

Addressing Trauma

Eliminating Strip Searches

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.”¹ Strip searches may also involve “inspections of the scalp, ears, hands, feet, mouth, and nose.”² Depending on state law, a strip search can be visual, physical, or a combination of both and may also involve a body cavity search.³

I didn’t want to look at her! Violated is people seeing something that you don’t want them to see. 17-year-old

Strip searches generally require probable cause or reasonable suspicion, and the law makes clear that such a significant intrusion into personal privacy should only occur when the government need is substantial.⁴ This fact sheet focuses on the issue of suspicionless strip searches in juvenile facilities.

Most states require strip searches to be performed by members of the same gender as the individual being searched. For transgender or intersex individuals, the Prison Rape Elimination Act (PREA) prohibits searches or physical examinations “for the sole purpose of determining...genital status.”⁵ Per policy, a number of states allow transgender or intersex youth an opportunity to request whom they would prefer to conduct the search.⁶

Additionally, some states require searches to “be conducted in the presence of two staff or one staff with another staff monitoring” the search by “security video surveillance with audio.”⁷

1 Prison Rape Elimination Act, <https://www.prearesourcecenter.org/sites/default/files/content/preafinalstandardstype-juveniles.pdf>.

2 Katherine Hunt Federle, *Children and the Law: An Interdisciplinary Approach* (2012); See also, National Institute of Corrections, Principles and Concepts, Chapter 5 – Rights and Responsibilities of Youth, Families, and Staff, Michael Umpierre (2017), Daily Practice, Chapter 9 – Admission and Intake, Chapter 8 – Management and Facility Administration, Anne M. Nelsen (2017), available at <https://info.ncic.gov/dtg/>.

3 Wis. Stat. § 968.255 (2015), <https://docs.legis.wisconsin.gov/statutes/statutes/968/255?view=section>; Cal. Stat. § 4031 (2017), https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN§ionNum=4031; See also William Simonitsch, *Visual Body Cavity Searches Incident to Arrest: Validity under the Fourth Amendment*, 54 U. Miami L. Rev. 665 (2000), available at <http://repository.law.miami.edu/cgi/viewcontent.cgi?article=1607&context=umlr>.

4 *Safford Unified School District No. 1 v. Redding*, 557 U.S. 364,375-77 (2009).

5 U.S. Department of Justice, *Juvenile Facility Standards: National Standards to Prevent, Detect, and Respond to Prison Rape Under the Prison Rape Elimination Act (PREA)* § 115.315 (2012), available at <https://www.prearesourcecenter.org/sites/default/files/content/preafinalstandardstype-juveniles.pdf>.

6 See e.g., Washington State Department of Social & Health Services Rehabilitation Administration, *Policy 5.70 Conducting Searches* (2015), available at <https://www.dshs.wa.gov/sites/default/files/JJRA/jr/documents/JR-Policies/policy5.70.pdf>.

7 Utah Department of Human Services, *Searches of Person, Room, State Vehicle* (2015), available at <https://hspolicy.utah.gov/files/jjs/Section%2005%20-%20Safety,%20Security,%20Supervision/05-02%20Searches%20of%20Person,%20Room,%20State%20Vehicle.pdf>.

The lady told me I had to take off my clothes so they could look for scars so that I can't go home and say they did it and my parents can sue...I was embarrassed. I don't like taking my clothes off in front of anyone...I could see it if I was there for carrying a weapon...But for not going to school?
13-year-old

WHY ARE STRIP SEARCHES HARMFUL?

Although strip searches are intended to locate hidden contraband, the practice is invasive, degrading, and can traumatize youth. Moreover, less intrusive approaches can generally accomplish the same goals.

The experience of a strip search can cause youth to experience anxiety, depression, loss of concentration, sleep disturbances, difficulty performing in school, phobic reactions, shame, guilt, depression, and other lasting emotional scars. These negative consequences can last for years.

Trauma during adolescence may have a particularly significant effect on the development of the frontal lobe, the area in the brain that is responsible for thoughtful decision-making and measured responses. Trauma to this area of the brain during a youth's development can result in lasting consequences into adulthood.

