

**As Reported by the Senate Judiciary Committee**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**Sub. S. B. No. 138**

**Senator Eklund**

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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, 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.

**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 49  
law enforcement agency or corrections agency, physician, or 50  
registered nurse or licensed practical nurse shall conduct or 51  
cause to be conducted a body cavity search ~~or a strip search.~~ 52

(2) A body cavity search ~~or strip search~~ may be conducted 53  
if a law enforcement officer, corrections officer, or employee 54  
of a law enforcement agency or corrections agency has probable 55  
cause to believe that the person is concealing evidence of the 56  
commission of a criminal offense, including fruits or tools of a 57  
crime, contraband, or a deadly weapon, as defined in section 58  
2923.11 of the Revised Code, that could not otherwise be 59  
discovered. In determining probable cause for purposes of this 60  
section, a law enforcement officer, corrections officer, or 61  
employee of a law enforcement agency or corrections agency shall 62  
consider the nature of the offense with which the person to be 63  
searched is charged, the circumstances of the person's arrest, 64  
and, if known, the prior conviction record of the person. 65

(3) A body cavity search ~~or strip search~~ may be conducted 66  
for any legitimate medical or hygienic reason. 67

(4) Unless there is a legitimate medical reason or medical 68  
emergency justifying a warrantless search, a body cavity search 69  
shall be conducted only after a search warrant is issued that 70  
authorizes the search. In any case, a body cavity search shall 71  
be conducted under sanitary conditions and only by a physician, 72  
or a registered nurse or licensed practical nurse, who is 73  
registered or licensed to practice in this state. 74

(5) Unless there is a legitimate medical reason or medical 75  
emergency that makes obtaining written authorization 76  
impracticable, a body cavity search ~~or strip search~~ shall be 77  
conducted only after a law enforcement officer, corrections 78

officer, or employee of a law enforcement agency or corrections  
agency obtains a written authorization for the search from the  
person in command of the law enforcement agency or corrections  
agency, or from a person specifically designated by the person  
in command to give a written authorization for ~~either type of a~~  
body cavity search. 79 80 81 82 83 84

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

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

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

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

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

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

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

probable cause for the search, including, but not limited to, 108  
the officer or employee's review of the nature of the offense 109  
with which the searched person is charged, the circumstances of 110  
~~his~~ the person's arrest, and, if known, ~~his~~ the person's prior 111  
conviction record; 112

(f) If the body cavity search was conducted before or 113  
without the issuance of a search warrant pursuant to division 114  
(B) (4) of this section, or if the body cavity ~~or strip~~ search 115  
was conducted before or without the granting of written 116  
authorization pursuant to division (B) (5) of this section, the 117  
legitimate medical reason or medical emergency that justified 118  
the warrantless search or made obtaining written authorization 119  
impracticable. 120

(2) A copy of the written report required by division (C) 121  
(1) of this section shall be kept on file in the law enforcement 122  
agency or corrections agency, and another copy of it shall be 123  
given to the person who was searched. 124

(D) (1) ~~This~~ (a) An administrator of a local detention 125  
facility may require a person who is part of the general 126  
population of the local detention facility to undergo a strip 127  
search immediately after the booking process at the local 128  
detention facility in order to identify concealed contraband, a 129  
weapon, or evidence of the commission of a criminal offense, 130  
including fruits or tools of a crime. 131

(b) An administrator of a local detention facility may 132  
require a person who is an inmate and who is housed with the 133  
general population of the local detention facility to undergo a 134  
strip search at any time in order to identify concealed 135  
contraband, a weapon, or evidence of the commission of a 136  
criminal offense, including fruits or tools of a crime. 137

(c) As used in divisions (D) (2) to (5) of this section, 138  
"strip search subject" means a person who is to be searched 139  
through a strip search, or who is undergoing a strip search, 140  
under division (D) (1) (a) or (b) of this section. 141

(2) If a strip search subject is required to undergo a 142  
strip search under division (D) (1) of this section and refuses 143  
to remove or rearrange some or all of the subject's clothing 144  
that directly covers the subject's genitalia, buttocks, breasts, 145  
or undergarments, the person or persons who are conducting the 146  
strip search may remove or rearrange the subject's clothing as 147  
is necessary to proceed with the visual inspection of the 148  
subject's genitalia, buttocks, breasts, or undergarments. 149

(3) If a strip search subject is required to undergo a 150  
strip search under division (D) (1) of this section, the person 151  
or persons who are conducting the strip search may require the 152  
subject to manipulate the subject's genitalia, buttocks, 153  
breasts, or undergarments as necessary for the visual inspection 154  
of the subject's genitalia, buttocks, breasts, or undergarments. 155  
If the strip search subject refuses to manipulate the subject's 156  
genitalia, buttocks, breasts, or undergarments as required, the 157  
person or persons conducting the strip search may manipulate the 158  
subject's genitalia, buttocks, breasts, or undergarments as is 159  
necessary for the visual inspection of the subject's genitalia, 160  
buttocks, breasts, or undergarments. 161

(4) A strip search conducted under division (D) (1) of this 162  
section shall be conducted in accordance with the following: 163

(a) The search shall be conducted by a person or persons 164  
who are law enforcement officers, corrections officers, or 165  
employees of a law enforcement agency or corrections agency. 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) <del>This</del> <u>Subject to division (E) (4) of this section, this</u>	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, <u>subject to division</u>	203
<u>(E) (4) of this section,</u> 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) <del>This</del> <u>Divisions (E) (1) to (3) of this section does do</u>	211
not apply <u>with respect</u> 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 <u>local</u> detention	214
facility, <del>as defined in section 2921.01 of the Revised Code.</del>	215
<del>(E)</del> <u>(F)</u> (1) Whoever violates division (B) <u>or (D) (5)</u> 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
<b>Section 2.</b> That existing section 2933.32 of the Revised	222
Code is hereby repealed.	223