

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

MARYLAND STATE SUPPLEMENT

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July 2021

This guide is designed to inform individuals and organizations about the prevalence of the strip-searching of children and youth in Maryland and assist those parties in encouraging Maryland to enact policy prohibiting such strip searches, except in the most exceptional circumstances. Today, strip searches in Maryland are most publicized in juvenile centers and schools. But children and youth are also unnecessarily strip searched in many 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-serving agencies and facilities. The end goal is that fewer Maryland children and youth will be subjected to this demeaning and dehumanizing practice.

What is the definition of a strip search in Maryland?

The definition of a strip search in Maryland varies by context.

In correctional settings, a strip search is the “observation of an inmate’s unclothed body to determine the presence of contraband.”¹ When a youth is admitted into a Department of Juvenile Services facility, he or she is completely disrobed, and is searched, including an examination of the “youth’s anatomy, which may include head, hair, mouth, torso, pelvic area, legs and feet.”² Youth are also ordered to squat and cough to check if they are concealing something in a body cavity.³ If a body cavity search is deemed necessary, the search is supposed to be performed by a medical professional.⁴

School districts address strip searches in their respective policies. For example, Baltimore City Public Schools define a strip search as “[a]ny search of an individual requiring the removal of some or all clothing to permit the visual inspection of any or all skin surfaces including genital areas, buttocks, anus, female breasts, or undergarments.”⁵

¹ MD. CODE REGS. 12.14.01.01(76) (2021).

² Erica L. Green, *Juveniles in Maryland’s justice system are routinely strip-searched and shackled*, THE BALT. SUN (Mar. 13, 2016), <https://www.baltimoresun.com/news/investigations/bs-md-strip-and-shackle-20160129-story.html> (describing procedures for strip searches in Maryland juvenile facilities).

³ *Id.*

⁴ *Id.*

⁵ *General Order 10-30, Section G-7: Strip Searches and Body Cavity Searches*, BALT. CITY PUB. SCHS. (June 12, 2018) https://www.baltimorecityschools.org/sites/default/files/inline-files/10-30_Searches.pdf.

In a variety of contexts, Maryland state courts have noted that strip searches are distinct from “body cavity searches,” and have defined strip searches as “the removal of [an individual’s] clothing for inspection of the under clothes and/or body” and, in some cases, “a visual inspection of the genital and anal regions of the body.”⁶ By way of comparison, Maryland district courts have defined strip searches as “the exposure of a person’s naked body for the purposes of a visual or physical examination.”⁷

How does a strip search affect children and youth?

In general, a strip search can traumatize children and youth. The practice of strip searches is “invasive” and “degrading.”⁸ A strip search can leave a number of emotional and psychological scars, such as anxiety, depression, sleep disturbances, phobic reactions, shame, and guilt.⁹ Because trauma during youth has a significant effect on the development of the brain, the experience of a strip search can have long-lasting effects and even affect adulthood.¹⁰ In addition, survivors of abuse or neglect are susceptible to greater trauma from strip searches.¹¹

In Maryland, the Juvenile Justice Monitoring Unit (the “JJMU”) investigates the needs of children in state correctional facilities and reports allegations of abuse and treatment of youth held in such facilities.¹² In its 2017 report, the JJMU stated that “children are likely to experience strip searches as degrading, disrespectful, and victimizing. Such searches undermine, rather than enhance, the relationship between youth and facility staff, and work against the child’s rehabilitation.”¹³ A child psychiatrist who evaluated the mental health services provided by state correctional facilities described strip searches as an “unfair restriction of human rights and basic dignity” that can compound the trauma and behavior that led youth into the system in the first place.¹⁴ A 2012 study by the Maryland Department of Juvenile Services found that nearly half of girls placed in state facilities had a history of physical or sexual abuse.¹⁵ Moreover, juvenile correctional policies disproportionately affect young black men who make up the overwhelming majority of teenage boys housed in Maryland’s 14 juvenile facilities.¹⁶

⁶ See, e.g. *State v. Nieves*, 383 Md. 573, 586, 861 A.2d 62, 70 (2004); *Paulino v. State*, 399 Md. 341, 352, 924 A.2d 308, 315 (2007); see also *State v. Harding*, 196 Md. App. 384, 410-15, 9 A.3d 547, 562-65 (2010) (discussing the “strip search continuum”).