Strip searches can also retraumatize youth who are survivors of sexual abuse. A national survey indicated that more than one-third of girls in the juvenile justice system reported being sexual abuse survivors.

TROUBLING PRACTICES AND POLICIES ACROSS THE COUNTRY

The following are based on existing strip search policies and practices from various jurisdictions:

- Suspicionless strip searches, including searches upon admission to a facility, after contact visits, after transportation, or upon a change of status or placement within a facility;
- Requiring youth to remove all clothes for a search;
- Requiring youth to bend over and cough in the presence of a staff member;

We walked in there and she told me I had to take my clothes off... [S]he told me she had to do a strip search. I said, 'What is that?' She said 'you just have to bend over, you have to spread your butt cheeks, and you have to cough... I was like 'I can't do it!' And she was just like 'well, you're going to have to do it some time. So, then I turned around, and I coughed, and I coughed again.'
12-year-old

- Searching body cavities.

MODEL ALTERNATIVE STRIP SEARCH POLICIES

Below are components of state policies that provide model alternatives to strip searches. Where possible, we have included citations to state policies in the footnotes.

The best policy is to eliminate strip searches of youth for any circumstance, as is the policy for adjudicated youth in Missouri.⁸

Where strip searches remain in effect, policies should be narrow and clearly articulate the following:

- **Standard of Proof:** Probable cause that there is contraband that could not otherwise be discovered should be required before any strip search.⁹

⁸ Missouri Division of Youth Services, *Training Guide for Physical Searches of Youth in a Residential Setting* (2014), available at <http://www.opd.state.md.us/Portals/0/Downloads/TaskForce/MO-DYS-Searches-for-Cntrbnd.pdf>.

⁹ Kentucky Department of Juvenile Justice, *Policy and Procedures: Searches* (2016), available at <http://djj.ky.gov/300%20Policy%20Manual/DJJ%20325%20Searches.pdf>.

When I had my first full search, it was horrible as I have been sexually abused and I didn't feel comfortable showing my body as this brought back bad memories. 13-year-old

- **Searches Not Permitted:** Where a youth remained under the direct, continuous supervision of staff members before and after being transported, he or she **should not** be subject to a strip search upon arrival or admission to the destination.¹⁰
- **Limitations:** Strip searches should be limited to preventing an immediate threat of harm posed by a youth.
- **Less Intrusive Searches:** Youth should be permitted to remain dressed in a layer of clothing, such as shorts and tank top, during the search.¹¹
- **Graduated Response:** Staff should be required to use a graduated response before conducting a strip search. Before conducting any search that requires contact with a youth's body, staff should:
 1. Verbally notify the youth of 1) their reported suspicion that the youth is in possession of contraband, including the type of contraband and 2) the process the staff will conduct to locate and retrieve contraband.
 2. Attempt to exhaust all verbal intervention techniques to persuade the youth to voluntarily surrender any possible contraband.
 3. If the verbal intervention techniques fail to result in the retrieval of the suspected contraband and reasonable suspicion still exists, staff should inform youth of the next step in the search process and permit youth an opportunity to ask questions before the search begins.
 - Staff may conduct a search of the youth by using a detection device, such as a hand-held metal detector wand or body scanner. The youth should remain fully clothed during this search.
 - Staff can instruct youth to remove any items from their person that causes the detector's alarm to sound.
 4. Where both a verbal discussion and the use of a detection device fail in the retrieval of contraband, inform the youth that the next step in the search involves a visual, manual, or physical search of the youth's body, including the area of the body the staff will inspect. If a youth expresses concerns about being touched before or during a search, staff must be sensitive and accommodate such requests to prevent trauma and/or re-victimization.

FOR MORE INFORMATION ABOUT STRIP SEARCHES OF YOUTH IN JUVENILE DETENTION FACILITIES, PLEASE SEE THE SELECTED ARTICLES AND RESOURCES:

The Annie E. Casey Foundation, *A Guide to Juvenile Detention Reform: Juvenile Detention Facility Assessment* (2014), available at <http://www.aecf.org/m/resourcedoc/aecf-juvenile-detention-facility-assessment-2014.pdf>.

