

Beloit to pay \$265,000 to settle strip search lawsuit

Milwaukee investigation may leave taxpayers on the hook

By [Gina Barton](#) of the Journal Sentinel
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The City of Beloit has agreed to pay a teenage boy \$265,000 to settle a federal lawsuit claiming police violated his constitutional rights by strip-searching him on the street and slamming his head into a car window.

The settlement comes as authorities investigate [allegations](#) of illegal strip searches and cavity searches in Milwaukee - allegations that seven Milwaukee police officers and a sergeant may have sexually assaulted people and violated their civil rights while conducting rectal searches for drugs on the streets of District 5.

Milwaukee County prosecutors have launched a [John Doe](#) investigation, an inquiry in which prosecutors can compel testimony and subpoena documents without public knowledge. Simultaneously, the civilian Fire and Police Commission and the department's internal affairs division are reviewing a list of complaints dating back a couple of years.

Federal officials are closely [monitoring](#) the process, as is the Milwaukee [Common Council](#).

Pretrial rulings in the Beloit case by Judge Barbara Crabb of the Western District of Wisconsin reinforced that strip searches in public are illegal - unlike jailhouse searches, which were upheld as constitutional by the U.S. Supreme Court earlier this month. The Beloit case also shows just how expensive even a single bad search can be to taxpayers, even if drugs are found.

"People have to hold the police accountable," said Madison attorney Amy Scarr, who represented Conner Poff, the teenager in the Beloit case. "They have a lot of authority, and we have to be able to trust them. If their own departments aren't holding them account able, and their own cities aren't holding them accountable, individuals must do so for the sake of all of us."

Attorney John A. Wolfgang, who represented the officer in the case, Kerry Daugherty, and the City of Beloit, did not return telephone calls.

Suspected drug dealing

Poff, of South Beloit, Ill., was 16 when he encountered Daugherty just across the state line in Wisconsin about 2 p.m. Jan. 1, 2010, according to court records.

Poff and two others were in a parked car in a residential neighborhood when someone called the police to report drug activity, the records say.

Daugherty asked Poff to get out of the car and patted him down for contraband and weapons, as is standard police procedure, Daugherty testified in a deposition. The officer saw a bulge in the front of the teenager's pants and asked him what it was.

Poff answered that it was his genitalia. Daugherty then said, "I don't believe you. Show me," according to a transcript of the officer's deposition.

Poff unfastened his pants and exposed himself. Daugherty testified that he then pushed Poff against the car "to stabilize him," his deposition says. Poff's head shattered the back windshield, and he suffered a concussion. Daugherty later found a small baggie of marijuana hidden in Poff's underwear.

During the deposition, Scarr asked the officer why he didn't take Poff to the station and do the strip search there. Daugherty answered: "I don't know. It's just not the way we operate. We continue the investigation on the street where we were."

Daugherty testified he wanted Poff to show him the marijuana, not his genitals. Therefore, the encounter did not amount to an illegal strip search under the Fourth Amendment, his attorney argued.

Crabb disagreed, saying that should be up to a jury to decide.

"The test for determining whether an unlawful strip search occurred is not dependent upon the subjective intent of the officer giving the order. Such intent is generally 'irrelevant in determining whether that officer's actions violate the Fourth Amendment,' " she wrote, quoting an earlier decision.

That's a different standard than the one Milwaukee Police Chief Edward Flynn has said he will use in determining potential discipline for District 5 officers in the strip search investigation here.

"We will be governed by many variables," he said at a news conference last month. "Among them are: the motivation for the conduct, the experience level of the officer, their intent, their knowledge of policy, as well as the actual violation."

The recent U.S. Supreme Court [decision](#) regarding strip searches does not apply to the one in Beloit and those under investigation in Milwaukee for one key reason: The local searches were performed on the street, while the case before the Supreme Court, filed by New Jersey resident Albert W. Florence, involved searches inside jails.

Florence, a passenger when his wife was pulled over for speeding, was arrested for outstanding fines - which, as it turns out, he had actually paid. He spent a week in two jails.

At each one, he was forced to take off his clothes and show officers his buttocks and genitals. The officers did not touch him.

Florence argued that jailers should not be allowed to do that type of search on someone arrested for a minor offense unless they have "reasonable suspicion" they will find contraband.

The majority court opinion said privacy rights are not as important as security in jails.

The high court did not address searches performed in public. In those situations, a Court of Appeals case known as *Campbell vs. Miller* still applies.

That decision, cited by Crabb in her pretrial ruling in the Beloit case, says: "Courts across the country are uniform in their condemnation of intrusive searches performed in public."

The Campbell decision also cites an earlier case, which found that "police conduct that would be impractical or unreasonable - or embarrassingly intrusive - on the street can more readily - and privately - be performed at the station."

The only exception is "exigent circumstances," or a reasonable belief the evidence will be destroyed unless the search is done right away.

In addition to reiterating the problems with public strip searches, Crabb's pretrial decision in the Beloit case also said a city can be held liable if the actions in question are "carried out as part of an express policy of the city," or if they are part of a "widespread practice."

One incident isn't enough to qualify. Several incidents that go unpunished could be.

Officer not disciplined

Daugherty was not disciplined as a result of the way he treated Poff, according to court records. Poff was not charged with a crime but received a municipal citation, according to his attorney.

The officer's statement about why he didn't take Poff to the station for the search "could imply that defendant City has a custom or practice of conducting public strip searches," Crabb wrote.

That sort of custom or practice would leave the city on the hook for possible damages.

If the supervisor under investigation in Milwaukee, Sgt. Jason [Mucha](#), condoned or ordered strip searches or cavity searches in District 5, that could be enough to subject the city to similar liability here - which could amount to hundreds of thousands of dollars or more in damages.

Cavity searches, which are more intrusive than strip searches because they involve penetration, may never be performed by a police officer under any circumstances, according to both Milwaukee police policy and state law.

Cavity searches can be performed only by a doctor, physician assistant or registered nurse after a defendant is in custody. A search warrant also is required for a cavity search.

The Beloit case was set for trial April 16. The trial was canceled when parties agreed on the settlement late last month.

If the case had gone to trial, Scarr believes a jury would have concluded that the search violated Poff's rights.

"The illegal strip search was a very serious matter," she said. "Even if (Daugherty) had probable cause to do a search, it was done in a manner that I believe the jury would have deemed unconstitutional. . . . There was no emergency that would necessitate doing this search right there immediately on the spot on the street."

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