

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

## **NEW YORK STATE SUPPLEMENT**

*Prepared by the Children Rights Litigation Committee of the  
American Bar Association's Section of Litigation  
and the New York Civil Liberties Union*

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### **What is the definition of a strip search in New York State?**

The definition of a strip search varies by case, statute, school district, and agency. In the juvenile justice setting, a strip search is “the visual search of a youth's clothing and unclothed body.”<sup>i</sup> The Administration for Children’s Services (ACS) in New York City (NYC) defines a strip search as the removal of all clothing “to check for contraband believed capable of inflicting harm.”<sup>ii</sup> Child Protective Services (CPS) does not use the language “strip search”, but rather characterizes the strip search as “[c]onducting an observation of normally clothed areas of a child’s body” or a “physical inspection”.<sup>iii</sup> School districts define strip searches in their respective policies. For example, the Binghamton School Board defines a strip search as “a search that requires a student to remove any or all of his/her clothing, other than an outer coat or jacket.”<sup>iv</sup>

### **How does a strip search affect a child or youth?**

A strip search can be so traumatizing to youth that they feel it is unsafe to return to the setting where the strip search occurred.<sup>v</sup> A New York state court emphasized that “the psychological damage that would be risked on sensitive children by random search insufficiently justified by the necessities is not tolerable.”<sup>vi</sup> The court further noted that “the scope of permissible search and... the scope of undue risk of psychological harm, will vary significantly with the age and mental development of the child.”<sup>vii</sup>

### **Where and in what circumstances are children and youth in New York State subjected to strip searches?**

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

#### **➤ *In juvenile detention facilities***

Youth in juvenile detention facilities are subject to strip searches, but not cavity searches.<sup>viii</sup> Youth must be given an opportunity to surrender contraband prior to being searched and youth cannot be searched for purposes of discipline, punishment, or harassment.<sup>ix</sup> Additionally, searches should be conducted by staff of the same gender, unless the youth is transgender, in which case the youth may request a staff of any gender to conduct the search.<sup>x</sup> Children can be strip searched upon their initial admission into a juvenile detention center.<sup>xi</sup> Family Court judges in NYC can place higher risk youth in a Limited Secure Placement (LSP) home as an alternative to detention.<sup>xii</sup> LSPs are higher security group

homes located in all five boroughs that are closer to the youth's home and provide services to support the youth in their treatment and transition back into their home.<sup>xiii</sup> ACS allows strip searches of youth in LSPs if it is believed that the youth possesses dangerous contraband and only if a regular search has already been conducted.<sup>xiv</sup>

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

Child Protective Services (CPS) workers can strip search children if CPS receives information about possible child abuse.<sup>xv</sup> CPS has much discretion on whether to conduct a strip search. Case workers consider eight factors when deciding whether a strip search is necessary, which range from considering whether the child seems embarrassed to disrobe to whether the case worker believes that the child is in imminent danger.<sup>1</sup> CPS is able to conduct strip searches of a minor without the consent of a parent if CPS suspects an imminent threat to the child's safety.<sup>xvi</sup> The case worker may ask the child for consent to a search if the child has capacity to consent.<sup>xvii</sup> Capacity is not defined by age, but rather defined by the child's capacity to understand the nature and consequences of the proposed visual search of the child's body.<sup>xviii</sup>

➤ *In schools*

The New York State Department of Education Regulation of the Chancellor provides that "[u]nder no circumstances shall a strip-search of a student be conducted."<sup>xix</sup> The New York City Police Department, which is currently in charge of the School Safety Agents who work in NYC public schools, has the same policy.<sup>xx</sup>

Despite the Chancellor's regulation absolutely prohibiting strip searches of students, school personnel are still conducting them. For example, In January 2019, four Black twelve-year-old Binghamton middle school girls were perceived as "giddy" and "hyper" and were brought to the nurse's office for a search and examination.<sup>xxi</sup> The searches and examinations ranged from a "sobriety test" to a strip search.<sup>xxii</sup> Two girls were strip searched by the school nurse despite the Chancellor's regulation and the school board's policy that stated "[s]trip searches are intrusive in nature and are almost never justified."<sup>xxiii</sup> After the incident, the children "felt it was too unsafe to return" to school.<sup>xxiv</sup>

