

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

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March 2021

This guide is designed to assist individuals and organizations in their advocacy for legislation and regulations to prohibit the strip searches of children and youth¹ except in the most exceptional situations. We often think of strip searches being something that happens only in correctional facilities like juvenile detention centers. But today, children and youth are unnecessarily strip searched in many other settings, causing trauma that can have life-long consequences. For that reason, 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 so that fewer children and youth will be subjected to this demeaning and dehumanizing practice.

What is a strip search?

A strip search is a “search that requires a person to remove or arrange some clothing so as to permit a visual inspection of the person’s breasts, buttocks, or genitalia.”² Strip searches may also involve “inspections of the scalp, ears, hands, feet, mouth, and nose.”³ Depending on state law, a strip search can be visual, physical, or a combination of both and may also involve a body cavity search.⁴ In addition, the child or youth may be required to bend over and cough in the presence of a staff member working for the agency or facility that is conducting the strip search.⁵

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

Strip searches were customarily used to discover contraband on incarcerated individuals, but they have become increasingly common on children and youth in other contexts, including:

➤ *In juvenile detention facilities*

A Georgia detention facility requires strip searches after medical appointments, court appearances, and every visit. The policy requires examination of a youth’s hair, ears, mouth, armpits, hands, feet, inner thighs, pubic area and outer rectum.⁶

➤ *In immigration detention centers*

Fifteen- and sixteen-year-old girls were regularly strip-searched and subject to vaginal searches at Texas and California detention facilities.⁷

➤ ***By child protective services workers as part of child welfare investigations***

Six children, ages 10 months to 5 years old, were strip-searched by child protective services after their mother left them alone in the car for ten minutes when she ran into a store to get them a snack.⁸

➤ ***In schools***

Four twelve-year-old girls reported that they were strip searched at a New York middle school after being perceived as hyper and giddy.⁹

➤ ***In residential facilities for “troubled teens”***

The Troubled Teen Industry or TTI refers to a network of private residential facilities, schools, and programs that operate largely without government oversight or regulation for children between the ages of between the ages of 5-18. Individuals have reported being held against their will at such facilities, and being subjected to abusive practices such as strip searches.¹⁰

➤ ***To visit incarcerated family members in correctional facilities***

In December 2019, Virginia suspended a policy allowing strip searches of all visitors after an eight-year-old girl was strip-searched before visiting her father, who was incarcerated.¹¹

How does a strip search affect a child or youth?

Strip searches of children and youth are traumatic and overused. Strip searches are “demeaning, dehumanizing, undignified, humiliating, terrifying, unpleasant, embarrassing, repulsive, signifying degradation and submission.”¹² Scientific and psychological research 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.¹³ 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.¹⁴ For youth who may be victims of abuse or neglect, strip searches are re-traumatizing.¹⁵ 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.¹⁶ Consequently, strip searches have a debilitating impact that clearly violates the best interests of children and youth.

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

Federal courts have set a high bar for what constitutes an unconstitutional strip search of a child or youth. Schools can constitutionally strip search students if the search is reasonably related to its objectives and not excessively intrusive.¹⁷ The federal courts of appeals are split on whether strip searches by child protective services caseworkers upon suspicion of abuse are constitutional without a court order or search warrant,¹⁸ and the United States Supreme Court recently denied a case that would have resolved the split.¹⁹

The Supreme Court has also never considered the constitutionality of strip searches of children and youth in detention centers.²⁰ As a result, federal courts of appeals have relied Supreme Court precedent upholding the constitutionality of suspicionless strip searches of arrested adults to find that strip searches of youth and children upon admission to detention facilities also do not violate the Constitution.²¹ However, testimony by juvenile detention center staff – who have conducted strip searches on thousands of youth without yielding contraband – establishes that suspicionless strip searches are unnecessary to ensure child safety.²²

The bottom line is that federal courts have interpreted the U.S. Constitution in a way that provides little protection from unwarranted strip searches for children and youth. That is why we need statutes and regulations to strictly limit this traumatizing practice.