⁷ *Swagler v. Sheridan*, 837 F.Supp.2d 509, 533 (D. Md. 2011) (citing *United States v. Dorlouis*, 107 F.3d 248, 256 (4th Cir.1997)).

⁸ *Addressing Trauma: Eliminating Strip Searches*, JUV. L. CTR. (June 1, 2017) <https://jlc.org/sites/default/files/attachments/2020-04/AddressingTrauma-EliminatingStripSearch%20March%202020.pdf>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Juvenile Justice Monitoring Unit*, MD. OFF. OF THE ATT’Y GEN., <https://www.marylandattorneygeneral.gov/Pages/JJM/default.aspx> (last visited Dec. 5, 2021).

¹³ MD. JUV. JUST. MONITORING UNIT, SECOND QUARTER REPORT, at 14 (2017) https://www.marylandattorneygeneral.gov/JJM%20Documents/17_Quarter2.pdf.

¹⁴ Green, *supra* note 2.

¹⁵ *Id.* (“46 percent of girls placed in facilities had a history of physical or sexual abuse.”).

¹⁶ *Id.*

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

Children in Maryland are subjected to strip searches in a variety of settings, including:

In juvenile detention facilities

In Maryland, correctional facilities are required to have written policies governing strip searches of inmates, which are to be “performed in private by facility personnel of the same sex.”¹⁷ Although the policy of the Department of Juvenile Services is not publicly available, investigators given access to the policy have revealed that children are strip searched whenever they are admitted into detention facilities regardless of whether they are being detained for a significant or low-level offense.¹⁸ In 2015, over 4,000 children passed through juvenile detention facilities.¹⁹ Of those found delinquent, about 70 percent were deemed nonviolent offenses by the Department of Juvenile Services.²⁰ The two most common offenses were second-degree assault (generally fights) and theft.²¹ Moreover, detained children and youth are subject to routine strip searches, as reflected in an incident reported where dozens of young males in one facility were strip searched after a teacher lost a key, which was later found in a staff room.²²

In 2016, legislation was proposed to ban strip searches for children and youth in state correctional facilities; however, it was not adopted.²³ The policies were, however, modified in May 2017 when the Department of Juvenile Services ended the prior practice of conducting strip searches after *any* contact with persons from outside of the facility, including visits with their families and attorneys.²⁴ Before this change, public defenders said they had to weigh the benefits of meeting with their young clients face-to-face against the emotional harm of the accompanying strip search.²⁵ Children also often declined visits from their parents to avoid the follow-up search.²⁶ Strip searches are now only allowed: (1) for new youth admissions; (2) when staff have reasonable suspicion that a youth is hiding contraband; and (3) when youth return to a facility from an unsupervised trip in the community (even if it is an outing earned for good behavior).²⁷

By child protective services workers or police officers as part of child welfare investigations

Child Protective Services falls under the Maryland Department of Human Services. Maryland regulations on state investigations of suspected child abuse and neglect provide discretion for conducting physical examinations of alleged victims: “If a local department takes an alleged victim into custody without parental consent or before court approval, the local

¹⁷ MD. CODE REGS. 12.14.04.01(B)(5)(k), 12.14.05.01(C)(5)(k) (2021).

¹⁸ Green, *supra* note 2.

¹⁹ *Id.* (“Statewide, roughly 4,300 youths cycled through the juvenile justice detention system last year.”).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ SECOND QUARTER REPORT, *supra* note 14, at 72.

²⁵ Green, *supra* note 2.

