

As Introduced

**132nd General Assembly
Regular Session
2017-2018**

S. B. No. 138

Senator Eklund



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, to establish
separate rules and restrictions for conducting
strip searches, and to limit the right of any
person to commence a civil action for a
violation of the law governing body cavity
searches and strip searches to violations
related to body cavity 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 20
the person's clothing that directly covers the person's 21
genitalia, buttocks, breasts, or undergarments ~~and that is~~ 22
~~conducted visually, manually, by means of any instrument,~~ 23
~~apparatus, or object, or in any other manner while the person is~~ 24
~~detained or arrested for the alleged commission of a misdemeanor~~ 25
~~or traffic offense. "Strip search" does not mean the visual~~ 26
~~observation of a person who was afforded a reasonable~~ 27
~~opportunity to secure release on bail or recognizance, who fails~~ 28
~~to secure such release, and who is to be integrated with the~~ 29
~~general population of any detention facility, while the person~~ 30
~~is changing into clothing that is required to be worn by inmates~~ 31
~~in the facility.~~ 32

(3) "General population of a local detention facility" 33
means those inmates who have not secured release within a 34
reasonable time after the inmate's initial booking and therefore 35
have been classified and housed in areas that are not designated 36
for booking, intake, or temporary special housing. 37

(4) "Local detention facility" means a county jail, 38
municipal jail, regional jail, twelve-day jail, twelve-hour 39
jail, temporary holding facility, or workhouse. 40

(B) (1) Except as authorized by this division, no law 41
enforcement officer, ~~other corrections officer,~~ employee of a 42
law enforcement agency or corrections agency, physician, or 43
registered nurse or licensed practical nurse shall conduct or 44
cause to be conducted a body cavity search ~~or a strip search.~~ 45

(2) A body cavity search ~~or strip search~~ may be conducted 46
if a law enforcement officer, corrections officer, or employee 47
of a law enforcement agency or corrections agency has probable 48
cause to believe that the person is concealing evidence of the 49

commission of a criminal offense, including fruits or tools of a 50
crime, contraband, or a deadly weapon, as defined in section 51
2923.11 of the Revised Code, that could not otherwise be 52
discovered. In determining probable cause for purposes of this 53
section, a law enforcement officer, corrections officer, or 54
employee of a law enforcement agency or corrections agency shall 55
consider the nature of the offense with which the person to be 56
searched is charged, the circumstances of the person's arrest, 57
and, if known, the prior conviction record of the person. 58

(3) A body cavity search ~~or strip search~~ may be conducted 59
for any legitimate medical or hygienic reason. 60

(4) Unless there is a legitimate medical reason or medical 61
emergency justifying a warrantless search, a body cavity search 62
shall be conducted only after a search warrant is issued that 63
authorizes the search. In any case, a body cavity search shall 64
be conducted under sanitary conditions and only by a physician, 65
or a registered nurse or licensed practical nurse, who is 66
registered or licensed to practice in this state. 67

(5) Unless there is a legitimate medical reason or medical 68
emergency that makes obtaining written authorization 69
impracticable, a body cavity search ~~or strip search~~ shall be 70
conducted only after a law enforcement officer, corrections 71
officer, or employee of a law enforcement agency or corrections 72
agency obtains a written authorization for the search from the 73
person in command of the law enforcement agency or corrections 74
agency, or from a person specifically designated by the person 75
in command to give a written authorization for ~~either type of a~~ 76
body cavity search. 77

(6) A body cavity search ~~or strip search~~ shall be 78
conducted by a person or persons who are of the same sex as the 79

person who is being searched and the search shall be conducted 80
in a manner and in a location that permits only the person or 81
persons who are physically conducting the search and the person 82
who is being searched to observe the search. 83

(C) (1) Upon completion of a body cavity search ~~or strip-~~ 84
~~search~~ pursuant to this section, the person or persons who 85
conducted the search shall prepare a written report concerning 86
the search that shall include all of the following: 87

(a) The written authorization for the search obtained from 88
the person in command of the law enforcement agency or 89
corrections agency, or ~~his~~ the person's designee, if required by 90
division (B) (5) of this section; 91

(b) The name of the person who was searched; 92

(c) The name of the person or persons who conducted the 93
search, the time and date of the search, and the place at which 94
the search was conducted; 95