How can I find out about the laws and regulations on strip searches in my state?

The Children’s Rights Litigation Committee of the ABA’s Section of Litigation is asking public and private law firms to conduct state-specific research on case law, statutes, and regulations that govern strip searches of children and youth by child-serving facilities and agencies. Please visit our [website](#) to check for research on your state’s provisions. If we do not have a supplement on your state, please consider approaching a pro bono law firm that will be willing to do this research in support of your advocacy efforts. And email the memo to us at cathy.krebs@americanbar.org so that we can post it on our website as a resource for others.

What can state and municipal governments do to curb the use of unnecessary strip searches on children and youth?

State, local, and tribal governments can and should adopt policies that prohibit conducting 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.

There are multiple ways to protect children and youth. For example, state legislatures can pass new laws that limit strip searches. Executive agencies also can enact regulations limiting searches by child-serving agencies and facilities that are under their jurisdiction or receive public monies. 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.

But what if a strip search is necessary because authorities believe the child or youth is concealing something dangerous, like a weapon—can they do a strip search then?

Yes. 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.

Can changing state, local and territorial laws and regulations really make a difference?

Yes. For example, in December 2019, Governor Ralph Northam of Virginia immediately suspended a policy that allowed prison officials to strip-search children after an eight-year-old girl was strip-searched before visiting her father, who was incarcerated.²³ 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 prevent unnecessary, traumatizing strip searches.

¹ Children and youth are defined as an individual who is (1) under the age of 18; or (2) under the age of 22 who remains under the jurisdiction of the juvenile court.

² Prison Rape Elimination Act, Juvenile Facility Standards, 28 C.F.R. § 115.6 (2012). *See also* *Body Searches: Addressing Risk Factors to Prevent Torture and Ill-Treatment*, PENAL REFORM INT'L 1, 1 (2015), [hereinafter *Body Searches*], <https://www.penalreform.org/resource/detention-monitoring-tool-factsheet-body-searches/> at 1.

³ KATHERINE HUNT FEDERLE, *CHILDREN & THE LAW: AN INTERDISCIPLINARY APPROACH* (2012). *See also* Michael Umpierre, *Rights & Responsibilities of Youth, Families, and Staff*, in NAT'L INST. CORRECTIONS, *DESKTOP GUIDE TO QUALITY PRACTICE FOR WORKING WITH YOUTH IN CONFINEMENT* (2017); Anne M. Nelsen, *Management & Facility Administration*, in NAT'L INST. CORRECTIONS, *DESKTOP GUIDE TO QUALITY PRACTICE FOR WORKING WITH YOUTH IN CONFINEMENT* (2017); Anne M. Nelsen, *Admission and Intake*, in NAT'L INST. CORRECTIONS, *DESKTOP GUIDE TO QUALITY PRACTICE FOR WORKING WITH YOUTH IN CONFINEMENT* (2017); *Body Searches*, *supra* note 1, at 1.

⁴ *See* WIS. STAT. § 968.255 (2015); CAL. PENAL CODE § 4031 (2017). *See also* William Simonitsch, *Visual Body Cavity Searches Incident to Arrest: Validity under the Fourth Amendment*, 54 U. MIAMI L. REV. 665 (2000); *Body Searches*, *supra* note 1, at 1.

⁵ *See* JUVENILE LAW CENTER, *Addressing Trauma: Eliminating Strip Searches* (2017) [hereinafter *Addressing Trauma*], <https://jlc.org/resources/addressing-trauma-eliminating-strip-searches>.

⁶ See Alan Judd, *Georgia's Juvenile Prisons: Assaults by Guards, Strip Searches, Chaos*, ATLANTA JOURNAL-CONSTITUTION, Nov. 17, 2019, <https://www.ajc.com/news/crime--law/violence-permeates-youth-prisons/7YRQTDEnIT20hGVEnjqyBP/>.