²⁶ *Id.*

²⁷ SECOND QUARTER REPORT, *supra* note 14, at 14, 72; Green, *supra* note 2.

department shall have the child examined to: (a) Relieve any urgent illness or life-threatening health condition; and (b) Determine the nature or extent of any child abuse or neglect.”²⁸ The regulations do not require the child’s consent to conduct an examination, nor do they put any limitations on the types of examinations that are conducted so long as they are deemed necessary to “[d]etermine the nature or extent of any child abuse or neglect.”²⁹ While these regulations are broad, we could not find any cases, articles, or references to strip searches being conducted by Child Protective Services. This is an area ripe for rulemaking or legislation to set forth more defined guidelines for what types of physical examinations, including strip searches, are appropriately conducted and under what specific circumstances.

Maryland’s Family Law statute provides that if law enforcement agencies receive a report of suspected physical or sexual abuse of a child, they are required to initiate an investigation within twenty-four hours.³⁰ During such investigations, police officers must “attempt to have an on-site interview with the child’s caretaker,” “decide on the safety of the child, wherever the child is, and of other children in the household,” and “decide on the safety of other children in the care or custody of the alleged abuser.”³¹ To make these determinations, officers may conduct reasonable visual inspections of unclothed children for evidence of child abuse without parent or guardian consent.³²

In schools

In public school settings, Maryland’s Education statute allows a principal, assistant principal, or school security guard to make a “reasonable search of a student” on school premises or on a school-sponsored trip if they have a “reasonable belief” that the student unlawfully possesses contraband.³³ County boards may authorize teachers to conduct similar searches of students on school-sponsored trips, but the teachers must be designated in writing by a principal as qualified to conduct a search and must have received relevant training.³⁴ In all cases, searches must be “made in the presence of a third party.”³⁵ The parallel regulations further provide that law enforcement officers may “conduct searches of students . . . in accordance with their established policies and procedures” without first obtaining a search warrant.³⁶ However, school officials are prohibited from conducting student searches “at the request of a police officer *unless* a search warrant has been issued authorizing the search.”³⁷ Regardless of whether the search is being conducted by a school official or a police officer, “[e]very effort shall be made to conduct searches in a manner which will minimize disruption of the normal school routine and minimize embarrassment to students affected.”³⁸

²⁸ MD. CODE REGS. 07.02.07.07(F) (2021).

²⁹ *Id.* at 07.02.07.07(F)(1)(b).

³⁰ MD. CODE ANN., FAM. LAW § 5-706(c) (2021).

³¹ *Id.* at § 5-706(c)(2)-(4).

³² *Wildberger v. State*, 74 Md. App. 107, 118, 536 A.2d 718, 723 (Md. 1988) (holding strip search examination performed by police officer of two-year-old girl without parent consent reasonable because of the “strong possibility” that she was a victim of child abuse).

³³ MD. CODE ANN., EDUC. § 7-308(a) (2021).

³⁴ *Id.* at § 7-308(b)(1)-(2).

³⁵ *Id.* at § 7-308(c).

³⁶ MD. CODE REGS. 13A.08.01.14(D) (2021).

³⁷ *Id.* at 13A.08.01.14(E) (emphasis added).

³⁸ *Id.* at 13A.08.01.14(F).

Because the statute and corresponding regulations are silent on strip searches, school officials at the county and city levels can set their own policies. Indeed, some school systems, including Frederick County and Montgomery County, have prohibited strip searches of students by any school personnel.³⁹ However, strip searches of students are permitted in other school systems, such as the Baltimore City Public School system, which subjects its students to strip searches by police.⁴⁰

To visit incarcerated family members in correctional facilities

Children and youth visiting inmates in any Maryland correctional facility must be “frisk searched” by a correctional officer of the same gender upon entering the facility.⁴¹ A frisk search is defined as a “nonintrusive examination of an individual performed by running hands over the entire, clothed body, applying gentle pressure to determine if the individual is concealing contraband.”⁴² More invasive strip searches of visitors are not required.

