

STRIP AND BODY CAVITY SEARCHES

House Bill 4669 as introduced First Analysis (5-20-99)

Sponsor: Rep. Mike Kowall
**Committee: Criminal Law and
Corrections**

THE APPARENT PROBLEM:

Public Act 164 of 1996 provided for the creation of a youth correctional facility. This facility will provide a place to house juvenile offenders up to the age of 19 who were convicted as adults without having to place them in an adult facility where they might be at risk of either being influenced or harmed by adult prisoners. In addition to providing for the creation of the facility, the legislation also authorized the Department of Corrections to contract with a private vendor for the construction and/or operation of the facility, which was done. Construction of the youth correctional facility, which is owned and will be operated by the Wackenhut Corrections Corporation, is likely to be completed in July or August of this year. However, as the date for the opening of this facility approaches, it has been noted that the private vendor operating the youth facility will not be eligible for certain exceptions that allow state run correctional facilities to perform strip and body cavity searches under broader circumstances and conditions than are generally allowed. It is felt that these exceptions allowing for strip and body cavity searches are necessary to running a correctional facility, whether or not it is run by the DOC or by a private vendor.

THE CONTENT OF THE BILL:

House Bill 4669 would amend the Code of Criminal Procedure to expand the circumstances under which strip searches and body cavity searches would be allowed. The bill would specifically include a youth correctional facility operated by the Department of Corrections or a private vendor in exceptions that allow an adult correctional facility under the department's jurisdiction to perform such searches.

MCL 764.25a and 764.25b

BACKGROUND INFORMATION:

The Code of Criminal Procedure sets out specific procedural requirements for when and by whom a strip or body cavity search may be performed. Under current law, strip searches are not generally allowed where the person to be searched is arrested for a misdemeanor. However, such a search may be allowed, with prior written authorization, if there is reasonable cause to believe the person has a weapon, a controlled substance, or evidence of a crime. These limitations on strip searches do not apply where the individual who is to be searched is lodged in a detention facility by order of a court or is in a state correctional facility under the jurisdiction of the Department of Corrections.

Body cavity searches are generally not allowed without a valid search warrant unless the person is in a detention facility, a state correctional facility, a juvenile detention facility, or an inpatient facility operated by or under contract to the Department of Community Health or a community mental health board. Even if the individual who will be subjected to the search is in a listed facility, the code requires that the search be performed under the following restrictions:

* There must be written authorization from the chief administrative officer of the facility or his or her designee.

* The search must be performed by a licensed physician or by a physician's assistant, licensed practical nurse, or registered professional nurse acting with the approval of a licensed physician, and the search must be conducted by a person of the same sex as the subject or in the presence of a person of the same sex.

* The person conducting the search must prepare a report, including: the written authorization; the name and sex of the person who was searched; the name and sex of the person conducting the search; the time, date and place of the search; a list of items recovered; and the name and sex of all persons present during the search.

* A copy of the report must be provided to the person who was searched without cost.

The Department of Corrections supports the bill. (5-18-99)

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no significant fiscal impact. (5-13-99)

ARGUMENTS:

For:

Without the changes that would be put in place by this bill, those operating the new youth correctional facility will be forced to get a search warrant in order to perform a strip search or a body cavity search of a prisoner. This would clearly be an unnecessary administrative burden for the operators of the facility.

It is a matter of record that many people opposed both the creation of a youth facility as well as the privatization of the facility. However, since the facility is being built and will be operated by a private company, those who opposed the privatization of the facility should not serve to tie the hands of those who will be running the youth correctional facility. The ability to perform thorough searches of the inmates in a correctional facility is a fundamental power of correctional facility. Without the ability to perform such searches, the facility cannot protect the safety and security of either the personnel or the prisoners.

Against:

The privately run facility will not be prohibited from performing searches if this bill is not enacted; the facility will merely be required to get a search warrant before performing such a search. Considering that the "prisoners" in this facility will be children under the age of 19, perhaps it would not be such a bad idea to keep such a limitation on the ability of those in charge to perform such invasive searches.

Analyst: W. Flory

POSITIONS:

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.