⁷ See *When Migrant Children Were Detained Among Adults, Strip Searched*, NBC NEWS, July 24, 2014, <https://www.nbcnews.com/storyline/immigration-border-crisis/when-migrant-children-were-detained-among-adults-strip-searched-n161956>.

⁸ See Lenore Skenazy & Diane Redleaf, *How Dare She Dash in for Muffins?*, WASH. POST, May 29, 2019, <https://www.washingtonpost.com/outlook/2019/05/22/how-dare-she-dash-muffins/>.

⁹ See Michael Gold, *After Report of 4 Girls Strip-Searched at School, Cuomo Calls for Inquiry*, N.Y. TIMES, Jan. 30, 2019, <https://www.nytimes.com/2019/01/30/nyregion/inghamton-school-strip-search.html>.

¹⁰ See American Bar Association, *The Troubled Teen Industry, a Multi-series Webinar Event, Topic: Youth in Congregate Care: Far from Home, Far From Safe*, (Jan. 28, 2021), https://www.americanbar.org/groups/diversity/sexual_orientation/events_cle/youth-in-congregate-care/, at 25:15–25:25 (presentation by Misha Osherovich, describing that at age 15, she was sent to a treatment center in Utah, and that when she fought back when staff attempted to strip-search them, she was put in isolation as punishment), 39:00–40:02 (statement by Paris Hilton, describing being strip-searched upon admission to a residential facility at age 16). See also *Survivor Testimonials*, #BREAKINGCODESILENCE, <https://www.breakingcodesilence.net/testimonial> (last visited March 13, 2021) (e.g., Laura's Story, <https://www.breakingcodesilence.net/testimonial/laurasstorynwa> (Feb. 23, 2021) (recounting experience of being strip-searched upon admission to a residential treatment center at 16 years of age); Jill's Story, <https://www.breakingcodesilence.net/testimonial/jillsstory> (Feb. 22, 2021) (recounting experience of being strip-searched when sent to a wilderness program in Oregon when she was teenager); Diana's Story, <https://www.breakingcodesilence.net/testimonial/dianasstoryair> (Feb. 22, 2021) (recounting experience of being strip-searched upon admission to residential academy at age 15); Summer's Story, <https://www.breakingcodesilence.net/testimonial/summersstory> (Feb. 22, 2021) (recounting experience of being strip-searched at residential treatment center when age 13); Veronica's Story, <https://www.breakingcodesilence.net/testimonial/veronicasstory> (Feb. 22, 2021) (recounting experience of being strip-searched and subject to cavity search at boarding school at age 14); and Mic's Story, <https://www.breakingcodesilence.net/testimonial/micsstory> (Feb. 22, 2021) (recounting experience of being strip-searched when sent to residential psychiatric hospital as a teenager)).

¹¹ See Gary A. Harki, *An 8-Year-Old Girl Was Strip Searched at a Virginia Prison. She Was Told It Was the Only Way to See Her Dad*, VIRGINIAN-PILOT, Dec. 5, 2019,

<https://www.pilotonline.com/government/virginia/vp-nw-strip-search-20191206-wd2ejtrtqfgbvkbj7xzh7btemu-story.html>. See also *Body Searches*, *supra* note 1, at 7 (“Intrusive search procedures are likely to discourage visitors, and consequently have a negative impact on the maintenance of family and social links which are essential for reintegration following release.”); *id.* at 8 (“[T]he Committee on the Rights of the Child recommend[s] measures to ensure that the visit context is respectful to the child’s dignity and right to privacy and urged states to ensure that security matters and policies on incarcerated parents take into account the rights of affected children.”) (citations and internal quotations omitted).

¹² *Mary Beth G. v. City of Chicago*, 723 F.2d 1263, 1272 (7th Cir. 1983) (citation and internal quotation marks omitted). See also *Body Searches*, *supra* note 1, at 1 (“All types of body search can be intimidating and degrading, and the more intrusive the method, the stronger the feeling of invasion will be.”).

