

As Reported by the Senate Judiciary Committee

132nd General Assembly

Regular Session

Sub. S. B. No. 138

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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 modify the
provisions regarding the gender of a person who
may conduct a body cavity search or strip
search, and to establish separate rules and
restrictions 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.

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(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

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genitalia, buttocks, breasts, or undergarments ~~and that is~~ 20
~~conducted visually, manually, by means of any instrument,~~ 21
~~apparatus, or object, or in any other manner while the person is~~ 22
~~detained or arrested for the alleged commission of a misdemeanor~~ 23
~~or traffic offense. "Strip search" does not mean the visual~~ 24
~~observation of a person who was afforded a reasonable~~ 25
~~opportunity to secure release on bail or recognizance, who fails~~ 26
~~to secure such release, and who is to be integrated with the~~ 27
~~general population of any detention facility, while the person~~ 28
~~is changing into clothing that is required to be worn by inmates~~ 29
~~in the facility.~~ 30

(3) "Exigent circumstances" means, with respect to a strip 31
search, any set of temporary and unforeseen circumstances that 32
require immediate action, for either of the following purposes: 33

(a) To address any potential or actual threat to the 34
security or institutional order of the facility in which the 35
search is to be conducted or to which the person who is being 36
searched will be taken; 37

(b) To protect the welfare of the person who is being 38
searched. 39

(4) "General population of a local detention facility" 40
means those persons who have not secured release within a 41
reasonable time after the person's initial booking and therefore 42
are housed, or classified to be housed, in areas that are not 43
designated for booking, intake, or temporary special housing. 44

(5) "Local detention facility" means a county jail, 45
municipal jail, regional jail, twelve-day jail, twelve-hour 46
jail, temporary holding facility, or workhouse. 47

(B) (1) Except as authorized by this division, no law 48

enforcement officer, ~~other corrections officer~~, employee of a
law enforcement agency ~~or corrections agency~~, physician, or
registered nurse or licensed practical nurse shall conduct or
cause to be conducted a body cavity search ~~or a strip search~~. 49
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(2) A body cavity search ~~or strip search~~ may be conducted
if a law enforcement officer, ~~corrections officer~~, or employee
of a law enforcement agency ~~or corrections agency~~ has probable
cause to believe that the person is concealing evidence of the
commission of a criminal offense, including fruits or tools of a
crime, contraband, or a deadly weapon, as defined in section
2923.11 of the Revised Code, that could not otherwise be
discovered. In determining probable cause for purposes of this
section, a law enforcement officer, ~~corrections officer~~, or
employee of a law enforcement agency ~~or corrections agency~~ shall
consider the nature of the offense with which the person to be
searched is charged, the circumstances of the person's arrest,
and, if known, the prior conviction record of the person. 53
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(3) A body cavity search ~~or strip search~~ may be conducted
for any legitimate medical or hygienic reason. 66
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(4) Unless there is a legitimate medical reason or medical
emergency justifying a warrantless search, a body cavity search
shall be conducted only after a search warrant is issued that
authorizes the search. In any case, a body cavity search shall
be conducted under sanitary conditions and only by a physician,
or a registered nurse or licensed practical nurse, who is
registered or licensed to practice in this state. 68
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(5) Unless there is a legitimate medical reason or medical
emergency that makes obtaining written authorization
impracticable, a body cavity search ~~or strip search~~ shall be
conducted only after a law enforcement officer, ~~corrections~~ 75
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officer, or employee of a law enforcement agency or corrections 79
agency obtains a written authorization for the search from the 80
person in command of the law enforcement agency or corrections 81
agency, or from a person specifically designated by the person 82
in command to give a written authorization for ~~either type of a~~ 83
body cavity search. 84

(6) A body cavity search ~~or strip search of a person~~ shall 85
be conducted ~~by a person or persons who are of the same sex as~~ 86
~~the person who is being searched and the search shall be~~ 87
~~conducted~~ in a manner and in a location that permits only the 88
person or persons who are physically conducting the search and 89
the person who is being searched to observe the search. 90

(C) (1) Upon completion of a body cavity search ~~or strip~~ 91
~~search~~ pursuant to this section, the person or persons who 92
conducted the search shall prepare a written report concerning 93
the search that shall include all of the following: 94

(a) The written authorization for the search obtained from 95
the person in command of the law enforcement agency or 96
corrections agency, or ~~his~~ the person's designee, if required by 97
division (B) (5) of this section; 98

(b) The name of the person who was searched; 99

(c) The name of the person or persons who conducted the 100
search, the time and date of the search, and the place at which 101
the search was conducted; 102

(d) A list of the items, if any, recovered during the 103
search; 104

(e) The facts upon which the law enforcement officer, or 105
corrections officer, or employee of the law enforcement agency 106
or corrections agency based ~~his~~ the officer or employee's 107

probable cause for the search, including, but not limited to,
the officer or employee's review of the nature of the offense
with which the searched person is charged, the circumstances of
~~his~~ the person's arrest, and, if known, ~~his~~ the person's prior
conviction record;

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

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

(D) (1) ~~This~~ (a) An administrator of a local detention
facility may require a person who is part of the general
population of the local detention facility to undergo a strip
search immediately after 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.

