

2016 -- S 2880

=====  
LC005419  
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

—————  
A N A C T

RELATING TO CRIMINAL PROCEDURE

Introduced By: Senators Conley, Goldin, Jabour, Archambault, and Lynch Prata

Date Introduced: March 31, 2016

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 12 of the General Laws entitled "Criminal Procedure" is hereby  
2 amended by adding thereto the following chapter:

3 CHAPTER 7.1

4 STRIP SEARCHES OF DETAINEES

5 **12-7.1-1. Short title.** -- This chapter shall be known and may be cited as the "Rhode  
6 Island Strip Searches of Detainees Act of 2016."

7 **12-7.1-2. Purpose.** -- The general assembly recognizes that the use of strip searches and  
8 body cavity searches of individuals lawfully detained may, under certain circumstances, be  
9 necessary to protect the safety of law enforcement personnel, members of the public, and other  
10 detainees; to detect and secure evidence of criminal activity; and to safeguard the security, safety  
11 and orderly administration of criminal detention and holding facilities. The general assembly  
12 further recognizes the substantial intrusion on personal privacy and integrity caused by such  
13 searches and the consequent necessity that these searches be conducted only with proper  
14 justification and authority and with due recognition of and deference to the human dignity of  
15 those being searched.

16 **12-7.1-3. Definitions.** -- (a) "Body cavity search" means any search involving internal  
17 physical examination of body cavities, with the exception of a visual inspection of the ears, nose,  
18 and mouth.

19 (b) "Detainee" means any person who is detained, under arrest, or otherwise in the

1 custody and control of any state or local law enforcement personnel or agent within the state of  
2 Rhode Island, but does not include criminal offenders committed to the adult correctional  
3 institution or to persons confined at the Wyatt Detention Center.

4 (c) "Probable cause" means sufficient, objective facts or circumstances to lead a  
5 reasonable person to believe that a detainee is in possession of a weapon, contraband, or evidence  
6 of a crime that cannot be detected and seized pursuant to a thorough frisk or pat search of a  
7 detainee's person.

8 (d) "Reasonable suspicion" means sufficient, objective facts or circumstances to lead a  
9 reasonable person to suspect that a detainee is in possession of a weapon, contraband or evidence  
10 of a crime, that cannot be detected and seized pursuant to a thorough frisk or pat search of a  
11 detainee's person.

12 (e) "Strip search" means any search requiring the removal or rearrangement of some or  
13 all of the clothing of a detainee to permit the visual inspection of the genitalia, buttocks, anus,  
14 female breasts or undergarments of the detainee.

15 **12-7.1-4. Policy. --** No detainee in the state of Rhode Island shall be subject to a strip  
16 search or body cavity search, except in accordance with the procedures set forth herein. Detainees  
17 confined at the adult correctional institution shall be subject to a search pursuant to regulations  
18 promulgated by the department of corrections in accordance with applicable law. Detainees  
19 confined at the Wyatt Detention Center shall be subject to a search in accordance with rules and  
20 regulations of that facility promulgated in accordance with applicable law.

21 **12-7.1-5. Search prerequisites. --** (a) Standard of belief. Neither strip searches nor body  
22 cavity searches shall be conducted as a matter of routine procedure. A strip search may be  
23 conducted based upon reasonable suspicion. A body cavity search may be conducted only  
24 pursuant to a warrant based upon probable cause.

25 (b) Basis of belief. Neither reasonable suspicion nor probable cause, as defined herein,  
26 may be based solely on the nature of the offense charged or on the detainee's previous criminal  
27 record. A belief or suspicion sufficient to support either search also may not be based on mere  
28 speculation, conjecture, or hunch. Facts or circumstances sufficient to establish reasonable  
29 suspicion or probable cause may include, but are not limited to, the following:

30 (1) The nature of the offense charged;

31 (2) The detainee's appearance and demeanor;

32 (3) The circumstances surrounding the arrest or detention;

33 (4) The detainee's criminal record, particularly past crimes of violence and narcotics  
34 offenses;

1           (5) The discovery of evidence of a major offense in plain view or in the course of a  
2 search incident to arrest;

3           (6) Detection of suspicious objects beneath the detainee's clothing during a field search  
4 incident to arrest; or

5           (7) The type of clothing and manner in which it is worn by the detainee.