(d) A list of the items, if any, recovered during the 96
search; 97

(e) The facts upon which the law enforcement officer, 98
corrections officer, or employee of the law enforcement agency 99
or corrections agency based ~~his~~ the officer or employee's 100
probable cause for the search, including, but not limited to, 101
the officer or employee's review of the nature of the offense 102
with which the searched person is charged, the circumstances of 103
~~his~~ the person's arrest, and, if known, ~~his~~ the person's prior 104
conviction record; 105

(f) If the body cavity search was conducted before or 106
without the issuance of a search warrant pursuant to division 107
(B) (4) of this section, or if the body cavity ~~or strip-~~ search 108

was conducted before or without the granting of written 109
authorization pursuant to division (B) (5) of this section, the 110
legitimate medical reason or medical emergency that justified 111
the warrantless search or made obtaining written authorization 112
impracticable. 113

(2) A copy of the written report required by division (C) 114
(1) of this section shall be kept on file in the law enforcement 115
agency or corrections agency, and another copy of it shall be 116
given to the person who was searched. 117

(D) (1) This section does not preclude the prosecution of a 118
law enforcement officer, corrections officer, or employee of a 119
law enforcement agency or corrections agency for the violation 120
of any other section of the Revised Code. 121

(2) This section does not limit, and shall not be 122
construed to limit, any statutory or common law rights of a 123
person to obtain injunctive relief or to recover damages in a 124
civil action. 125

(3) If a person is subjected to a body cavity search ~~or~~ 126
~~strip search~~ in violation of this section, any person may 127
commence a civil action to recover compensatory damages for any 128
injury, death, or loss to person or property or any indignity 129
arising from the violation. In the civil action, the court may 130
award punitive damages to the plaintiffs if they prevail in the 131
action, and it may award reasonable attorney's fees to the 132
parties who prevail in the action. 133

(4) This section does not apply to ~~body cavity strip~~ 134
~~searches or strip searches~~ of persons who have been sentenced to 135
serve a term of imprisonment and who are serving that term in a 136
local detention facility, ~~as defined in section 2921.01 of the~~ 137

Revised Code. 138

(E) (1) (a) An administrator of a local detention facility shall require an arrestee to undergo a strip search during the booking process at the local detention facility in order to identify concealed contraband, a weapon, or evidence of the commission of a criminal offense, including fruits or tools of a crime. 139
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(b) An administrator of a local detention facility shall require an inmate who is committed to the general population of the local detention facility to undergo a strip search in order to identify concealed contraband, a weapon, or evidence of the commission of a criminal offense, including fruits or tools of a crime. 145
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(2) If an arrestee or inmate is required to undergo a strip search under division (E) (1) of this section and refuses to remove or rearrange some or all of the arrestee's or inmate's clothing that directly covers the arrestee's or inmate's genitalia, buttocks, breasts, or undergarments, the person or persons who are conducting the strip search may remove or rearrange the arrestee's or inmate's clothing as is necessary to proceed with the visual inspection of the arrestee's or inmate's genitalia, buttocks, breasts, or undergarments. 151
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(3) If an arrestee or inmate is required to undergo a strip search under division (E) (1) of this section, the person or persons who are conducting the strip search may require the arrestee or inmate to manipulate the arrestee's or inmate's genitalia, buttocks, breasts, or undergarments as necessary for the visual inspection of the arrestee's or inmate's genitalia, buttocks, breasts, or undergarments. If the arrestee or inmate refuses to manipulate the arrestee's or inmate's genitalia, 160
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buttocks, breasts, or undergarments as required, the person or 168
persons conducting the strip search may manipulate the 169
arrestee's or inmate's genitalia, buttocks, breasts, or 170
undergarments as is necessary for the visual inspection of the 171
arrestee's or inmate's genitalia, buttocks, breasts, or 172
undergarments. 173

(4) A strip search conducted under this division shall be 174
conducted by a person or persons who are of the same sex as the 175
person who is being searched. 176

(F)(1) Whoever violates division (B) of this section is 177
guilty of conducting an unauthorized search, a misdemeanor of 178
the first degree. 179

(2) Whoever violates division (C) of this section is 180
guilty of failure to prepare a proper search report, a 181
misdemeanor of the fourth degree. 182

Section 2. That existing section 2933.32 of the Revised 183
Code is hereby repealed. 184