

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

NEW JERSEY 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 New Jersey and assist those parties in encouraging New Jersey to enact policy prohibiting such strip searches, except in the most exceptional circumstances. Today, strip searches in New Jersey are most publicized in juvenile centers. 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 New Jersey children and youth will be subjected to this demeaning and dehumanizing practice.

What is the definition of a strip search in New Jersey?

Under the New Jersey Strip Search Statute, a “strip search” is defined as “the removal or rearrangement of clothing for the purpose of visual inspection of the person’s undergarments, buttocks, anus, genitals or breasts.”¹ Generally, “a person who has been detained or arrested for commission of an offense other than a crime shall not be subjected to a strip search” unless “[t]he search is authorized by consent . . . the search is based on probable cause that a weapon, controlled dangerous substance . . . or evidence of a crime will be found and a recognized exception to the warrant the requirement exists; or the person is lawfully confined in a municipal detention facility or an adult county correctional facility and the search is based on a reasonable suspicion that a weapon, controlled dangerous substance . . . or contraband . . . will be found, and the search is authorized pursuant to regulations promulgated by the Commissioner of the Department of Corrections.”²

How does a strip search affect youth?

New Jersey has been keenly aware of the effect strip searches have on children. In 1998, the Governor, Attorney General, and Commissioner of Education in New Jersey published the New Jersey School Search Policy Manual. Within its guidelines highlighting the manner in

¹ N.J.S.A. § 2A:161A-3(a) (2020). The term “does not include the use of body imaging scanning equipment . . . or any removal or rearrangement of clothing reasonably required to render medical treatment or assistance or the removal of articles of outer-clothing such as coats, ties, belts or shoelaces.” *Id.* The act defines “body cavity search” as “the visual inspection or manual search of a person’s anal or vaginal cavity.” N.J.S.A. § 2A:161A-3(b).

² N.J.S.A. § 2A:161A-1 (2020).

which school officials may conduct a search, the manual instructs school officials to “consider the psychological effect of the search.”³ The Manual further states “[o]ne need not be a constitutional scholar to recognize students should not be subjected to conduct even approaching the intensity of a full strip search except in the most urgent, extraordinary, and life-threatening situations.”⁴

Scientific and psychological research also indicates that strip searches impact children and youth more severely than adults. Children understand from an early age that certain parts of their bodies are private, and with the onset of puberty, adolescents begin to view their bodies critically and are especially vulnerable to embarrassment.⁵ Thus, being stripped searched – compelled to expose one’s private parts to a stranger who is not a medical practitioner – is particularly traumatic for children and youth.⁶ For youth who may be victims of abuse or neglect, strip searches are re-traumatizing.⁷ Trauma during adolescence may have a significant effect on the development of the frontal lobe, the area of the brain responsible for thoughtful decision-making, and can lead to long-term negative consequences including anxiety, depression, loss of concentration, sleep disturbances, difficulty performing in school, phobic reactions, and lasting emotional scars.⁸ Consequently, strip searches have a debilitating impact that clearly violates the best interests of children and youth.

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

Children in New Jersey may be subject to strip searches in a variety of settings, including:

In juvenile detention facilities

New Jersey specifically allows for strip searches of juveniles in detention facilities. New Jersey’s Administrative Code details the permissible scope of strip searches. According to the Code, strip searches “shall be conducted while the juvenile is unclothed” and include “a thorough and systematic examination of the juvenile’s body and orifices, including visual inspection of external genital and anal areas, as well as the juvenile’s clothing and all personal possessions.”⁹ While New Jersey juvenile detention centers appear to regularly allow strip

³ New Jersey School Search Policy Manual (1998).

⁴ *Id.*

⁵ See F. PHILLIP RICE & KIM GALE DOLGIN, *THE ADOLESCENT: DEVELOPMENT, RELATIONSHIPS AND CULTURE* 173 (10th ed. 2002).

⁶ Steven F. Shatz et al., *The Strip Search of Children and the Fourth Amendment*, 26 U.S.F. L. REV. 1, 12-13 (1991).

⁷ See *N.G. ex rel. S.C. v. Connecticut*, 382 F.3d 225, 239 (2d. Cir. 2004) (Sotomayor, J., dissenting) (“We should be especially wary of strip searches of children, since youth ‘is a time and condition of life when a person may be most susceptible to influence and to psychological damage. . . . [W]ith children who may be victims of sexual abuse, the concerns are even greater.”). See also *Body Searches: Addressing Risk Factors to Prevent Torture and Ill-Treatment*, PENAL REFORM INT’L 1, 4 (2015), [hereinafter *Body Searches*], <https://www.penalreform.org/resource/detention-monitoring-tool-factsheet-body-searches/> (“For female detainees, the experience of a body search may be re-traumatizing due to sexual abuse in the past.”)

⁸ See Scott A. Gartner, *Strip Searches of Students: What Johnny Really Learned at School and How Local School Boards Can Help Solve the Problem*, 70 S. Cal. L. Rev. 921, 929 (1997) (describing lasting and debilitating psychological effects of school’s strip search of a student).

