



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Dennis M. Papp

S.B. 138

132nd General Assembly
(As Introduced)

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.
 - Removes strip searches from a statutory cause of action that currently authorizes any person to commence a civil action for a violation of the law governing body cavity searches and 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, and limits the bringing of civil actions regarding violations of the law governing body cavity searches and strip searches.

Body cavity searches

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 employees of a corrections agency.¹ The bill also eliminates an exemption that currently specifies that those provisions do not apply to body cavity searches of persons sentenced to serve a term of imprisonment in a detention facility.² The bill does not otherwise substantively change the provisions that regulate those officers and employees regarding body cavity searches.

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.³

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.⁴

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; by a person or persons who are of the same sex as the person who is being searched; and in a

¹ R.C. 2933.32(B), (C), and (D)(3).

² R.C. 2933.32(D)(4).

³ R.C. 2933.32(B)(1) to (3).

⁴ R.C. 2933.32(B)(4) and (5).



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.⁵

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.⁶

Strip searches

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 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.⁷

Under the bill, an administrator of a local detention facility must require an arrestee to undergo a strip search during the booking process at the facility in order to

⁵ R.C. 2933.32(B)(4) and (6).

⁶ R.C. 2933.32(C).

⁷ R.C. 2933.32(B), (C), and (D)(3).



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 must require an inmate who is committed to the facility's general population 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.⁸

A strip search of an arrestee or inmate conducted under the provisions described above must be conducted by a person or persons who are of the same sex as the person who is being searched. If the arrestee or inmate required to undergo the strip search 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 conducting the 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. The person or persons 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, buttocks, breasts, or undergarments as required, the person or persons conducting the search may manipulate the arrestee's or inmate's genitalia, buttocks, breasts, or undergarments as is necessary for the visual inspection of the arrestee's or inmate's genitalia, buttocks, breasts, or undergarments.⁹

Similar to existing law, the bill specifies that its provisions described above do not apply to strip searches of persons sentenced to serve a term of imprisonment who are serving that term in a local detention facility.¹⁰

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 specifies that a violation of its body cavity search prohibition and provisions is the offense of "conducting an unauthorized search," a first degree misdemeanor. Currently, this provision also applies with respect to violations of its

⁸ R.C. 2933.32(E)(1).

⁹ R.C. 2933.32(E)(2) to (4).

¹⁰ R.C. 2933.32(D)(4) and (E).



strip search prohibition and provisions, but the bill removes strip searches from the coverage of the provision.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 is the offense of "failure to prepare a proper search report," a fourth degree misdemeanor. Currently, this provision also applies with respect to violations of the report-related provisions as they apply to strip searches, but the bill removes strip searches from the coverage of the report-related provisions and, thus, from the coverage of this provision.¹²

(3) It specifies that its provisions regarding such 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 its provisions regarding such 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 in violation of its provisions, 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. Currently, this provision also applies with respect to persons subjected to a strip search in violation of the existing strip search-related provisions, but the bill removes strip searches from the coverage of the provision.¹⁵

Definitions

With respect to the bill's provisions:¹⁶

¹¹ R.C. 2933.32(F)(1).

¹² R.C. 2933.32(F)(2).

¹³ R.C. 2933.32(D)(1).

¹⁴ R.C. 2933.32(D)(2).

¹⁵ R.C. 2933.32(D)(3).

¹⁶ R.C. 2933.32(A).



"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).

"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.

"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 |
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| Introduced | 04-25-17 |

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