

As Introduced

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S. B. No. 49

Senator Eklund

Cosponsors: Senators Thomas, Fedor

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.

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:

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

(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~~

~~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, or 103
corrections officer, or employee of the law enforcement agency or 104
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

(c) As used in divisions (D) (2) to (5) of this section, 136
"strip search subject" means a person who is to be searched 137
through a strip search, or who is undergoing a strip search, 138
under division (D) (1) (a) or (b) of this section. 139

(2) If a strip search subject is required to undergo a 140
strip search under division (D) (1) of this section and refuses 141
to remove or rearrange some or all of the subject's clothing 142
that directly covers the subject's genitalia, buttocks, breasts, 143
or undergarments, the person or persons who are conducting the 144
strip search may remove or rearrange the subject's clothing as 145
is necessary to proceed with the visual inspection of the 146
subject's genitalia, buttocks, breasts, or undergarments. 147

(3) If a strip search subject is required to undergo a 148
strip search under division (D) (1) of this section, the person 149
or persons who are conducting the strip search may require the 150
subject to manipulate the subject's genitalia, buttocks, 151
breasts, or undergarments as necessary for the visual inspection 152
of the subject's genitalia, buttocks, breasts, or undergarments. 153
If the strip search subject refuses to manipulate the subject's 154
genitalia, buttocks, breasts, or undergarments as required, the 155
person or persons conducting the strip search may manipulate the 156
subject's genitalia, buttocks, breasts, or undergarments as is 157
necessary for the visual inspection of the subject's genitalia, 158
buttocks, breasts, or undergarments. 159

(4) A strip search conducted under division (D) (1) of this 160
section shall be conducted in accordance with the following: 161

(a) The search shall be conducted by a person or persons 162
who are law enforcement officers, corrections officers, or 163
employees of a law enforcement agency or corrections agency. 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) ~~This~~ Subject to division (E) (4) of this section, this 196
section does not limit, and shall not be construed to limit, any 197
statutory or common law rights of a person to obtain injunctive 198
relief or to recover damages in a civil action. 199

(3) If a person is subjected to a body cavity search or 200
strip search in violation of this section, subject to division 201
(E) (4) of this section, any person may commence a civil action 202
to recover compensatory damages for any injury, death, or loss 203
to person or property or any indignity arising from the 204
violation. In the civil action, the court may award punitive 205
damages to the plaintiffs if they prevail in the action, and it 206
may award reasonable attorney's fees to the parties who prevail 207
in the action. 208

(4) ~~This~~ Divisions (E) (1) to (3) of this section does do 209
not apply with respect to body cavity searches or strip searches 210
of persons who have been sentenced to serve a term of 211
imprisonment and who are serving that term in a local detention 212
facility, ~~as defined in section 2921.01 of the Revised Code.~~ 213

~~(E)~~ (F) (1) Whoever violates division (B) or (D) (5) of this 214
section is guilty of conducting an unauthorized search, a 215
misdemeanor of the first degree. 216

(2) Whoever violates division (C) of this section is 217
guilty of failure to prepare a proper search report, a 218
misdemeanor of the fourth degree. 219

Section 2. That existing section 2933.32 of the Revised 220
Code is hereby repealed. 221