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<sup>1</sup> Case workers should consider eight factors when deciding whether a strip search is necessary: (1) Whether the case circumstances or history would indicate a strip search would be necessary to determine if the child is in imminent danger; (2) Whether the strip search is necessary to immediately see the injuries to decide whether the child needs immediate protection; (3) Whether "the allegation that the child has bruises or injuries on a clothed part of the body seems to be credible"; (4) Whether there are other signs of visible physical harm to the child or other evidence of violence occurring in the home; (5) Whether the child indicates they do not want to disrobe or indicates great discomfort regarding the visual inspection of his or her clothed areas; (6) Whether the child seems embarrassed by the plan to disrobe and whether this may be due to the child's cultural background and upbringing; (7) Whether it seems as if the child is attempting to protect their parent or the child shows discomfort around the parent; (8) Whether "the worker have reasonable cause to believe that the child is in imminent danger without having the child physically inspected". Office of Children and Family Services (OCFS), Child Protective Services Manual, G-2 (Mar. 2020), <https://ocfs.ny.gov/main/cps/manual/2020/2020-CPS-Manual-Ch06-2020Mar.pdf>.

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

Children visiting people who are incarcerated in a correctional facility can be strip searched with the consent of their parent.<sup>xxv</sup> If the parent refuses consent, the parent and child will not be permitted to enter the correctional facility.<sup>xxvi</sup>

In 2017, a NYC correction officer strip-searched a four-year-old girl who was visiting an inmate with her mother.<sup>xxvii</sup> Even though the mother and daughter walked “through a metal detector ‘without incident’ and a police dog inspection found them free of contraband,” a correction officer told the mother that “she'd been picked for a random ‘pat and frisk’ search.”<sup>xxviii</sup> The correction officer searched the mother’s genital regions, which the mother described as embarrassing, humiliating, and dehumanizing.<sup>xxix</sup> The search of the four-year-old girl “involved using their hands to open the child's pants, underwear and ... touching the child's buttocks and vaginal area and conducting a visual inspection of these private areas”.<sup>xxx</sup>

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

The Second Circuit has upheld a strip search of a student conducted by school personnel for medical reasons, such as searching for evidence of “cutting” or self-harm.<sup>xxxii</sup> and strip searches of children upon their initial admission to a juvenile detention facility.<sup>xxxiii</sup> However, in 2020, the Second Circuit found in favor of two Black twelve-year-old middle school girls who were strip searched at their school.<sup>xxxiii</sup> While the incident involved searches of four girls, the court dismissed two of the plaintiff’s strip search claims because the two girls only removed their shoes, which the court did not find to be a strip search.<sup>xxxiv</sup> The Second Circuit has emphasized how susceptible children are to the trauma of strip searches.<sup>xxxv</sup>

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

Advocates can encourage state, local, and tribal governments to 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, the New York State legislatures can pass new laws that limit strip searches. Executive agencies in New York 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.

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<sup>i</sup> 9 N.Y.C.R.R. § 180-3.18 (a)(6) (2018).

<sup>ii</sup> New York City Administration for Children's Services, *Limited Secure Placement Personal Youth Search Policy*, 4 (Jun. 10, 2016), [https://www1.nyc.gov/assets/acs/pdf/partners/JJProviders/CloseToHome/2016\\_05.pdf](https://www1.nyc.gov/assets/acs/pdf/partners/JJProviders/CloseToHome/2016_05.pdf).

<sup>iii</sup> Office of Children and Family Services (OCFS), *Child Protective Services Manual*, G-1 (Mar. 2020), <https://ocfs.ny.gov/main/cps/manual/2020/2020-CPS-Manual-Ch06-2020Mar.pdf>.