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

<u>(c) As used in divisions (D) (2) to (5) of this section,</u>	138
<u>"strip search subject" means a person who is to be searched</u>	139
<u>through a strip search, or who is undergoing a strip search,</u>	140
<u>under division (D) (1) (a) or (b) of this section.</u>	141
<u>(2) If a strip search subject is required to undergo a</u>	142
<u>strip search under division (D) (1) of this section and refuses</u>	143
<u>to remove or rearrange some or all of the subject's clothing</u>	144
<u>that directly covers the subject's genitalia, buttocks, breasts,</u>	145
<u>or undergarments, the person or persons who are conducting the</u>	146
<u>strip search may remove or rearrange the subject's clothing as</u>	147
<u>is necessary to proceed with the visual inspection of the</u>	148
<u>subject's genitalia, buttocks, breasts, or undergarments.</u>	149
<u>(3) If a strip search subject is required to undergo a</u>	150
<u>strip search under division (D) (1) of this section, the person</u>	151
<u>or persons who are conducting the strip search may require the</u>	152
<u>subject to manipulate the subject's genitalia, buttocks,</u>	153
<u>breasts, or undergarments as necessary for the visual inspection</u>	154
<u>of the subject's genitalia, buttocks, breasts, or undergarments.</u>	155
<u>If the strip search subject refuses to manipulate the subject's</u>	156
<u>genitalia, buttocks, breasts, or undergarments as required, the</u>	157
<u>person or persons conducting the strip search may manipulate the</u>	158
<u>subject's genitalia, buttocks, breasts, or undergarments as is</u>	159
<u>necessary for the visual inspection of the subject's genitalia,</u>	160
<u>buttocks, breasts, or undergarments.</u>	161
<u>(4) A strip search conducted under division (D) (1) of this</u>	162
<u>section shall be conducted in accordance with the following:</u>	163
<u>(a) The search shall be conducted by a person or persons</u>	164
<u>who are law enforcement officers, corrections officers, or</u>	165
<u>employees of a law enforcement agency or corrections agency.</u>	166

(b) Except in exigent circumstances, the search shall be 167
conducted by a person or persons who are of the same sex as the 168
strip search subject who is being searched. 169

(c) Notwithstanding division (D) (4) (b) of this section, if 170
the strip search subject who is to be searched states, prior to 171
the search, that the subject's gender is other than the 172
subject's birth gender, the subject shall be asked whether it is 173
most appropriate for male personnel or for female personnel to 174
conduct the search and the search may be conducted in accordance 175
with the subject's response. 176

(d) If, in the circumstances described in division (D) (4) 177
(c) of this section, a strip search is conducted other than in 178
accordance with the strip search subject's response, the person 179
or persons who conducted the strip search shall prepare a 180
written report concerning the search that shall include the 181
information described in divisions (C) (1) (b), (c), and (d) of 182
this section and a statement as to why the strip search was 183
conducted in the manner in which it was conducted. The 184
requirements of division (C) (2) of this section apply to the 185
written report required by this division. 186

(5) No administrator of a local detention facility shall 187
cause a strip search subject to undergo a strip search under 188
division (D) (1) of this section that does not conform to 189
division (D) (4) of this section, and no person shall conduct a 190
strip search of a strip search subject that does not conform to 191
division (D) (4) of this section. 192

(E) (1) Subject to division (E) (4) of this section, this 193
section does not preclude the prosecution of a law enforcement 194
officer, corrections officer, or employee of a law enforcement 195
agency or corrections agency for the violation of any other 196

section of the Revised Code. 197

(2) This Subject to division (E) (4) of this section, this 198
section does not limit, and shall not be construed to limit, any 199
statutory or common law rights of a person to obtain injunctive 200
relief or to recover damages in a civil action. 201

(3) If a person is subjected to a body cavity search or 202
strip search in violation of this section, subject to division 203
(E) (4) of this section, any person may commence a civil action 204
to recover compensatory damages for any injury, death, or loss 205
to person or property or any indignity arising from the 206
violation. In the civil action, the court may award punitive 207
damages to the plaintiffs if they prevail in the action, and it 208
may award reasonable attorney's fees to the parties who prevail 209
in the action. 210

(4) This Divisions (E) (1) to (3) of this section does do 211
not apply with respect to body cavity searches or strip searches 212
of persons who have been sentenced to serve a term of 213
imprisonment and who are serving that term in a local detention 214
facility, as defined in section 2921.01 of the Revised Code. 215

~~(E) (F)~~ (1) Whoever violates division (B) or (D) (5) of this 216
section is guilty of conducting an unauthorized search, a 217
misdemeanor of the first degree. 218

(2) Whoever violates division (C) of this section is 219
guilty of failure to prepare a proper search report, a 220
misdemeanor of the fourth degree. 221

Section 2. That existing section 2933.32 of the Revised 222
Code is hereby repealed. 223