

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

WASHINGTON STATE 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 Washington and assist those parties in encouraging Washington to enact policy prohibiting such strip searches, except in the most exceptional circumstances. Today, strip searches in Washington 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 Washington children and youth will be subjected to this demeaning and dehumanizing practice.

What is the definition of a strip search in Washington State?

Washington does not have a separate legal definition for strip searches of juveniles. However, the state statute for criminal procedure, the Revised Code of Washington (RCW), establishes definitions for strip searches and body cavity searches for individuals booked into holding, detention, or local correctional facilities. The statute defines strip search as “having a person remove or arrange some or all of his or her clothing so as to permit an inspection of the genitals, buttocks, anus, or undergarments of the person or breasts of a female person.”¹ Meanwhile, a body cavity search is defined as the “touching or probing of a person's body cavity [stomach or rectum of a person and the vagina of a female person], whether or not there is actual penetration of the body cavity.”²

How does a strip search affect a child or youth?

In general, a strip search can traumatize children and youth. The practice of strip searches is “invasive” and “degrading.”³ A strip search can leave a number of emotional and psychological scars, such as anxiety, depression, sleep disturbances, phobic reactions, shame, and guilt.⁴ 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.⁵ In

¹ RCWA § 10.79.070 (WEST). [Chapter 10.79 RCW: SEARCHES AND SEIZURES \(wa.gov\)](#)

² Id.

³ Addressing Trauma: Eliminating Strip Searches, JUV. L. CTR. (June 1, 2017), <https://jlc.org/sites/default/files/attachments/2020-04/AddressingTraumaEliminatingStripSearch%20March%202020.pdf>.

⁴ Id.

⁵ Id.

addition, survivors of abuse or neglect are susceptible to greater trauma from strip searches.⁶ While the psychological effects of strip searches and body cavity searches have not been extensively discussed in Washington state, various state courts have acknowledged the significant intrusiveness of such searches.⁷ Courts in the Ninth Circuit have also “long recognized the psychological trauma intrinsic to a strip search.”⁸ Additionally, courts note that strip searches performed on youth is particularly damaging given the vulnerability of children and adolescents to mental harm, citing extensive psychological research.⁹

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

Children and youth in Washington are subjected to strip searches in a variety of settings, including:

In juvenile detention facilities

Washington does not have specific statutory regulations relating to strip searches in juvenile detention facilities. As such, juvenile strip searches and body cavity searches are governed by the same RCW regulations regarding strip searches and body cavity as apply to all detention facilities in the state.¹⁰ The RCW stipulates that a strip search may not be conducted unless there is (i) a reasonable suspicion of “weapons, criminal evidence, contraband, or other thing concealed on the body of the person to be searched, that constitutes a threat to the security of a holding, detention, or local correctional facility;” (ii) probable cause of criminal evidence not constituting a threat to facility security; or (iii) a reasonable suspicion of the need for immediate medical attention.¹¹ Body cavity searches require the authorization of the ranking supervisor and a search warrant, and cannot be conducted unless “other methods do not satisfy the safety, security, or evidentiary concerns of the law enforcement agency.”¹² Both types of searches should be conducted in private and must be documented in a written record.¹³

Additionally, juvenile detention facilities do implement general standards of operations. To receive state funds, a juvenile detention facilities must meet the minimum standards prescribed by the department of children, youth, and families. The facility must also implement operational standards regarding medical and health care, security and control, sanitation and hygiene, juvenile rights, rules and discipline, juvenile records, and training and staff development, among other requirements.¹⁴

⁶ Id.

⁷ *State v. Audley*, 77 Wn. App. 897, 903-905 (App. Div. 1 1995); *State v. Sweeney*, 56 Wn. App. 42, 49 (App. Div. 3 1989); *State v. Rainford*, 86 Wn. App. 431, 436 (App. Div. 2 1997); *State v. Hampton*, 114 Wn. App. 486, 492-493 (App. Div. 2 2002).

⁸ *Redding v. Safford Unified Sch. Dist. No.1*, 531 F.3d 1071, 1085 (9th Cir. 2008). [Redding v. Safford Unified School Dist. No.1 | Cases | Arizona | Westlaw Edge](#)

⁹ Id., 1086.

¹⁰ RCWA § 10.79.120 (WEST); *State v. Harris*, 66 Wn. App. 636 (App. Div. 1 1992).