<sup>iv</sup> Binghamton School Board Policy 7330, *Searches and Interrogations of Students* (2016) [http://www.binghamtonschools.org/UserFiles/Servers/Server\\_512723/File/Board%20Policies/Section%207000%20Students%20updated%20february%202018.pdf](http://www.binghamtonschools.org/UserFiles/Servers/Server_512723/File/Board%20Policies/Section%207000%20Students%20updated%20february%202018.pdf).

<sup>v</sup> *I.S.*, 2020 BL 349920 at \*2 (strip search in school).

<sup>vi</sup> *People v. Scott*, 34 N.Y.2d 483, 490 (N.Y. 1974).

<sup>vii</sup> *Id.*

<sup>viii</sup> 9 N.Y.C.R.R. § 180-3.18 (a) and (b) (2018).

<sup>ix</sup> 9 N.Y.C.R.R. § 180-3.18 (c) and (d) (2018).

<sup>x</sup> 9 N.Y.C.R.R. § 180-3.18 (e) (2018).

<sup>xi</sup> *N.G. ex rel. S.C. v. Connecticut*, 382 F.3d 225, 237-38 (2d Cir. 2004).

<sup>xii</sup> New York City Administration for Children's Services, *Limited Secure Placement* (2020), <https://www1.nyc.gov/site/acs/justice/limited-secure-placement.page>.

<sup>xiii</sup> *Id.*

<sup>xiv</sup> New York City Administration for Children's Services, *Limited Secure Placement Personal Youth Search Policy*, 4 (Jun. 10, 2016), [https://www1.nyc.gov/assets/acs/pdf/partners/JJProviders/CloseToHome/2016\\_05.pdf](https://www1.nyc.gov/assets/acs/pdf/partners/JJProviders/CloseToHome/2016_05.pdf).

<sup>xv</sup> Office of Children and Family Services (OCFS), *Child Protective Services Manual*, G-1 (Mar. 2020), <https://ocfs.ny.gov/main/cps/manual/2020/2020-CPS-Manual-Ch06-2020Mar.pdf>.

<sup>xvi</sup> *Id.* at G-3.

<sup>xvii</sup> *Id.*

<sup>xviii</sup> *Id.*

<sup>xix</sup> Chancellor's Regulation A-432.

<sup>xx</sup> New York Police Department, *Patrol Guide*, Section: Juvenile Matters, Procedure No.: 215-18, 158 (Mar. 20, 2019) [https://www1.nyc.gov/assets/nypd/downloads/pdf/public\\_information/public-pguide3.pdf](https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide3.pdf).

<sup>xxi</sup> *I.S.*, 2020 BL 349920 at \*1-2.

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xxii *Id.*

xxiii Binghamton School Board Policy 7330, Searches and Interrogations of Students (2016)  
[http://www.binghamtonschools.org/UserFiles/Servers/Server\\_512723/File/Board%20Policies/Section%207000%20Students%20updated%20february%202018.pdf](http://www.binghamtonschools.org/UserFiles/Servers/Server_512723/File/Board%20Policies/Section%207000%20Students%20updated%20february%202018.pdf).

xxiv *I.S.*, 2020 BL 349920 at \*2.

xxv 7 N.Y.C.R.R. § 200.2(7) (2012).

xxvi *Id.*

xxvii Victoria Bekiempis, *NYC Correction Officers Strip-searched 4-year-old Girl Visiting Inmate with Mom: Lawsuit*, New York Daily News, May 4, 2017, <https://www.nydailynews.com/new-york/manhattan/nyc-guards-strip-searched-girl-4-jail-visit-mom-suit-article-1.3137708>.

xxviii *Id.*

xxix *Id.*

xxx *Id.*

xxxi *Masciotta v. Clarkstown Cent. Sch. Dist.*, 136 F. Supp. 3d 527, 537 (S.D.N.Y. 2015).

xxxii *N.G.*, 382 F.3d at 239.

xxxiii *I.S.*, 2020 BL 349920 at \*1-2.

xxxiv *Id.* at \*13, \*25.

xxxv *N.G.*, 382 F.3d at 233, 239.