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

In cases involving strip searches, the Fourth Circuit applies the test laid out by the Supreme Court in *Bell v. Wolfish*, which determines whether a strip search is reasonable under the circumstances by considering (1) the scope of the intrusion; (2) the manner in which it was conducted; (3) the justification for initiating the search; and (4) the place in which the search was performed.⁴³ Whether a search is conducted in private or not is particularly relevant in the Fourth Circuit in determining whether a strip search is reasonable.⁴⁴ Moreover, strip searches and other sexually invasive searches that are conducted “in a manner likely to instill fear” or trauma in the suspect lean heavily towards a finding of unreasonableness.⁴⁵

³⁹ FREDERICK CNTY. PUB. SCHS., MD., REG. NO. 400-59 (May 15, 2019), <https://apps.fcps.org/legal/doc.php?number=400-59>; *Form 236-6: Search and Seizure Report*, MONTGOMERY CNTY. PUB. SCHS., (Aug. 2018), <https://ww2.montgomeryschoolsmd.org/departments/forms/pdf/236-6.pdf>.

⁴⁰ *General Order 10-30 – Section G-7*, *supra* note 5 (allowing “reasonable” strip searches where the “necessity for the search” is “greater than the extent to which the search invades the personal rights of the arrestee”).

⁴¹ *Inmate Visits: Department Directive Number OPS.195.0003 - Revised*, MD. DEP’T OF PUB. SAFETY AND CORR. SERVS., (Sept. 29, 2020), <http://itcd.dpscs.state.md.us/pia/ShowFile.aspx?fileID=1284>.

⁴² *Id.*

⁴³ *E.g., Amaechi v. West*, 237 F.3d 356, 361-65 (4th Cir. 2001) (concluding that search involving the ungloved touching of suspect’s genitalia and buttocks in public was unreasonable where suspect was arrested for a misdemeanor noise violation and submitted to arrest peacefully); *Logan v. Shealy*, 660 F.2d 1007, 1013 (4th Cir. 1981) (concluding that visual strip search of detainee was unreasonable where detainee was arrested for a traffic offense and search had no discernible relationship to security needs at detention center). *Bell v. Wolfish*, 441 U.S. 520 (1979).

⁴⁴ *E.g., Polk v. Montgomery Cnty., Md.*, 782 F.2d 1196, 1200 (4th Cir. 1986).

⁴⁵ *E.g., United States v. Edwards*, 666 F.3d 877, 884-885 (4th Cir. 2011) (concluding that search involving the use of a knife to cut a baggie containing contraband off of suspect’s genitalia while suspect was restrained was unreasonable); *King v. Rubenstein*, 825 F.3d 206, 214-17 (4th Cir. 2016) (concluding that invasive surgery to remove contraband from suspect’s genitalia was unreasonable).

In *Hobbs ex rel. Hughes v. Town of Hurlock*, the Fourth Circuit upheld the strip search of a 15-year-old girl who was taken into police custody and subjected to a “visual body cavity search” before she was allowed to use the bathroom because officers reasonably suspected she was hiding drugs.⁴⁶ Notably, the search was conducted in private by an officer of the same gender.⁴⁷

However, in *Sims v. Labowitz*, the Fourth Circuit held that a strip search of a 17-year old boy, who was alleged to have used his cell phone to send sexually explicit recordings of himself to his girlfriend, violated his Fourth Amendment rights.⁴⁸ After obtaining a warrant authorizing photographs of the boy’s naked body, police officers ordered him to remove his pants and masturbate in front of the officers while they took photographs on a cellular phone.⁴⁹ The court held this constituted an unreasonable “sexually invasive search,” which “constitutes an extreme intrusion upon personal privacy, as well as an offense to the dignity of the individual,” and, as such, “the basis for the search requires greater justification under the Fourth Amendment.”⁵⁰ The court further held that the invasion of personal rights caused by the search outweighed the need for that particular search.⁵¹ Additionally, the court stressed the boy’s age “should have caused a reasonable officer even greater concern in seeking a warrant and in executing the sexually invasive search” because “minors are ‘especially susceptible to possible traumas’ affiliated with such searches.”⁵²