¹³ See F. PHILLIP RICE & KIM GALE DOLGIN, *THE ADOLESCENT: DEVELOPMENT, RELATIONSHIPS AND CULTURE* 173 (10th ed. 2002).

¹⁴ Steven F. Shatz et al., *The Strip Search of Children and the Fourth Amendment*, 26 U.S.F. L. REV. 1, 12-13 (1991).

¹⁵ 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*, *supra* note 1, at 4 (“For female detainees, the experience of a body search may be re-traumatizing due to sexual abuse in the past.”)

¹⁶ 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); *Addressing Trauma*, *supra* note 4.

¹⁷ *New Jersey v. T.L.O.*, 469 U.S. 325, 349 (1985).

¹⁸ The Fourth and Seventh Circuits have held that such searches can proceed without a warrant if the search passes the “special needs” balancing test. *Darryl H. v. Coler*, 801 F.2d 893 (7th Cir. 1986); *Wildauer v. Frederick Cty.*, 993 F.2d

369 (4th Cir. 1993). By contrast, four other circuits have held that strip searches of children based on suspicions of abuse are not amenable to the “special needs” test and are only valid subject to a court order or search warrant, or exigent circumstances. *Good v. Dauphin Cty. Soc. Servs. Children & Youth*, 891 F.2d 1087 (3d Cir. 1989) (holding that social workers’ search of a child in his home required either a search warrant, consent, or exigent circumstances); *Calabretta v. Floyd*, 189 F.3d 808 (9th Cir. 1999) (holding that a social worker performing a search on a child to investigate possible abuse must have a warrant, consent, or exigent circumstances, and may not rely on the special needs doctrine); *Tenenbaum v. Williams*, 193 F.3d 581 (2d Cir. 1999) (judicial authorization was required for social workers to examine a student upon suspicion of abuse); *Roe v. Texas Dep’t Protective & Regulatory Servs.*, 299 F.3d 395 (5th Cir. 2002) (social workers performing a visual body cavity search for suspected abuse needed a court order based on probable cause or exigent circumstances, and that they could not rely on the special needs doctrine).

¹⁹ See *Doe v. Woodard*, 912 F.3d 1278 (10th Cir. 2019), *cert. denied*, 139 S.Ct. 2616 (2019).

²⁰ See Emily J. Nelson, *Custodial Strip Searches of Juveniles: How Safford Informs a New Two-Tiered Standard of Review*, 52 B.C.L. REV. 339, 341 (2011)

²¹ See, e.g., *Mabry v. Lee County*, 849 F.3d 232, 238-39 (5th Cir. 2017) (holding that intake strip and body cavity search of 12-year-old girl arrested for a fight at school was constitutional, even though detention center officer found no contraband when using a metal wand and patting down the child); *J.B. ex rel. Benjamin v. Fassnacht*, 801 F.3d 336, 338 (3d Cir. 2015) (finding lawful suspicionless strip and body cavity searches as part of routine admission to juvenile detention center).

²² See *N.G.*, 382 F.3d at 242-43 (Sotomayor, J., dissenting) (“One supervisor testified that of the one hundred strip searches she personally conducted, not one yielded evidence of contraband. A director of one of the facilities testified that out of 2,500 strip searches performed since that facility was built, only two strip searches revealed contraband that otherwise would not have been found. Those two recovered items of contraband were a piece of jewelry attached to a child’s belly button and cocaine that was discovered in a child’s clothing. Full nudity would not have been necessary to uncover these items.”).

²³ Maria Cramer, *Strip-Searching of 8-Year-Old at Prison Leads Virginia to Halt the Practice*, N.Y. TIMES, Dec. 9, 2019, <https://www.nytimes.com/2019/12/06/us/strip-search-buckingham-correctional-center.html>.