

## As Introduced

133rd General Assembly

Regular Session

2019-2020

**S. B. No. 49**

**Senator Eklund**

**Cosponsors: Senators Thomas, Fedor**

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## A BILL

To amend section 2933.32 of the Revised Code to  
authorize a corrections officer to cause a body  
cavity search to be conducted or to conduct a  
strip search and to establish separate rules for  
conducting strip searches.

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## **BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 2933.32 of the Revised Code be  
amended to read as follows:

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**Sec. 2933.32.** (A) As used in this section:

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(1) "Body cavity search" means an inspection of the anal  
or vaginal cavity of a person that is conducted visually,  
manually, by means of any instrument, apparatus, or object, or  
in any other manner while the person is detained or arrested for  
the alleged commission of a misdemeanor or traffic offense.

(2) "Strip search" means an-a visual inspection of the  
genitalia, buttocks, breasts, or undergarments of a person that  
is preceded by the removal or rearrangement of some or all of  
the person's clothing that directly covers the person's  
genitalia, buttocks, breasts, or undergarments ~~and that is~~

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~~conducted visually, manually, by means of any instrument, apparatus, or object, or in any other manner while the person is detained or arrested for the alleged commission of a misdemeanor or traffic offense. "Strip search" does not mean the visual observation of a person who was afforded a reasonable opportunity to secure release on bail or recognizance, who fails to secure such release, and who is to be integrated with the general population of any detention facility, while the person is changing into clothing that is required to be worn by inmates in the facility.~~

(3) "Exigent circumstances" means, with respect to a strip search, any set of temporary and unforeseen circumstances that require immediate action, for either of the following purposes:

(a) To address any potential or actual threat to the security or institutional order of the facility in which the search is to be conducted or to which the person who is being searched will be taken;

(b) To protect the welfare of the person who is being searched.

(4) "General population of a local detention facility" means those persons who have not secured release within a reasonable time after the person's initial booking and therefore are housed, or classified to be housed, in areas that are not designated for booking, intake, or temporary special housing.

(5) "Local detention facility" means a county jail, municipal jail, regional jail, twelve-day jail, twelve-hour jail, temporary holding facility, or workhouse.

(B) (1) Except as authorized by this division, no law enforcement officer, ~~other corrections officer~~, employee of a

law enforcement agency or corrections agency, physician, or 48  
registered nurse or licensed practical nurse shall conduct or 49  
cause to be conducted a body cavity search ~~or a strip search~~. 50

(2) A body cavity search ~~or strip search~~ may be conducted 51  
if a law enforcement officer, corrections officer, or employee 52  
of a law enforcement agency or corrections agency has probable 53  
cause to believe that the person is concealing evidence of the 54  
commission of a criminal offense, including fruits or tools of a 55  
crime, contraband, or a deadly weapon, as defined in section 56  
2923.11 of the Revised Code, that could not otherwise be 57  
discovered. In determining probable cause for purposes of this 58  
section, a law enforcement officer, corrections officer, or 59  
employee of a law enforcement agency or corrections agency shall 60  
consider the nature of the offense with which the person to be 61  
searched is charged, the circumstances of the person's arrest, 62  
and, if known, the prior conviction record of the person. 63

(3) A body cavity search ~~or strip search~~ may be conducted 64  
for any legitimate medical or hygienic reason. 65

(4) Unless there is a legitimate medical reason or medical 66  
emergency justifying a warrantless search, a body cavity search 67  
shall be conducted only after a search warrant is issued that 68  
authorizes the search. In any case, a body cavity search shall 69  
be conducted under sanitary conditions and only by a physician, 70  
or a registered nurse or licensed practical nurse, who is 71  
registered or licensed to practice in this state. 72

(5) Unless there is a legitimate medical reason or medical 73  
emergency that makes obtaining written authorization 74  
impracticable, a body cavity search ~~or strip search~~ shall be 75  
conducted only after a law enforcement officer, corrections 76  
officer, or employee of a law enforcement agency or corrections 77

agency obtains a written authorization for the search from the 78  
person in command of the law enforcement agency or corrections 79  
agency, or from a person specifically designated by the person 80  
in command to give a written authorization for either type of a 81  
body cavity search. 82

