

Preventing Strip Searches of Children and Youth: A Guide for Advocates

CONNECTICUT SUPPLEMENT

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This guide is designed to inform individuals and organizations about the prevalence of the strip-searching of children and youth in Connecticut and assist those parties in encouraging Connecticut to enact policy prohibiting such strip search, except in the most exceptional circumstances. Today, strip searches in Connecticut are most prevalent in juvenile centers. But children and youth are also unnecessarily strip searched in other settings, causing trauma that can have life-long consequences.

For these reasons, in 2020, the American Bar Association adopted a resolution that urges governments to enact policies to limit strip searches of children and youth to only those situations where certain enumerated requirements are met. This guide provides background research, talking points, and model language that can be used to enact statutes, regulations and contract provisions that govern child-servicing agencies and facilities. The end goal is that fewer Connecticut children and youth will be subjected to this demeaning and dehumanizing practice.

What is the definition of a strip search in Connecticut?

Connecticut does not have a separate legal definition for strip searches of juveniles. Connecticut’s general statute for criminal procedure defines a strip search as having an arrested person or an officer or employee of the police department remove or arrange the arrested individual’s clothing “to permit a visual inspection of the genitals, buttocks, anus, female breasts or undergarments used to clothe said anatomical parts of the body.”¹ All strip searches must “be performed by a person of the same sex as the arrested person and on premises where the search cannot be observed by persons not physically conducting the search.”² Searches of body cavities, with the exception of a person’s mouth, cannot be conducted without a search warrant.³ However, when a person “is remanded to a correctional institution pursuant to a court order,” these protections against strip searches do not apply.⁴

How does a strip search affect a child or youth?

A strip search can traumatize youth. The practice of strip searches is “invasive” and “degrading.”⁵ A strip search can leave a number of emotional and psychological scars, such as anxiety, depression, sleep disturbances, phobic reactions, shame, and guilt.⁶ Because trauma during youth has a significant effect on the development of the brain, the experience of a strip

¹ CONN. GEN. STAT. § 54-33k (2019).

² CONN. GEN. STAT. § 54-33l(c) (2019).

³ CONN. GEN. STAT. § 54-33l(b) (2019).

⁴ CONN. GEN. STAT. § 54-33l(g) (2019).

⁵ Juvenile Law Center, *Addressing Trauma: Eliminating Strip Searches* (June 1, 2017), <https://jlc.org/resources/addressing-trauma-eliminating-strip-searches>.

⁶ *Id.*

search can have long-lasting effects and even affect adulthood.⁷ In addition, survivors of abuse or neglect are susceptible to greater trauma from strip searches.⁸ A 15 year old girl who was a survivor of sexual abuse was detained for violating court orders not to run away. At the detention facility, she was strip searched numerous times. She explained the invasive search “brought back everything [she] had gone through.”⁹ The Second Circuit has explained ““children are especially susceptible to possible traumas from strip searches””¹⁰ because ““youth . . . is a . . . condition of life when a person may be most susceptible . . . to psychological damage.””¹¹

Where and in what circumstances are children and youth in Connecticut subjected to strip searches?

Children in Connecticut can be strip searched in a variety of different settings, including:

In juvenile detention facilities

Connecticut does not have publicly available operational policies governing its JDCs. However, both of Connecticut’s JDCs—Bridgeport and Hartford—are accredited by the American Correctional Association (“ACA”), which ensures Connecticut’s JDCs comply with the ACA’s minimum operational practices for detention centers.¹² The 2016 Standards Supplement¹³ to the ACA’s Minimum Standards for Juvenile Detention Facilities is the most updated version of the ACA’s standards publicly available. The standards require Juvenile Detention Facilities¹⁴ to establish written policies, practices, and procedures providing that visual inspections of juvenile body cavities be conducted by facility workers of the same sex, in private, and “based on reasonable belief that the juvenile is carrying contraband or other prohibited material.”¹⁵ However, “reasonable belief” is “not required when juveniles return from contact with the general public or from outside the institution.”¹⁶ While these are national standards established by the ACA, the Connecticut JDCs’ compliance with these standards, which is required to receive ACA accreditation, clarifies that visual inspection of juveniles’ unclothed bodies may occur in juvenile detention centers throughout the state.

⁷ *Id.*

⁸ *Id.*

⁹ Matthew Purdy, *Our Towns; Stripped And Searched, Even at Age 13*, N.Y. TIMES (July 18, 2001), <http://nytimes.com/2001/07/18/nyregion/our-towns-stripped-and-searched-even-at-age-13.html>.

