



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2013 Senate Bill 447

Senate Substitute Amendment 2

Memo published: March 17, 2014

Contact: Anne Sappenfield, Principal Attorney (267-9485)

2013 Senate Bill 447 relates to strip searches.

Current Law

Under current law, a person may be subject to a strip search only if he or she is a detained person and if other conditions are met. Current law defines “detained” as any of the following:

- Arrested for a felony.
- Arrested for one of the following misdemeanors: discharging a weapon within 40 feet of a park or other specified outdoor space; battery; endangering safety by use of a dangerous weapon; carrying a concealed weapon; carrying a handgun where alcohol may be sold and consumed; possession of a switchblade knife; possession of a dangerous weapon by a person under 18; or possessing a dangerous weapon on school premises.
- Taken into custody under the Juvenile Justice Code and there are reasonable grounds to believe that the juvenile has committed a felony or one of the misdemeanors listed above.
- Arrested for a misdemeanor not specified above, 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 which may constitute evidence of the offense for which he or she is detained.

Current law defines “strip search” 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.

A law enforcement agency may promulgate rules concerning strip searches which at least meet the minimum requirements of the statute.

Senate Bill 447

Senate Bill 447 provides that a person may be strip searched if he or she is 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.

Senate Substitute Amendment 2

Senate Substitute Amendment 2 provides that a person who does not meet one of the conditions for being strip searched under current law may be strip searched if he or she is arrested or otherwise lawfully detained or taken into custody for a violation of a rule or condition or probation, parole, or extended supervision, and if he or she has been incarcerated, imprisoned, or otherwise detained in a jail or prison for at least 12 hours. For such detainees, the strip search must be a visual strip search unless touching is necessary to gain the detainee’s cooperation with the search or unless touching is necessary to assist a disabled detainee’s cooperation with the search.

For purposes of the statute governing strip searches, the substitute amendment defines “jail” to include municipal prisons and rehabilitation facilities by whatever name they are known, but does not include lockup facilities. The substitute amendment defines “lockup facilities” as 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.

The substitute amendment requires each law enforcement agency and each facility where a strip search may be conducted to establish written policies and procedures concerning strip searches which at least meet the minimum requirements of the statute governing strip searches and to provide annual training regarding the policies and procedures to any employee or agent of the agency or facility who may conduct a strip search.

Bill History

Senate Substitute Amendment 2 was offered by Senator Leibham. On March 14, 2014, the Senate Committee on Judiciary and Labor voted unanimously to adopt the substitute amendment and to recommend passage of the bill, as amended.

AS:ksm