(6) A body cavity search ~~or strip search of a person~~ shall 83  
be conducted ~~by a person or persons who are of the same sex as~~ 84  
~~the person who is being searched and the search shall be~~ 85  
~~conducted~~ in a manner and in a location that permits only the 86  
person or persons who are physically conducting the search and 87  
the person who is being searched to observe the search. 88

(C) (1) Upon completion of a body cavity search ~~or strip~~ 89  
~~search~~ pursuant to this section, the person or persons who 90  
conducted the search shall prepare a written report concerning 91  
the search that shall include all of the following: 92

(a) The written authorization for the search obtained from 93  
the person in command of the law enforcement agency or 94  
corrections agency, or his the person's designee, if required by 95  
division (B) (5) of this section; 96

(b) The name of the person who was searched; 97

(c) The name of the person or persons who conducted the 98  
search, the time and date of the search, and the place at which 99  
the search was conducted; 100

(d) A list of the items, if any, recovered during the 101  
search; 102

(e) The facts upon which the law enforcement officer, 103  
corrections officer, or employee of the law enforcement agency 104  
or corrections agency based his the officer or employee's 105  
probable cause for the search, including, but not limited to, 106

the officer or employee's review of the nature of the offense 107  
with which the searched person is charged, the circumstances of- 108  
~~his~~ the person's arrest, and, if known, ~~his~~ the person's prior 109  
conviction record; 110

(f) If the body cavity search was conducted before or 111  
without the issuance of a search warrant pursuant to division 112  
(B) (4) of this section, or if the body cavity ~~or strip~~ search 113  
was conducted before or without the granting of written 114  
authorization pursuant to division (B) (5) of this section, the 115  
legitimate medical reason or medical emergency that justified 116  
the warrantless search or made obtaining written authorization 117  
impracticable. 118

(2) A copy of the written report required by division (C) 119  
(1) of this section shall be kept on file in the law enforcement 120  
agency or corrections agency, and another copy of it shall be 121  
given to the person who was searched. 122

(D) (1) ~~This~~ (a) An administrator of a local detention 123  
facility may require a person who is part of the general 124  
population of the local detention facility to undergo a strip 125  
search immediately after the booking process at the local 126  
detention facility in order to identify concealed contraband, a 127  
weapon, or evidence of the commission of a criminal offense, 128  
including fruits or tools of a crime. 129

(b) An administrator of a local detention facility may 130  
require a person who is an inmate and who is housed with the 131  
general population of the local detention facility to undergo a 132  
strip search at any time in order to identify concealed 133  
contraband, a weapon, or evidence of the commission of a 134  
criminal offense, including fruits or tools of a crime. 135

<u>(c) As used in divisions (D) (2) to (5) of this section,</u>	136
<u>"strip search subject" means a person who is to be searched</u>	137
<u>through a strip search, or who is undergoing a strip search,</u>	138
<u>under division (D) (1) (a) or (b) of this section.</u>	139
<u>(2) If a strip search subject is required to undergo a</u>	140
<u>strip search under division (D) (1) of this section and refuses</u>	141
<u>to remove or rearrange some or all of the subject's clothing</u>	142
<u>that directly covers the subject's genitalia, buttocks, breasts,</u>	143
<u>or undergarments, the person or persons who are conducting the</u>	144
<u>strip search may remove or rearrange the subject's clothing as</u>	145
<u>is necessary to proceed with the visual inspection of the</u>	146
<u>subject's genitalia, buttocks, breasts, or undergarments.</u>	147
<u>(3) If a strip search subject is required to undergo a</u>	148
<u>strip search under division (D) (1) of this section, the person</u>	149
<u>or persons who are conducting the strip search may require the</u>	150
<u>subject to manipulate the subject's genitalia, buttocks,</u>	151
<u>breasts, or undergarments as necessary for the visual inspection</u>	152
<u>of the subject's genitalia, buttocks, breasts, or undergarments.</u>	153
<u>If the strip search subject refuses to manipulate the subject's</u>	154
<u>genitalia, buttocks, breasts, or undergarments as required, the</u>	155
<u>person or persons conducting the strip search may manipulate the</u>	156
<u>subject's genitalia, buttocks, breasts, or undergarments as is</u>	157
<u>necessary for the visual inspection of the subject's genitalia,</u>	158
<u>buttocks, breasts, or undergarments.</u>	159
<u>(4) A strip search conducted under division (D) (1) of this</u>	160
<u>section shall be conducted in accordance with the following:</u>	161
<u>(a) The search shall be conducted by a person or persons</u>	162
<u>who are law enforcement officers, corrections officers, or</u>	163
<u>employees of a law enforcement agency or corrections agency.</u>	164