¹⁰ *N.G. v. Connecticut*, 382 F.3d 225, 233 (2d Cir. 2004) (quoting *Flores v. Meese*, 681 F. Supp. 665, 667 (C.D. Cal. 1988)).

¹¹ *Id.* (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)).

¹² State of Connecticut Judicial Branch, *Court Support Services Division: Juvenile Residential (Detention) Services*, <https://www.jud.ct.gov/CSSD/juvres.htm>.

¹³ AMERICAN CORRECTIONAL ASSOCIATION, 2016 STANDARDS SUPPLEMENT iii (Nov. 2016), <https://www.aca.org/common/Uploaded%20files/2016%20Standards%20Supplement.pdf> [hereinafter 2016 STANDARDS SUPPLEMENT] (“The 2016 Standards Supplement is an update of ACA’s entire collection of adult and juvenile standards manuals. The supplement is a compilation of every addition, deletion, revision and/or interpretation approved by ACA’s Standards Committee through August 2015.”).

¹⁴ *Id.* at 259.

¹⁵ *Id.*

¹⁶ *See id.*

The Connecticut Detention Legal Rights Handbook that is provided to juveniles that will be held in a JDC states that strip searches will occur when a juvenile enters the JDC, returns to the JDC after leaving the property, or if the detention staff thinks the juvenile may have items that are considered dangerous or prohibited, like weapons, tobacco, drugs or alcohol.¹⁷ The Handbook also states that staff must notify the juvenile before a strip search, and that the search must be performed by staff of the same gender.

The JDC strip search process was further described in an article about a lawsuit related to a child strip search as forcing children upon entering juvenile detention centers “to remove their clothes, raise their arms above their heads and squat while an adult checks them for contraband.”¹⁸

The Second Circuit Court of Appeals ruled that the Connecticut Judicial Branch’s repetitive strip search policy at the state’s JDCs violates the Fourth Amendment’s guarantee against unreasonable searches. In *N.G. ex rel. S.G. v. Conn.*, the Court found that although strip searches conducted upon a juvenile’s initial entry into the JDCs are lawful, repetitive strip searches performed upon JDC residents, conducted in the absence of reasonable suspicion, are unconstitutional.¹⁹

In schools

Connecticut follows the Supreme Court case that allows school officials to search students when there is a reasonable suspicion that a search would lead to evidence of a crime or a violation of school rules and the need to maintain order in the school outweighs the student’s legitimate right to personal privacy.²⁰ The Supreme Court concluded that student searches should be conducted in a manner reasonably related to the objectives of the search and should not be excessively intrusive in light of the age and sex of the student and the nature of the infraction.²¹

The Connecticut State Department of Education’s position statement on creating a healthy school environment states that school districts are responsible for developing and implementing “policies and procedures that assist all staff and administrators in creating safe and healthy learning environments that address the needs of every student.”²²

As such, it appears that policies and procedures related to student searches are developed and implemented at the school district board of education level in Connecticut. Connecticut has hundreds of local school districts and the policies and procedures related to student searches, including strip searches, may vary across school districts. For example, the Hamden Public School

¹⁷ Connecticut Judicial Branch, *Juvenile Publications: Legal Rights in Detention* (2015), <https://www.jud.ct.gov/Publications/jm158.pdf>

¹⁸ Colin Poitras, *Lawsuit Challenges Strip-Search Policy*, HARTFORD COURANT (Apr. 3, 2002), <https://www.courant.com/news/connecticut/hc-xpm-2002-04-03-0204031694-story.html>.

¹⁹ 382 F.3d 225.

²⁰ *New Jersey v. T.L.O.*, 469 U.S. 325, 342 (1985); *see also Safford Unified School Dist. No. 1 v. Redding*, 557 U.S. 364 (2009).

²¹ *T.L.O.*, 469 U.S. at 342; *Safford*, 557 U.S. at 379.

²² Connecticut State Board of Education, *Position Statement on Creating a Healthy Learning Environment that is Physically, Emotionally and Intellectually Safe* (Feb. 3, 2010), https://portal.ct.gov/-/media/SDE/Board/Creating_Learning_Environment.pdf.