¹¹ RCWA § 10.79.130 (WEST).

¹² RCWA § 10.79.080 (WEST).

¹³ RCWA § 28A.600.230 (West); REV. CODE OF WASH. § 10.79.160.

¹⁴ RCWA § 13.06.050 (WEST).

Nonetheless, given the common practice of strip searches in juvenile detention facilities across Washington state, activists and lawmakers have pushed for better protection for children and youth. Major progress has been made over the past few decades in improving juvenile detention facilities and establishing general standards for all people in detention around strip searches and body cavity searches in Washington.¹⁵ Nonetheless, progress has stalled in implementing specific protections for juveniles. Most recently, in 2015, Washington lawmakers proposed new rules that would make strip searches for juveniles a last resort; nonetheless, the potential bill failed to pass the Senate and no legislation addressing this issue has been proposed since.¹⁶

In schools

The RCW specifically stipulates that “[a] principal or vice principal or anyone acting under their direction may not subject a student to a strip search or body cavity search.”¹⁷ This prohibition is echoed in both case law and the policies of various school districts across Washington state, which clearly state that students cannot be subject to a strip search or body cavity search from school staff.¹⁸ Of course, school staff may still search a student and their locker or possessions if there are reasonable grounds to suspect evidence of the student's violation of the law or school rules.¹⁹ Any search must be conducted so that (i) the methods used are reasonably related to the objectives of the search and (ii) the search is not excessively intrusive in light of the age and sex of the student and the nature of the suspected infraction.²⁰ Additionally, school discipline must also not “deprive a student of the student's constitutional right to be secure in the student's person, papers, and effects against unreasonable searches and seizures.”²¹

To visit incarcerated family members in correctional facilities

Washington correctional facilities' visitation rules generally apply to children and juveniles. The Washington Department of Corrections requires searches of visitors on facility

¹⁵ *Juvenile Detention Standards in Washington State*, WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY (December 1998), https://www.wsipp.wa.gov/ReportFile/1303/Wsipp_Juvenile-Detention-Standards-in-Washington-State_Executive-Summary.pdf; *Okanogan County Pays \$35,000 for Illegal Strip Search of Juvenile*, AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON (November 20, 2009), <https://www.aclu-wa.org/news/okanogan-county-pays-35000-illegal-strip-search-juvenile>.

¹⁶ Austin Jenkins, *King County Defends Juvenile Strip Searches In Detention*, KNKX (January 26, 2015), https://www.knkx.org/law/2015-01-27/king-county-defends-juvenile-strip-searches-in-detention?_amp=true; SB 5256, 64th Legis. (2015). [5256.pdf \(wa.gov\)](#)

¹⁷ REV. CODE OF WASH. § 28A.600.230.

¹⁸ *Parent Notifications*, RIVERSIDE SCHOOL DISTRICT, <http://archive.rsd407.org/parents/parent%20notifications/default.aspx>; *Student Rights - Privacy: Search & Seizure*, CITY OF KIRKLAND, WASHINGTON, <https://www.kirklandwa.gov/Government/Departments/Parks-and-Community-Services/Human-Services/Youth-Services/Student-Rights/Student-Rights-Privacy-Search-Seizure>; *Redding*, 531 F.3d 1071 (holding that a school official's order that a student “remove her clothes down to her underwear, and then ‘pull out’ her bra and the elastic band on her underpants... in the presence of the two officials who were able to see her necessarily exposed breasts and pelvic area to some degree,” constituted a search that could be fairly called a “strip search.”).

¹⁹ WAC 392-400-805.

²⁰ *Id.*

²¹ WASH. ADMIN. CODE § 392-400-805.

grounds, which may include pat, electronic, container, locker and canine searches.²² Infants and children are counted as visitors.²³ The Department has established that such policies “enhance security and safety for personnel, incarcerated individuals, and the public by minimizing the introduction of contraband into Department facilities.”²⁴

Pat searches at correctional facilities require the placing of hands on the visitor and may include removal of coats, hats, and shoes; a manual search of clothing and personal effects; visual inspection of the nasal passages, hands, hair, ears, and mouth; and removal of any hairpiece, hearing aids, and/or dentures. For a child in diapers, the diaper will be removed by the accompanying adult (who will also be pat searched) and replaced with a clean diaper that has been searched by employees.²⁵ For all visitors, pat searches will be conducted in a private setting by a correctional employee of the same gender as the person being searched and who will wear protective gloves during the search.²⁶

