** (ag) In this subsection:

13 1. “Sex” has the meaning given in s. 968.255 (1) (au).

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

17 **SECTION 4.** 302.375 (3) (b) of the statutes is renumbered 302.375 (3) (am) 2. and
18 amended to read:

19 302.375 **(3)** (am) 2. Notwithstanding ~~par. (a)~~ subd. 1., the sheriff, jailer or
20 keeper may permit prisoners of different sexes to participate together in treatment

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1 or in educational, vocational, religious or athletic activities or to eat together, under
2 such supervision as the sheriff, jailer or keeper deems necessary.

3 **SECTION 5.** 302.375 (3) (bm) of the statutes is created to read:

4 302.375 (3) (bm) Unless exigent circumstances require an immediate search,
5 no person may conduct a strip search on a prisoner unless the person conducting the
6 strip search is of the same sex as the prisoner.

7 **SECTION 6.** 938.505 (3) of the statutes is created to read:

8 938.505 (3) STRIP SEARCHES. (a) In this subsection:

- 9 1. "Sex" has the meaning given in s. 968.255 (1) (au).
10 2. "Strip search" means a search in which a juvenile's genitals, pubic area,
11 buttock, or anus, or a female juvenile's breast, is uncovered and either is exposed to
12 view or is touched by a person conducting the search.

13 (b) Unless exigent circumstances require an immediate search, no person may
14 conduct a strip search on a juvenile unless the person conducting the strip search is
15 of the same sex as the juvenile.

16 **SECTION 7.** 968.255 (1) (au) of the statutes is created to read:

17 968.255 (1) (au) "Sex" means a person's sex at birth, as being male or female,
18 according to distinct reproductive roles as manifested by sex and reproductive organ
19 anatomy, chromosomal makeup, and endogenous hormone profiles.

20 **SECTION 8.** 973.09 (4) (d) of the statutes is created to read:

21 973.09 (4) (d) 1. In this paragraph, "strip search" means a search in which a
22 probationer's genitals, pubic area, buttock, or anus, or a female probationer's breast,
23 is uncovered and either is exposed to view or is touched by a person conducting the
24 search.