6           **12-7.1-6. Procedure. --** (a) A strip or body cavity search may be performed only in  
7 accordance with the following procedures:

8           (1) Prior to search.

9           (i) A written request describing the detainee to be searched and the specific facts and/or  
10 circumstances establishing the requisite reasonable suspicion or probable cause to justify the  
11 search;

12           (ii) Written approval of the request by a supervisory or other designated official;

13           (iii) Application for and approval of a search warrant for a body cavity search;

14           (iv) The search must be conducted in a secure, private area where it cannot be visually  
15 monitored by electronic or other means or observed by persons not participating in the search;

16           (v) No more than two (2) persons shall participate in the search unless the participation of  
17 additional persons is deemed essential to the safety of the detainee and/or those participating in  
18 the search;

19           (vi) Anyone participating in the search must be of the same gender as the detainee being  
20 searched, except for a licensed physician performing a body cavity search;

21           (vii) The detainee undergoing a search shall not be touched during a strip search, unless  
22 the detainee refuses to cooperate with the search procedure or is otherwise unable to comply with  
23 the search due to their mental or physical condition; and

24           (viii) Any body cavity search must be performed by a licensed physician or a registered  
25 nurse under sanitary, clinical conditions.

26           (2) Subsequent to search. The supervisory or other designated official approving the  
27 search must prepare a written report of the circumstances surrounding the approval and conduct  
28 of the search which shall include the following information:

29           (i) The specific facts and/or circumstances upon which it was determined that the  
30 requisite reasonable suspicion or probable cause existed to justify the search. A copy of the  
31 written request and approval of the search shall be attached to the report. In the case of a body  
32 cavity search, a copy of the search warrant and application in support thereof shall be attached to  
33 the report;

34           (ii) The name and address of the detainee and the date, time, and place of the search;

1           (iii) The name, rank or position, and gender of the persons participating in the search;

2           (iv) A description of the results of the search, including a list of any items removed from  
3 the detainee searched and the precise location on the detainee's person from where each item was  
4 seized; and

5           (v) A copy of the foregoing report, with attachments, shall be provided to the detainee  
6 searched.

7           **12-7.1-7. Remedies for violations. --** (a) Any detainee aggrieved by a search performed  
8 without the requisite reasonable suspicion or probable cause mandated by this chapter or without  
9 substantial compliance with the procedures provided herein shall be entitled to seek relief in a  
10 civil action against all those participating in or approving such a search, as well as the state or  
11 local governmental entity by whom they are employed, for compensatory damages of not less  
12 than one thousand dollars (\$1,000), punitive damages, attorneys' fees, and costs of the suit. Any  
13 judicial officer approving a warrant and any person acting in good faith based upon a facially  
14 valid warrant shall be immune from liability under this section.

15           (b) No evidence procured by, through, or as a consequence of a search performed without  
16 the requisite reasonable suspicion or probable cause mandated by this statute or without  
17 substantial compliance with the procedures provided herein shall be admissible in the trial of any  
18 action in any court of this state.

19           (c) The remedies provided herein shall be in addition to any other remedies which an  
20 aggrieved detainee may have pursuant to applicable law.

21           SECTION 2. This act shall take effect upon passage.

=====  
LC005419  
=====

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO CRIMINAL PROCEDURE

\*\*\*

1           This act would promulgate standards of probable cause and/or reasonable suspicion  
2 before a detainee, arrestee, or any individual in the custody and control of law enforcement can be  
3 subjected to a strip search or a body cavity search, and would establish procedures to be followed  
4 before any strip search or body cavity search can be conducted. This act would not apply to those  
5 individuals in the custody, care, or control of the adult correctional institution or the Wyatt  
6 detention center.

7           This act would take effect upon passage.

=====  
LC005419  
=====