In connection with child neglect or child abuse proceedings

In Washington, Child Protective Services investigates reports of child abuse and neglect. In these investigations, CPS may conduct a physical examination during their investigations into allegations of serious physical and sexual abuse. The physician conducting the medical examination must be verified and affiliated with the Child Abuse and Neglect Medical Consultation (Med-Con) or the Child Advocacy Center (CAC). The physician must be consulted (i) to determine if children or youth alleged to be sexually abused need a medical examination; (ii) when there is an allegation of sexual abuse that includes physical injury to children or youth or the potential for them to have a sexually transmitted disease; (iii) when children or youth are seriously injured; or (iv) when there is a pattern of injury to young children because of alleged child abuse or neglect.²⁷

If parents or guardians do not comply with the request for a medical examination, caseworkers and Licensing Division CPS investigators must seek legal authority to go forward with the examination.²⁸ Parents also have the right to an independent documentation of bruises or marks on their child’s body, and the right to take their child to a doctor to document the child’s physical condition (at their own expense).²⁹

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

²² DEPT. OF CORR. § 420.340 (Searching and Detaining Facility Visitors).

²³ *Prison Visits*, DEPARTMENT OF CORRECTIONS, <https://doc.wa.gov/corrections/incarceration/visiting/prison-visits.htm>.

²⁴ DEPT. OF CORR. § 420.340.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *2331. Child Protective Services (CPS) Investigation*, WASHINGTON DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES, <https://www.dcyf.wa.gov/policies-and-procedures/2331-child-protective-services-cps-investigation>.

²⁸ *Id.*

²⁹ *Know Your Rights When CPS Comes Knocking*, WASHINGTON STATE COALITION AGAINST DOMESTIC VIOLENCE, <https://wscadv.org/wp-content/uploads/2015/05/Know-your-rights-when-CPS-comes-knocking.pdf>.

The Ninth Circuit has repeatedly expressed concerns over strip searches, noting “[t]he feelings of humiliation and degradation associated with forcibly exposing one’s nude body to strangers for visual inspection is beyond dispute.”³⁰ These concerns are “magnified when strip searches are performed on school children.”³¹

In *Bilbrey by Bilbrey v. Brown*, two fifth-grade students sued school officials under section 1983 for damages and injunctive and declaratory relief in response to allegedly illegal searches, including a strip search.³² A bus driver testified that she saw students exchange “what appeared to be money” for objects she could not identify but suspected to be drugs.³³ In response to the bus driver’s observation, a school principal and teacher strip searched one of the students.³⁴ The Court found the search unconstitutional and held the principal and teacher were not entitled to qualified immunity, because “the record shows that the defendants presented little to justify Gartner’s search and nothing to justify the strip search of Bilbrey” as “[s]uch intrusive handling of the minors required justification.”³⁵ Importantly, *Bilbrey* was decided before the Supreme Court’s decision in *New Jersey v. T.L.O.*, which provided the current test applied in determining the constitutionality of student searches at schools.

In *Redding v. Safford Unified School District No.1*, the Ninth Circuit addressed the constitutionality of a school official’s strip search of 13-year-old girl who was “remotely rumored to have had Advil.”³⁶ Relying on the standard set forth in *T.L.O.*, the court found “the public school officials who strip searched [the girl] acted contrary to all reason and common sense as they trampled over her legitimate and substantial interests in privacy and security of her person.”³⁷ Further the Court noted “[a]pproving such a strip search would eviscerate the Supreme Court’s stated goal of developing a standard that ‘ensure[s] that the interests of students will be invaded no more than is necessary to achieve the legitimate end of preserving order in the schools.’”³⁸ The court also found the assistant principal was not entitled to qualified immunity when he “initiated and directed the strip search” but the other actors that played a role in the strip search were entitled to qualified immunity because they “acted solely pursuant to [the assistant principal’s] instructions and not as independent decision-makers.”³⁹ The Ninth Circuit’s decision was affirmed in part and reversed in part by the Supreme Court in *Safford Unified Sch. Dist. No. 1 v. Redding*.⁴⁰ The Supreme Court affirmed the Ninth Circuit’s finding that the strip search violated the Fourth

³⁰ *Thompson v. City of Los Angeles*, 885 F.2d 1439, 1446 (9th Cir.1989); *see also* *Kirkpatrick v. City of Los Angeles*, 803 F.2d 485, 489–90 (9th Cir.1986) (“[T]he fact that a strip search is conducted reasonably, without touching and outside the view of all persons other than the party performing the search, does not negate the fact that a strip search is a significant intrusion on the person searched”)(citation omitted).