⁹ N.J.A.C.13:103-11.7(b).

searches of juveniles, there are several limitations placed on such searches. First, strip searches may only be conducted “with the prior approval of the Director of Community Programs or designee when there is a clear indication that the juvenile is carrying or concealing contraband on his or her person, or in the juvenile’s anal or vaginal cavity.”¹⁰ Second, a strip search shall be conducted: (1) at a location where the search cannot be observed by unauthorized persons; (2) in a professional and dignified manner, with a maximum courtesy and respect for the juvenile’s person; (3) by the number of staff members deemed reasonably necessary to provide security; (4) only by staff of the same gender as the juvenile and may include a scanning/testing device operator or operators of the same gender as the juvenile . . . and (5) only by staff who have received Commission of equivalent training in the conducting of strip searches.¹¹ Third, strip searches of juveniles may be conducted by staff and with a scanning/testing device operator or operators of the opposite gender only under emergent conditions as ordered by the Superintendent or designee.¹²

In emergency circumstances, strip searches may be observed by those not performing the search and “may be of the opposite gender” to ensure: (1) the secure and orderly operation of the procedure; (2) the accurate recordkeeping regarding the emergent circumstances and incident; and (3) that the strip search is conducted in a professional and dignified manner, with maximum courtesy and respect for the juvenile’s person.¹³ However, body cavity searches are strictly prohibited.¹⁴ If reasonable suspicion exists that a juvenile is concealing contraband in a body cavity, “local law enforcement authorities shall be notified immediately” and the juvenile shall be “placed on constant observation.”¹⁵ Juveniles may be subject to strip searches “before and after a visit, in accordance with the procedures” established in N.J.A.C. 13:103-11.¹⁶

Additionally, children or relatives visiting New Jersey juvenile centers may also be subject to searches.¹⁷ These provisions do not clarify whether visitors could be subject to strip searches but emphasize “all searches shall be conducted in a professional and dignified manner, with maximum courtesy and respect for the visitor’s person.”¹⁸

By the Department of Children and Families in New Jersey

Children that are suspected victims of child abuse in New Jersey may be subject to an examination of their intimate body parts during an investigation by a child protective investigator. In completing an investigation of an allegation of child abuse, “[t]he child protective investigator shall obtain a medical assessment of the injury, which may include photos or a body chart, when completing an investigation of a report containing any allegation that involved a physical injury and when a physician has examined the child.”¹⁹ Additionally, in performing investigations, an investigator “may remove, move or cause to be removed or moved

¹⁰ N.J.A.C. 13:103-11.7(a).

¹¹ N.J.A.C.13:103-11.7(c).

¹² N.J.A.C. 13:103-11.7(d).

¹³ N.J.A.C. 13:103-11.7(e).

¹⁴ N.J. A.C.13:103-11.7(f).

¹⁵ N.J.A.C. 13:103-11.8(b).

¹⁶ N.J.A.C. 13:103-8.15.

¹⁷ See N.J.A.C. 13:103-8.10(a)(7); see also N.J.A.C. 13:103-8.14.

¹⁸ N.J.A.C. 13:103-8.14(h).

¹⁹ N.J.A.C. 3A:10-3.1(d).

only that clothing necessary to view suspected injuries” which “shall be done in a manner consistent with the alleged child victim’s sense of privacy and in consideration of the age, sex and emotional state of the alleged child victim and the need to limit the number of physical examinations the child victim undergoes.” This removal of clothing “shall be done only in the presence of an adult supportive of the alleged child victim, except in emergency situations.”²⁰ New Jersey courts have recognized the constitutional limits of searches of children suspected of child abuse.²¹

In schools

New Jersey flatly prohibits the strip search of students by school officials. N.J.S.A. § 18A:37-6.1 states, “[a]ny teaching staff member, principal or other educational personnel shall be prohibited from conducting any strip search or body cavity search of a pupil under any circumstances.”²² As originally written and before its enactment, this bill “prevented any teaching staff member, principal, or other educational personnel from conducting any strip searches or body cavities if they had reasonable grounds to believe a pupil may have committed an act which would constitute a criminal offense.”²³ Through this language, the original bill would have clarified the procedures to be used if school officials had reasonable grounds to believe that a pupil had committed a criminal offense.²⁴ The committee amended the bill to bar strip searches of pupils under any circumstances.²⁵ Consistent with this statute, the New Jersey School Boards Association has noted that strip searches are prohibited.²⁶ Notably, the prohibition on strip searches only applies to school officials, not law enforcement officers. When reviewing strip searches of students at schools, courts follow the framework established in *New Jersey v. T.L.O.*²⁷

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

The Third Circuit has recognized that, as a general matter, strip searches and other body searches are “highly intrusive”²⁸ and constitute a “significant intrusion on an individual’s

²⁰ N.J. Admin. Code § 3A:10-3.3(b).