District Policy 5145.12 (Search and Seizure) prohibits school personnel from conducting student strip searches (defined as those searches that require students to remove their clothes or require the inspection or feeling of parts of the students' bodies).²³ In the event a strip search is believed to be warranted due to the nature of the suspected offense and circumstances, the administrator must call the parents of the student and report the suspicions to the police who will be responsible for any search.²⁴ Similarly, Region 1 School District's Policy 5145.12 (Search and Seizure) also prohibits strip searches conducted by school authorities and requires all student searches to be carried out in the presence of another adult witness.²⁵ The East Lyme School District's Policy 5145.12 (Search and Seizure) permits searches that require the student to remove a jacket or shoes but prohibits "strip searches" by employees of the school district.²⁶ Naugatuck Public Schools permit school officials to search students under special circumstances, particularly if there is reasonable suspicion that a student possesses illegal matter, such as a dangerous weapon or illegal drugs.²⁷ The policy does not directly address strip searches.²⁸

However, in *Phaneuf v. Fraikin*, the Second Circuit Court of Appeals said it was not persuaded that a strip search of a student at a high school in Plainville, CT was constitutional due to the lack of reasonableness of the suspicion prior to the search.²⁹

To visit incarcerated family members in correctional facilities

Unlike some states that have specific rules pertaining to minors who visit correctional facilities, Connecticut does not have special visitation rules on children who visit correctional facilities. The statutes that set the procedure for entering a correctional facility for visitation purposes apply to all visitors. Any visitor who wishes to enter a correctional facility that activates a walk-through metal detector must consent and submit to a search with a portable or hand-held metal detector.³⁰ The visitor is escorted by a correction officer of the same sex to a private location. The visitor is asked to remove any object or clothing that activated the walk-through metal detector and then must submit to a portable or hand-held metal detector search.³¹ If the detector is not activated, the visitor is permitted to reapply the object or article of clothing and enter the correctional institution.

In connection with child neglect or child abuse proceedings

In proceedings in the Superior Court involving suspected abuse or neglect of a child, "the court may order the child, the parents, the guardian, or other persons accused by a competent

²³ Hamden Public School District Policy, *Civil & Legal Rights and Responsibilities: Search and Seizure* (July 2004), https://www.hamden.org/uploaded/Policies/Series_5000/5145.12.pdf.

²⁴ *Id.*

²⁵ Regional School District No. 1 Board of Education Policy, *Search and Seizure* (Oct. 2014), <https://www.region1schools.org/policies/search-and-seizure-112>.

²⁶ East Lyme School District Board of Education Policy, *Students: Search and Seizure* (June 1999), <https://go.boarddocs.com/ct/elsd/Board.nsf/goto?open&id=AZ4V277E8425#>.

²⁷ Naugatuck Public Schools Student & Family Handbook, *Search and Seizure* (2018-2019), https://www.naugatuck.k12.ct.us/apps/pages/index.jsp?uREC_ID=1230916&type=d&pREC_ID=1463622.

²⁸ *See id.*

²⁹ 448 F.3d 591 (2d Cir. 2006).

³⁰ CONN. GEN. STAT. § 18-81v(a)(1) (2019).

³¹ *Id.*

witness of abusing the child, to be examined by one or more competent physicians, psychiatrists or psychologists appointed by the court.”³² Relatedly, a federal district court in the District of Connecticut has clarified that the “Fourth Amendment’s protection against unreasonable searches extends to children being examined by social services workers.”³³

What have federal courts in the Second Circuit said about strip searches of children and youth?

In *N.G. ex rel. S.C. v. Connecticut*, two teenage girls, S.C. and T.W., who entered the custody of Connecticut’s JDCs were strip searched on multiple occasions. S.C. was strip searched each time she was detained or transferred to a new facility, and none of the instances uncovered contraband.³⁴ T.W. was strip searched two times, and again, neither search revealed contraband. The Second Circuit found that the searches conducted upon each initial entry into the custody of the State’s JDCs were lawful, but that repetitive searches, conducted while the girls remained in custody, violated the Fourth Amendment in the absence of reasonable suspicion that contraband was possessed.³⁵ In this opinion, the Second Circuit emphasized how susceptible children are to the trauma of strip searches.³⁶

The Second Circuit addressed the constitutionality of strip searches of students in schools in *Phaneuf v. Franklin*.³⁷ The seniors at Plainville High School, a public high school in Plainville, Connecticut, were scheduled to attend an off-campus class picnic.³⁸ One of the students told a teacher that Kelly Phaneuf, then eighteen years old, possessed marijuana and hid it down her pants during a mandatory bag check.³⁹ Phaneuf’s mother, in the presence of a school nurse, conducted a search of Phaneuf’s underpants, which did not reveal marijuana.⁴⁰ After clarifying that it joined its sister circuits in concluding the “reasonableness” standard for student searches, established in *New Jersey v. TLO*, 469 U.S. 325 (1985), also applied to the review of strip searches of students,⁴¹ the court found the strip search of Phaneuf was not reasonable at its inception since the tip from the student was insufficient to create a reasonable suspicion that Phaneuf was hiding drugs in her underpants.⁴²

³² CONN. GEN. STAT. § 46b-129(a)(1) (2017).