In the context of state workers visually inspecting the bodies of children for signs of child abuse or neglect, the Fourth Circuit has held that such searches are permissible without probable cause as long as the searches pass the Supreme Court’s “special needs” balancing test⁵³—that is, the state’s needs, beyond the need for law enforcement, make the warrant and probable cause requirements impracticable.⁵⁴

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

Generally, all Maryland agencies should have clear and publicly available policies and regulations that govern strip searches of children and youth. For example, the Department of Juvenile Services’ current strip search policy is not publicly available anywhere.

⁴⁶ *Hobbs ex rel. Hughes v. Town of Hurlock*, 1999 WL 7858, at *2-3 (4th Cir. 1999).

⁴⁷ *Id.* at *3 (“[A] visual body cavity search for drugs and bathroom surveillance, conducted by an officer of the same gender, in private, was reasonable given that [police] had grounds to believe that [the 15-year-old girl] may have been hiding drugs.”).

⁴⁸ 884 F.3d 254, 262 (4th Cir. 2018).

⁴⁹ *Id.* at 259.

⁵⁰ *Id.* at 261-64 (citing *Winston v. Lee*, 470 U.S. 753, 767 (1985) and *Wood v. Clemons*, 89 F.3d 922, 929 (1st Cir. 1996)).

⁵¹ *Id.* at 262. As in *Hobbs*, the court applied the *Bell* framework to determine whether the strip search was reasonable under the circumstances.

⁵² *Id.* at 264 (quoting *N.G., S.G. ex rel. S.C. v. Conn.*, 382 F.3d 225, 244 (2d Cir. 2004)).

⁵³ *Wildauer v. Frederick Cnty.*, 993 F.2d 369, 373 (4th Cir. 1993) (concluding that state’s interest in examining neglected children outweighed attenuated privacy interests of children’s foster mother) (citing *Darryl H. v. Coler*, 801 F.2d 893, 902 (7th Cir. 1986)).

⁵⁴ *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 652-653, 115 S. Ct. 2386, 2390-391 (1995).

Additionally, statutes and regulations that govern strip searches of children and youth, such as those governing Child Protective Services and law enforcement in cases of suspected abuse or neglect, should include clear guidelines for what *type* of physical examinations of children are appropriate and when. Narrower policies that afford less individual discretion—and transparency of those policies—will help with adherence and enforcement. Children and youth subjected to strip searches, as well as their parents, should always fully understand their rights and when those rights are violated.

Lastly, the Department of Juvenile Services should publish a report on the implementation of recommendations made by the Task Force to Study the Restraint, Searches, and Needs of Youth in the Juvenile Justice System in December 2016.⁵⁵ Such a report is required by Maryland law,⁵⁶ but has not yet been published. Publicizing this report could help advocates identify areas of reform that would reduce the use of unnecessary searches in juvenile detention facilities that may have devastating impacts on children.

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 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.⁵⁷

⁵⁵ SENATOR C. ANTHONY MUSE ET AL., REPORT OF THE TASK FORCE TO STUDY THE RESTRAINT, SEARCHES, AND NEEDS OF YOUTH IN THE JUVENILE JUSTICE SYSTEM (2016), <https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/021800/021815/20170190e.pdf>.

⁵⁶ S.B. 982, 2017 Leg., Reg. Sess. (Md. 2017), https://mgaleg.maryland.gov/2017RS/Chapters_noln/CH_487_sb0982e.pdf.

⁵⁷ *Preventing Strip Searches of Children and Youth: A Guide for Advocates*, AM. BAR ASS’N (Mar. 2021) (emphasis in original), https://www.americanbar.org/content/dam/aba/publications/litigation_committees/childrights/strip-search-tool-kit-national-edition.pdf.