Associated Press, *Judge: Youth Strip Searches at Oregon Jail Unconstitutional*, The Daily News (Washington) (2010), http://tdn.com/news/judge-youth-strip-searches-at-oregon-jail-unconstitutional/article_8b212556-3a03-11df-b391-001cc4c03286.html.

NOTE: The Baltimore Sun published a number of news articles on shackling and strip searches of youth in Maryland. Three of the articles written by Erica Green are below, however, more stories are available

¹⁰ H.B. 1256, 2017 Gen. Assem. (Md. 2017), available at <http://mgaleg.maryland.gov/2017RS/bills/hb/hb1256f.pdf>.

¹¹ Kentucky Department of Juvenile Justice, *Policy and Procedures: Searches* (2016), available at <http://djj.ky.gov/300%20Policy%20Manual/DJJ%20325%20Searches.pdf>.

on the Sun's website.

Erica Green, *Juveniles in Maryland's Justice System are Routinely Strip-Searched and Shackled*, The Baltimore Sun (2016), available at <http://www.baltimoresun.com/news/maryland/investigations/bs-md-strip-and-shackle-20160129-story.html>.

Erica Green, *Lawmakers Move to Withhold Funding from Juvenile Services as Debate over Strip-Search and Shackle Policies Intensifies*, The Baltimore Sun (2016), available at <http://www.baltimoresun.com/news/maryland/sun-investigates/bs-md-strip-shackle-hearing-20160323-story.html>.

Erica Green, *Experts: Youth Charged with Crimes Should be Strip-Searched Only When There's 'Reasonable' Suspicion*, The Baltimore Sun (2016), available at <http://www.baltimoresun.com/news/maryland/sun-investigates/bs-md-ci-strip-search-experts-20160922-story.html>.

Sue Burrell, *Trauma and the Environment of Care in Juvenile Institutions*, The National Child Traumatic Stress Network (2013), available at http://www.njcn.org/uploads/digital-library/NCTSN_trauma-and-environment-of-juvenile-care-institutions_Sue-Burrell_September-2013.pdf.

Jessica Feerman and Riya Shah, *Protecting Personhood: Legal Strategies to Combat the Use of Strip Searches on Youth in Detention*, 60 Rutgers L. Rev. 67 (2007), available at http://www.rutgerslawreview.com/wp-content/uploads/archive/vol60/Issue1/Feerman-Shah_v60n1.pdf.

Susan Goldsmith, *McMinnville Boys Sue over Strip-Searches*, The Oregonian (2008), available at http://blog.oregonlive.com/breakingnews/2008/06/mcminnville_boys_sue_over_stri.html.

Jessica Lander, *Keep Kids out of Detention*, The Boston Globe (2016), available at <https://www.bostonglobe.com/opinion/2016/03/11/keep-kids-out-detention/EvWqUgqOrwEyfEK0vS7w9O/story.html>.

Maryland Department of Juvenile Services, *Search Policy Overview* (2016), available at <http://www.opd.state.md.us/Portals/0/Downloads/TaskForce/DJS-Other-States-Summary-Slides-9.21.16.pdf>.

Nick Moroney, *Suggested Recommendations for Consideration by the Members of the Task Force to Study the Restraint, Searches, and Needs of Children in the Juvenile Justice System* (2016), available at <http://www.opd.state.md.us/Portals/0/Downloads/TaskForce/Suggested-Recommendations-to-the-Task-Force-submitted-by-Nick-Moroney-of-the-JJMU-10-12-16.docx.pdf>.

Emily Nelson, *Custodial Strip Searches of Juveniles: How Safford Informs a New Two-Tiered Standard of Review*, 52 B.C. L. Rev. 339 (2011), available at https://www.bc.edu/content/dam/files/schools/law/bclawreview/pdf/52_1/06_nelson.pdf.

Gretchen Schudlt, *More Horrors at Juvenile Prisons?*, Urban Milwaukee (2017), available at <http://urbanmilwaukee.com/2017/04/19/more-horrors-at-state-juvenile-prisons/>.

Rich Trunnell, *How Well Does the System Serve Our Kids?: A View of Juvenile Justice in 2016*, 49 Oct Md. B. J. 4 (2016), available at <http://www.msba.org/publications/barjournal/sep-oct-2016.aspx>.

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