



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Sub. S.B. 138*

132nd General Assembly
(As Reported by S. Judiciary)

Sen. Eklund

BILL SUMMARY

- Expands the authorization for law enforcement personnel to conduct a body cavity search to also apply to corrections officers and corrections agency employees.
 - Removes strip searches from the current body cavity search authorization described in the preceding dot point, which also authorizes law enforcement officers to conduct strip searches, and establishes separate rules and procedures for conducting strip searches.
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CONTENT AND OPERATION

The bill expands the authorization for the conduct of body cavity searches currently granted to law enforcement personnel to also apply to corrections officers and corrections agency employees, removes strip searches from the application of those provisions, and establishes new rules and procedures to regulate local detention facility personnel in requiring strip searches for persons detained in the facility.

Body cavity searches

In general; protections for body cavity search subjects

Existing law regulates law enforcement officers and other law enforcement agency employees in conducting, or causing the conducting of, body cavity searches. The bill expands the provisions that regulate those officers and employees regarding body cavity searches so that they also apply with respect to corrections officers and

* This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

employees of a corrections agency.¹ The bill does not otherwise substantively change the provisions that regulate those officers and employees regarding body cavity searches, other than with respect to removal of the "same sex searcher" requirement described below and as described below in "**Criminal and civil remedies for violations of provisions regulating body cavity searches or strip searches.**"

When authorized

Under the existing provisions as modified by the bill, except as described below, no law enforcement officer, corrections officer, employee of a law enforcement agency or corrections agency, physician, or nurse may conduct or cause to be conducted a body cavity search. A body cavity 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, that could not otherwise be discovered. In determining probable cause for purposes of this provision, an officer or employee must 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. A body cavity search also may be conducted for any legitimate medical or hygienic reason.²

Unless there is a legitimate medical reason or medical emergency justifying a warrantless search, a body cavity search may be conducted only after a search warrant is issued that authorizes the search. Unless there is a legitimate medical reason or medical emergency that makes obtaining written authorization impracticable, a body cavity search may be conducted only after a law enforcement officer, corrections 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 agency, or from a person specifically designated by the person in command to give a written authorization for a body cavity search.³

Conduct of search

In any case, a body cavity search must be conducted: under sanitary conditions; only by a physician or a nurse, who is registered or licensed to practice in Ohio; and 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. The

¹ R.C. 2933.32(B) and (C).

² R.C. 2933.32(B)(1) to (3).

³ R.C. 2933.32(B)(4) and (5).

bill repeals an existing provision that specifies that a body cavity search must be conducted by a person or persons who are of the same sex as the person who is being searched.⁴

Upon completion of a body cavity search under the provisions described above, the person or persons who conducted it must prepare a written report concerning the search. A copy of the written report must be kept on file in the law enforcement agency or corrections agency, and another copy of it must be given to the person who was searched. The report must include all of the following: (1) the written authorization for the search obtained from the person in command of the law enforcement agency or corrections agency, or the person's designee, if required as described above, (2) the name of the person who was searched, (3) 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, (4) a list of all items recovered during the search, (5) the facts upon which the law enforcement officer, corrections officer, or employee of the law enforcement agency or corrections agency based the officer's or employee's probable cause for the search, including, but not limited to, the officer's or employee's review of the nature of the offense with which the searched person is charged, the circumstances of the person's arrest, and, if known, the person's prior conviction record, and (6) if the search was conducted before or without the issuance of a search warrant, or was conducted before or without the granting of written authorization, the legitimate medical reason or medical emergency that justified the warrantless search or made obtaining written authorization impracticable.⁵

Strip searches

In general

Existing law regulates law enforcement officers and other employees of a law enforcement agency in their conduct, or their causing the conduct, of strip searches. The provisions that regulate those officers and employees regarding strip searches under existing law are the same as those described above that regulate those officers and employees regarding body cavity searches, with a few exceptions regarding provisions that by their nature are only relevant to body cavity searches. The bill removes strip searches from the application of those provisions and establishes new procedures to regulate local detention facility personnel in requiring strip searches for persons detained in the facility.⁶ It also modifies certain remedies for violations of strip search

⁴ R.C. 2933.32(B)(4) and (6).

⁵ R.C. 2933.32(C).

⁶ R.C. 2933.32(B), (C), and (D)(3).



provisions, as described below in "**Criminal and civil remedies for violations of provisions regulating body cavity searches or strip searches.**"

When authorized

Under the bill, an administrator of a "local detention facility" (defined in the bill) may require a person who is part of the "general population of the facility" (defined in the bill) to undergo a strip search immediately after the booking process at the 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. An administrator of a local detention facility also may require a person who is an inmate and who is housed with the facility's general population 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.⁷