³³ *Smart v. Morgillo*, No. CIV.300CV1281PCD, 2001 WL 802697, at *1 (D. Conn. July 10, 2001) (citing *Tenenbaum v. Williams*, 193 F.3d 581, 606 (2d Cir.1999)). In *Tenenbaum*, the Second Circuit affirmed a district court’s decision that a physical examination of a child in connection with a child abuse investigation, which included an examination of the child’s vagina and surrounding areas, performed without judicial authorization, violated the child’s “Fourth Amendment right to be free from warrantless searches.” 193 F. 3d at 606 (citing *Tenenbaum v. Williams*, 862 F. Supp. 962, 978 (E.D.N.Y. 1994)).

³⁴ 382 F.3d at 233.

³⁵ *Id.* at 226.

³⁶ *Id.* at 233, 239.

³⁷ 448 F.3d 591.

³⁸ *Id.* at 592.

³⁹ *Id.* at 593.

⁴⁰ *Id.* at 594.

⁴¹ *Id.* at 596.

⁴² *See id.* at 600.

In *M.C. v. Sigal*, a federal district court in the District of Connecticut addressed the constitutionality of a rectal search of a fourteen year old boy, R.N.⁴³ R.N. violated his parole and was transported to the Connecticut Juvenile Training Center (“CJTS”), where he was detained.⁴⁴ His parole officer informed a physician working at the CJTS that police suspected R.N. “may have something in his buttocks or anus,” because R.N. refused to unclench his buttocks during a pat down search.⁴⁵ The physician gave authorization to Middlesex Hospital to perform an x-ray and rectal examination on R.N., but no drugs, weapons, or other foreign bodies were discovered during either the x-ray or rectal examination.⁴⁶ The court found the search at issue “substantially similar to the search” upheld in *N.G. v. Connecticut*, because the search “was conducted on a juvenile prior to his entry into a Connecticut juvenile detention center” and “[j]ust as the State in *N.G.* had a duty to protect the juvenile plaintiffs from harm inflicted by themselves as well as to protect the safety of the juvenile institution, the Defendants in this case had the same obligation to prevent the Plaintiff from injuring himself with the suspected secreted substance and to protect the safety of the CJTS.”⁴⁷

What can we do in Connecticut to curb unnecessary strip searches of children and youth?

We must advocate for the elimination of strip searches of youth in any circumstances and particularly the provisions that allow for strip searches of juveniles without reasonable suspicion of a crime. Where strip searches remain in effect, we must advocate for statutory changes that limit when and where and the scope of strip searches of youth.

For example, there are less intrusive methods of searches that have fewer negative impacts on youth that do not require a complete removal of clothing. Strip searches can also be limited to instances where there is an immediate threat of harm posed. For children under state custody who are transferred to new facilities and have remained under continuous supervision of staff members, strip searches should be prohibited.⁴⁸

Do you have model language we can use in statutes, regulations, and contract provisions?

Yes. The American Bar Association passed a resolution urging all federal, state, local, territorial, and tribal governments to adopt policies and contractual provisions that prohibit conducting strip searches of children and youth, except in exceptional circumstances, using the following language:

Strip searches of children and youth are prohibited except when all of the following conditions are met: (1) the child or youth is in custody; (2) there is reasonable suspicion that the child or youth possesses or has immediate access to an implement that poses a threat of imminent bodily harm to themselves or others; (3) all other less intrusive methods of discovering and removing the implement have been

⁴³ No. 3:09-CV-1437 (VLB), 2010 WL 3037846, at *1 (D. Conn. Aug. 4, 2010).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at *5.

⁴⁸ Juvenile Law Center, *Addressing Trauma: Eliminating Strip Searches* (June 1, 2017), <https://jlc.org/resources/addressing-trauma-eliminating-strip-searches>.

exhausted, including the use of alternative search techniques that can be performed while the child or youth is fully clothed; and (4) the child or youth has been given notice, in a manner that is consistent with the child's or youth's primary language and developmental stage, and that takes into account accommodations for disability, that they will be searched and that they have an opportunity to reveal any implement they are carrying instead of being searched.

If a child or youth must be strip-searched, the search shall be conducted in a manner that respects the sexual orientation and gender identity of the child or youth and in the least intrusive manner possible.

Body cavity searches of children and youth are prohibited.