³¹ *Redding v. Safford Unified Sch. Dist. No.1*, 531 F.3d 1071, 1086 (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)

³² *Bilbrey by Bilbrey v. Brown*, 738 F.2d 1462 (9th Cir. 1984)

³³ *Id.* at 1467.

³⁴ *Id.*

³⁵ *Id.* at 1468.

³⁶ *Redding v. Safford Unified Sch. Dist. No.1*, 531 F.3d 1071, 1080 (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).

³⁷ *Id.*

³⁸ *Id.* at 1087 (quoting *T.L.O.*, 469 U.S. at 343, 105 S.Ct. 733).

³⁹ *Redding v. Safford Unified Sch. Dist. No.1*, 531 F.3d 1071, 1089 (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).

⁴⁰ *Safford Unified School Dist. No. 1*, 557 U.S. 364.

Amendment, but reversed the Ninth Circuit’s finding on qualified immunity by finding that the assistant principal and the other school employees involved in the strip search were shielded from liability.⁴¹

In *Calabretta v. Floyd*, the Ninth Circuit addressed the constitutionality of, among other things, the strip search of a child conducted in a child welfare case without a search warrant or a special exigency.⁴² A social worker, responding to a call regarding suspected child abuse, went to the Calabretta’s home to investigate.⁴³ After hearing from one of the older children in the home that their parents hit them, the social worker demanded to see the “bottom” of Mrs. Calabretta’s three-year-old child.⁴⁴ Eventually, Mrs. Calabretta pulled down the three-year-old child’s pants in response to the social worker’s order, which revealed no bruising.⁴⁵ The court found the search unconstitutional because the social worker did not have a warrant, consent, or exigent circumstances, and could not rely on the special needs doctrine.⁴⁶

In *Greene v. Camreta*, a child was interviewed and eventually taken to a sexual abuse center where she underwent a sexual abuse examination because a social worker believed the child’s father had sexually abused her.⁴⁷ The child was interviewed and examined over the objection of her mother, who denied the father’s abuse.⁴⁸ On the day the child was being examined, the mother went to the sexual abuse center, but she was denied entry and forced to leave the premises.⁴⁹ The mother argued the examination of the child outside her presence violated her “substantive due process right to be there for her children” as well as her children’s right to have their mother present when they face traumatic events.⁵⁰ After noting the sexual abuse center assessments “involved the visual inspection and photographing of the children’s genitals,” which “could certainly be emotionally traumatic to a young girl,” the court found the mother’s and child’s “clearly established rights under the Fourteenth Amendment” were violated.⁵¹

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

Advocates can encourage state, local, and tribal governments to adopt policies that prohibit strip searches of children in youth, except in exceptional circumstances. These entities have the power to regulate the use of strip searches, and nothing in the federal case law curbs that authority.

⁴¹ *Id.* (“The strip search of Savana Redding was unreasonable and a violation of the Fourth Amendment, but petitioners Wilson, Romero, and Schwallier are nevertheless protected from liability through qualified immunity.”).

⁴² *Calabretta v. Floyd*, 189 F.3d 808, 810 (9th Cir. 1999)

⁴³ *Id.*

⁴⁴ *Id.* at 811-12.

⁴⁵ *Id.* at 812.

⁴⁶ *Id.* at 820.

⁴⁷ *Green v. Camreta*, 588 F.3d 1011, 1018 (9th Cir. 2009), *vacated in part*, 563 U.S. 692, 131 S. Ct. 2020, 179 L. Ed. 2d 1118 (2011), and *vacated in part*, 661 F.3d 1201 (9th Cir. 2011).

⁴⁸ *Id.* at 1019.

⁴⁹ *Id.*

⁵⁰ *Id.* at 1036.

⁵¹ *Id.* at 1037.

There are multiple ways to protect children and youth. For example, the Washington State legislature can pass new laws that limit strip searches. Executive agencies in Washington State also can enact regulations limiting searches by child-serving agencies and facilities that are under their jurisdiction or receive public monies. State and local government agencies also can include limiting language in contracts with private service providers that directly interface with children and youth.

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.