(b) Except in exigent circumstances, the search shall be 165  
conducted by a person or persons who are of the same sex as the 166  
strip search subject who is being searched. 167

(c) Notwithstanding division (D) (4) (b) of this section, if 168  
the strip search subject who is to be searched states, prior to 169  
the search, that the subject's gender is other than the 170  
subject's birth gender, the subject shall be asked whether it is 171  
most appropriate for male personnel or for female personnel to 172  
conduct the search and the search may be conducted in accordance 173  
with the subject's response. 174

(d) If, in the circumstances described in division (D) (4) 175  
(c) of this section, a strip search is conducted other than in 176  
accordance with the strip search subject's response, the person 177  
or persons who conducted the strip search shall prepare a 178  
written report concerning the search that shall include the 179  
information described in divisions (C) (1) (b), (c), and (d) of 180  
this section and a statement as to why the strip search was 181  
conducted in the manner in which it was conducted. The 182  
requirements of division (C) (2) of this section apply to the 183  
written report required by this division. 184

(5) No administrator of a local detention facility shall 185  
cause a strip search subject to undergo a strip search under 186  
division (D) (1) of this section that does not conform to 187  
division (D) (4) of this section, and no person shall conduct a 188  
strip search of a strip search subject that does not conform to 189  
division (D) (4) of this section. 190

(E) (1) Subject to division (E) (4) of this section, this 191  
section does not preclude the prosecution of a law enforcement 192  
officer, corrections officer, or employee of a law enforcement 193  
agency or corrections agency for the violation of any other 194

section of the Revised Code.	195
(2) <u>This</u> <u>Subject to division (E) (4) of this section, this</u> section does not limit, and shall not be construed to limit, any statutory or common law rights of a person to obtain injunctive relief or to recover damages in a civil action.	196 197 198 199
(3) If a person is subjected to a body cavity search or strip search in violation of this section, <u>subject to division</u> <u>(E) (4) of this section,</u> any person may commence a civil action to recover compensatory damages for any injury, death, or loss to person or property or any indignity arising from the violation. In the civil action, the court may award punitive damages to the plaintiffs if they prevail in the action, and it may award reasonable attorney's fees to the parties who prevail in the action.	200 201 202 203 204 205 206 207 208
(4) <u>This</u> <u>Divisions (E) (1) to (3) of this section does do</u> not apply <u>with respect</u> to body cavity searches or strip searches of persons who have been sentenced to serve a term of imprisonment and who are serving that term in a <u>local</u> detention facility, <u>as defined in section 2921.01 of the Revised Code.</u>	209 210 211 212 213
(E) (F) (1) Whoever violates division (B) <u>or</u> (D) (5) of this section is guilty of conducting an unauthorized search, a misdemeanor of the first degree.	214 215 216
(2) Whoever violates division (C) of this section is guilty of failure to prepare a proper search report, a misdemeanor of the fourth degree.	217 218 219
<b>Section 2.</b> That existing section 2933.32 of the Revised Code is hereby repealed.	220 221