



TO: Senate Judiciary Committee
FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio
DATE: February 20, 2018
RE: Senate Bill 138

To Chairman Bacon, Vice Chair Dolan, Ranking Member Thomas, and members of the Senate Judiciary Committee, my name is Gary Daniels, chief lobbyist for the American Civil Liberties Union of Ohio (“ACLU of Ohio”) and I appear to present opponent testimony on Senate Bill 138.

Senate Bill 138 substantially changes Ohio law in a variety of ways with regard to body cavity and strip searches of Ohio jail inmates, as well as those who will never spend a minute detained in jail.

Thus far, proponents have described SB 138 as a natural response to the 2011 ruling in *Florence v. Board of Chosen Freeholders of the County of Burlington*. In that case, the Supreme Court of the United States upheld, by a 5-4 margin, the practice of strip searching all people who enter the general population of a jail. No individualized reasonable suspicion is required any longer nor is any consideration of how minor the underlying offense.

However, SB 138 goes significantly farther than what SCOTUS blessed via its *Florence* decision. SB 138 applies to not only those who are entering general population and encountering or mixing with other individuals, as was the situation in *Florence*, but also those who will never spend a minute detained in jail with others. That is, SB 138 applies to those who are merely booked at jail.

SB 138 also requires strip searches in all jails across Ohio whether or not a person will be entering the general population. So, if a local jail administrator concludes strip searches under one or both of these circumstances is unwise or unneeded they are powerless to refuse the mandates of this legislation. In other words, those officials do not get to decide what is best for their particular jail. The OGA now makes those decisions for them and, via this bill, sets those jails up for inevitable and numerous lawsuits across the state.

AMERICAN CIVIL
LIBERTIES UNION
OF OHIO
4506 CHESTER AVENUE
CLEVELAND, OH 44103-3621
T/216.472.2220
F/216.472.2210
WWW.ACLUOHIO.ORG
contact@acluohio.org

SB 138 gets worse from there as it also removes the ability of anyone strip searched, whether or not they spend any time in jail, from filing a civil suit in Ohio courts. No matter how egregious a violation of their rights takes place, no matter what injury, even death, occurs, and even if the person conducting the search deliberately violates someone's rights in the worst ways possible, SB 138 simply and entirely shuts the door for relief in Ohio courts.

In addition, just because the Supreme Court now permits mass searches of everyone entering a jail's general population does not mean it is sound public policy. As the Dissent in *Florence* explains, "A strip search that involves a stranger peering without consent at a naked individual, and in particular at the most private portions of that person's body, is a serious invasion of privacy." Other courts have described these types of searches as "demeaning, dehumanizing, undignified, humiliating, terrifying, unpleasant, embarrassing, repulsive, and signifying degradation and submission."

Yet, SB 138 requires jailers to strip search everyone entering general population no matter how minor the underlying offense and no matter how short their stay in jail. This is particularly relevant here in Ohio as legislators continually introduce and pass bills creating new misdemeanor offenses, which will only increase this problem. Of course, we also know it is communities of color who will disproportionately bear the brunt of these changes, as they do in every other aspect of our criminal justice system.

Also greatly affected will be indigent people who cannot afford bond and who, under current law and practices, are forced to remain in jail simply because they do not have enough money. At the least, it is ironic for the OGA to be currently considering cash bail reform because of its impact on Ohio's poor while simultaneously considering legislation requiring all of them to be strip-searched across the state.

Finally, SB 138 requires these searches to be performed by someone who is the same sex as those being searched. Previously, concerns about how this would affect transgender individuals have been raised. Our understanding is advocacy organizations are addressing this issue and we urge this committee to be receptive to those concerns and any proposed solutions.

Members of this committee, Senate Bill 38 is ill-advised in a number of ways as it dramatically expands strip searches in Ohio, goes far beyond the *Florence* decision, removes all local control, and will surely result in numerous lawsuits. Local governments will be forced to spend their limited resources defending. Drugs in jails are an issue worthy of attention. But, Senate Bill 138 is not the answer and should be rejected.