Conduct of search

If a person in a local detention facility who is required to undergo a strip search under the provisions described above (under the bill, defined as a "strip search subject") refuses to remove or rearrange some or all of the subject's clothing that directly covers the subject's genitalia, buttocks, breasts, or undergarments, the person or persons conducting the search may remove or rearrange the subject's clothing as is necessary to proceed with the visual inspection of the subject's genitalia, buttocks, breasts, or undergarments. The person or persons conducting the strip search may require the strip search subject to manipulate the subject's genitalia, buttocks, breasts, or undergarments as necessary for the visual inspection of the subject's genitalia, buttocks, breasts, or undergarments. If the strip search subject refuses to manipulate the subject's genitalia, buttocks, breasts, or undergarments as required, the person or persons conducting the search may manipulate the subject's genitalia, buttocks, breasts, or undergarments as is necessary for the visual inspection of the subject's genitalia, buttocks, breasts, or undergarments.⁸

A strip search conducted under the bill's provisions described above must be conducted in accordance with the following:⁹

⁷ R.C. 2933.32(D)(1)(a) and (b).

⁸ R.C. 2933.32(D)(1)(c), (2), and (3).

⁹ R.C. 2933.32(D)(4).



(1) It must be conducted by a person or persons who are law enforcement officers, corrections officers, or employees of a law enforcement agency or corrections agency;

(2) Except in "exigent circumstances" (defined in the bill), it must be conducted by a person or persons who are of the same sex as the strip search subject who is being searched.

(3) Notwithstanding the requirement in paragraph (2), if the strip search subject who is to be searched states, prior to the search, that the subject's gender is other than the subject's birth gender, the subject must be asked whether it is most appropriate for male personnel or for female personnel to conduct the search and the search may be conducted in accordance with the subject's response.

(4) If, in the circumstances described in paragraph (3), a strip search is conducted other than in accordance with the strip search subject's response, the person or persons who conducted the search must prepare a written report concerning the search that must include the name of the person searched, the name of the person or persons who conducted the search, the time and date of the search, the place at which the search was conducted, and a list of all items recovered during the search, and a statement as to why the strip search was conducted in the manner in which it was conducted. A copy of the written report required by this provision must be kept on file in the law enforcement agency or corrections agency, and another copy of it must be given to the person searched.

Criminal and civil remedies for violations of provisions regulating body cavity searches or strip searches

The bill addresses criminal and civil remedies for violations of its provisions regarding the conduct of body cavity searches or strip searches, as follows:

(1) It modifies the current prohibition against a law enforcement officer or law enforcement agency employee conducting a body cavity search or strip search other than as authorized under existing law so that the prohibition applies only with respect to body cavity searches conducted other than as authorized under the bill, extends the prohibition so that it also applies to corrections officers and corrections agency employees, and enacts a separate provision that prohibits an administrator of a local detention facility from causing a strip search subject to undergo a strip search other than in accordance with the bill and prohibits a person from conducting a strip search of a strip search subject other than in accordance with the bill.¹⁰ The bill specifies that a

¹⁰ R.C. 2933.32(B)(1) and (D)(5).

violation of either prohibition is the offense of "conducting an unauthorized search," a first degree misdemeanor.¹¹

(2) It specifies that a violation of its provisions regarding the preparation, maintenance, and distribution of a report with respect to body cavity searches conducted under its provisions, or strip searched conducted under its provisions when such a report is required, is the offense of "failure to prepare a proper search report," a fourth degree misdemeanor.¹²

(3) It specifies that, subject to the exception described below in (6), its provisions regarding body cavity searches and strip searches do not preclude the prosecution of a law enforcement officer, corrections officer, or employee of a law enforcement agency or corrections agency for the violation of any other Revised Code section (same as existing law, with the addition of references to corrections officers and corrections agency employees).¹³

(4) It specifies that, subject to the exception described below in (6), its provisions regarding body cavity searches and strip searches do not limit, and may 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 (same as existing law).¹⁴

(5) It specifies that if a person is subjected to a body cavity search or strip search in violation of its provisions, subject to the exception described below in (6), 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.¹⁵

(6) With respect to the provisions described above in (3), (4), and (5), it limits an existing exemption that currently specifies that those provisions do not apply to body cavity searches or strip searches of persons sentenced to serve a term of imprisonment

¹¹ R.C. 2933.32(F)(1).

¹² R.C. 2933.32(F)(2).

¹³ R.C. 2933.32(E)(1).

¹⁴ R.C. 2933.32(E)(2).

¹⁵ R.C. 2933.32(E)(3).

in a detention facility so that the exemption applies only with respect to persons serving such a term in a "local detention facility."¹⁶

Definitions

With respect to the bill's provisions:¹⁷

"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.

"Strip search" means 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 (currently, the term means an 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; it 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 required to be worn by inmates in the facility).

"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: (1) 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, or (2) to protect the welfare of the person who is being searched.

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

¹⁶ R.C. 2933.32(E)(4).

¹⁷ R.C. 2933.32(A).



"Local detention facility" means a county jail, municipal jail, regional jail, 12-day jail, 12-hour jail, temporary holding facility, or workhouse.

HISTORY

ACTION	DATE
Introduced	04-25-17
Reported, S. Judiciary	---

