

SUBJECT: Requiring a search warrant for body cavity search during traffic stop

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 9 ayes — Phillips, Nevárez, Burns, Dale, Johnson, Metcalf, Moody, M. White, Wray
0 nays

WITNESSES: For — (*Registered, but did not testify:* Kristin Etter, Texas Criminal Defense Lawyers Association; Teresa Beckmeyer; Joe Palmer; Jason Vaughn)
Against — Christopher Jones, the Combined Law Enforcement Associations of Texas (CLEAT); (*Registered, but did not testify:* Bill Elkin, Houston Police Retired Officers Association; Lon Craft, Texas Municipal Police Association)
On — (*Registered, but did not testify:* Phillip Adkins and Justin Chrane, Texas Department of Public Safety)

DIGEST: CSHB 324 would amend Code of Criminal Procedure, ch. 18 to require an officer to obtain a search warrant before conducting a body cavity search during a traffic stop. A body cavity search would include an inspection of a person’s anal or vaginal cavity in any manner.
This bill would take effect September 1, 2015.

SUPPORTERS SAY: CSHB 324 would help protect Fourth Amendment rights against unreasonable searches and seizures by requiring an officer to obtain a search warrant to conduct a body cavity search during a traffic stop.
Body cavity searches during a traffic stop are intrusive and unsanitary, and many law enforcement agencies have recognized this by implementing policies that require officers to obtain a warrant to conduct

this type of search. This bill would bring uniformity to state policy on requirements for cavity searches at traffic stops.

Although requiring an officer to obtain a warrant may take some additional time, body cavity searches are such a substantial invasion of privacy that this is necessary to ensure the search is used only when appropriate. The bill would not cause a person to be brought into a police station unnecessarily because the person still may consent to a body cavity search without a warrant if the person wants to be cleared immediately.

Recent cases of improper body cavity searches in Texas are not isolated incidents but reflect a larger pattern. Some police officers conduct these searches without a warrant because they are eager to uncover drugs, and this bill would provide a necessary check on such practices.

Police officers generally are required to obtain warrants to search an individual's car or home, so searching an individual's body should demand equal if not more stringent requirements. Requiring a warrant for all body cavity searches also would help prevent officers from improperly profiling individuals in low-income communities where body cavity searches are more prevalent.

Violating an individual's Fourth Amendment right against an unreasonable search could lead to exclusion of evidence collected against a dangerous criminal. Requiring all police officers to obtain a warrant would ensure that the search had appropriate probable cause and was approved by a magistrate, which would protect any valuable evidence collected from exclusion.

**OPPONENTS
SAY:**

CSHB 324 would inappropriately remove the authority of trained law enforcement officers to decide when an immediate threat during a traffic stop warranted a body cavity search.

Officers may conduct a traffic stop with reasonable suspicion alone, and requiring a warrant with probable cause for body cavity searches could delay law enforcement. It also could cause innocent individuals to

unnecessarily be brought into a police station while awaiting the warrant when they could have been cleared immediately by conducting the search at a traffic stop.

Improper searches at traffic stops are not a systemic problem. It is not necessary for all police officers to be restrained in exercising judgment and doing their jobs because of a few isolated incidents of bad judgment by individual police officers.