²¹ See *Frankovic v. Agatino*, No. CV 05-3876 (FSH), 2006 WL 8457727, at *3 (D.N.J. Apr. 12, 2006) (“The Fourth Amendment protection against unreasonable searches applies to the physical examination of a child’s body in the course of investigating suspected child abuse. . . However, the mere fact that a strip search of a child was conducted does not necessarily mean that a Fourth Amendment violation occurred.” (internal citations omitted)).

²² N.J.S.A. 18A:37-6.1; see *Redding v. Safford Unified Sch. Dist. No.1*, 531 F.3d 1071, 1081 (9th Cir. 2008), aff’d in part, rev’d in part, 557 U.S. 364, 129 S. Ct. 2633, 174 L. Ed. 2d 354 (2009) (noting “at least seven states [including New Jersey] have concluded that strip searches of school children are *never* permissible for *any* reason.”).

²³ Assembly Judiciary Committee Statements, Assembly No. 1167—L.1997, c.242.

²⁴ See *id.*

²⁵ See *id.*

²⁶ New Jersey School Boards Association, September/October 2017, Vol. 48, No.2 (<https://www.njsba.org/news-publications/school-leader/september-october-2017-volume-48-no-2/policy-update-cell-searching/>).

²⁷ *Hayward v. Salem City Bd. of Educ.*, No. CV 14-5200 (JBS/AMD), 2016 WL 4744132, at *4 (D.N.J. Sept. 12, 2016); *Jorge v. Powell*, No. CV1814675ESSCM, 2019 WL 2206067, at *2 (D.N.J. May 21, 2019).

²⁸ *Reppert v. Marino*, 259 F. App’x 481, 492 (3d Cir. 2007) (quoting *Evans v. City of Zebulon, GA*, 351 F.3d 485, 492 (11th Cir. 2003)).

privacy.”²⁹ Additionally, federal courts in New Jersey have recognized the uniformity of the various federal circuits requiring reasonable individualized suspicion before strip searching visitors or pre-trial detainees.³⁰ The reason for this requirement is “supported by ‘valid concerns for privacy, dignity, and the preservation of self-worth.’”³¹ While few state courts have defined the contours of strip searches in New Jersey, a handful of Third Circuit decisions provide guideposts for the practice of strip searching children in New Jersey. In *J.B. v. Fassnacht*, the Third Circuit upheld a juvenile detention center’s blanket strip search policy but “encourage[d] detention centers with blanket strip search policies to maintain protocol minimizing the embarrassment and indignity of such a search for the juvenile.”³² In *Good v. Dauphin County Social Services for Children & Youth*, after reviewing a police officer and social worker’s strip search of a child suspected of abuse, the Third Circuit determined that the search required a warrant absent consent or exigent circumstances.³³ And in *Doe v. Groody*, the Third Circuit found unconstitutional the strip search of Mr. Doe’s wife and daughter, who were not named in the warrant to search Mr. Doe’s property, because there was no probable cause to independently justify those searches.³⁴

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

New Jersey has several state-level laws and regulations that either entirely prohibit strip searches of children, or permit them in limited contexts, like emergencies. Because of New Jersey’s robust prohibition and limitation on strip searches, other states with fewer state-level protections can look to New Jersey’s laws and regulations as an effective starting point for curbing the strip searches of children in juvenile detention centers, schools, and during investigative searches by social workers. However, even New Jersey may be able to improve its protection of children from strip searches in some areas. For example, New Jersey could require that, in connection with child abuse investigations, the removal of a child’s clothing be performed by pediatric medical personnel, not just child protective investigators. State agencies can also enact regulations limiting searches by child-serving agencies and facilities that are under their jurisdiction or receive public monies. State agencies can also include limiting language in contracts with private service providers that directly interface with children and youth.

Additionally, many individuals are not aware of the prevalence of child and youth strip searches. It is critical that we educate our communities and enact laws and regulations that will protect New Jersey’s children from unnecessary, traumatizing strip searches.

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

²⁹ *United States v. Whitted*, 541 F.3d 480, 486 (3d Cir. 2008).

³⁰ *Brewer v. Hayman*, No. CIV. 06-6294(DRD), 2009 WL 2139429, at *4 (D.N.J. July 10, 2009) (“In the thirty years since *Bell*, nine of the ten Circuit Courts that have encountered the issue have held that prison officials must possess reasonable individualized suspicion before strip searching prison visitors or pre-trial detainees.”).

³¹ *Id.* (citing *Florence v. Bd. of Chosen Freeholders*, 595 F.Supp.2d 492, 513 (D.N.J. 2009)).

³² *J.B. ex rel. Benjamin v. Fassnacht*, 801 F.3d 336, 344 (3d Cir. 2015).

³³ *Good v. Dauphin Cty. Soc. Servs. for Child. & Youth*, 891 F.2d 1087 (3d Cir. 1989).

³⁴ *Doe v. Groody*, 361 F.3d 232, 243 (3d Cir. 2004).

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.

The model language approved by the ABA allows for a strip search of a child or youth in custody when 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. The model language includes guidelines for how to conduct these searches in the least invasive way.