

HOUSE BILL No. 4669

May 12, 1999, Introduced by Reps. Kowall, Pumford, Bishop, Sanborn and Faunce and referred to the Committee on Criminal Law and Corrections.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending sections 25a and 25b (MCL 764.25a and 764.25b), section 25a as amended by 1983 PA 92 and section 25b as amended by 1996 PA 418.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 25a. (1) As used in this section, "strip search" means
2 a search which requires a person to remove his or her clothing to
3 expose underclothing, breasts, buttocks, or genitalia.

4 (2) A person arrested or detained for a misdemeanor offense,
5 or an offense which is punishable only by a civil fine shall not
6 be strip searched unless both of the following occur:

7 (a) The person arrested is being lodged into a detention
8 facility by order of a court or there is reasonable cause to

1 believe that the person is concealing a weapon, a controlled
2 substance, or evidence of a crime.

3 (b) The strip search is conducted by a person who has
4 obtained prior written authorization from the chief law enforce-
5 ment officer of the law enforcement agency conducting the strip
6 search, or from that officer's designee; or if the strip search
7 is conducted upon a minor in a juvenile detention facility which
8 is not operated by a law enforcement agency, the strip search is
9 conducted by a person who has obtained prior written authoriza-
10 tion from the chief administrative officer of that facility, or
11 from that officer's designee.

12 (3) A strip search ~~which is~~ conducted under this section
13 shall be performed by a person of the same sex as the person
14 being searched and shall be performed in a place ~~which~~ THAT
15 prevents the search from being observed by a person not conduct-
16 ing or necessary to assist with the search. A law enforcement
17 officer who assists in the strip search shall be of the same sex
18 as the person being searched.

19 (4) If a strip search is conducted under this section, the
20 arresting officer shall prepare a report of the strip search.
21 The report shall include the following information:

22 (a) The name and sex of the person subjected to the strip
23 search.

24 (b) The name and sex of the person conducting the strip
25 search.

26 (c) The name and sex of a person who assists in conducting
27 the strip search.

1 (d) The time, date, and place of the strip search.

2 (e) The justification for conducting a strip search.

3 (f) A list of all items recovered from the person who was
4 strip searched.

5 (g) A copy of the written authorization required under
6 subsection (2)(b).

7 (5) A copy of the report required by subsection (4) shall be
8 given without cost to the person who has been searched, subject
9 to deletions permitted by section 13 of the freedom of informa-
10 tion act, ~~Act No. 442 of the Public Acts of 1976, being section~~
11 ~~15.243 of the Michigan Compiled Laws~~ 1976 PA 442, MCL 15.243.

12 (6) A law enforcement officer, any employee of the law
13 enforcement agency, or a chief administrative officer or employee
14 of a juvenile detention facility who conducts or authorizes a
15 strip search in violation of this section is guilty of a
16 misdemeanor.

17 (7) This section shall not apply to the strip search of a
18 person lodged in a detention facility by an order of a court or
19 in a state correctional facility HOUSING PRISONERS under the
20 jurisdiction of the department of corrections, INCLUDING A YOUTH
21 CORRECTIONAL FACILITY OPERATED BY THE DEPARTMENT OF CORRECTIONS
22 OR A PRIVATE VENDOR UNDER SECTION 20G OF 1953 PA 232, MCL
23 791.220G.

24 Sec. 25b. (1) As used in this section:

25 (a) "Body cavity" means the interior of the human body not
26 visible by normal observation, being the stomach or rectal cavity
27 of a person and the vagina of a female person.

1 (b) "Body cavity search" means a physical intrusion into a
2 body cavity for the purpose of discovering any object concealed
3 in a body cavity.

4 (2) Except as otherwise provided in this section, a search
5 of a body cavity shall not be conducted without a valid search
6 warrant.

7 (3) Subsection (2) does not apply to a body cavity search of
8 a person who is any of the following:

9 (a) A person serving a sentence for a criminal offense in a
10 detention facility or a state correctional facility HOUSING
11 PRISONERS under the jurisdiction of the department of
12 corrections, INCLUDING A YOUTH CORRECTIONAL FACILITY OPERATED BY
13 THE DEPARTMENT OF CORRECTIONS OR A PRIVATE VENDOR UNDER
14 SECTION 20G OF 1953 PA 232, MCL 791.220G.

15 (b) A person who, as a result of an order by a court, is
16 lodged in an inpatient facility operated by or under contract
17 with the department of community health or a county community
18 mental health board, if the person is self-abusive and the search
19 is necessary for his or her protection.

20 (c) A person who, as the result of a dispositional order
21 entered after adjudication by the juvenile division of probate
22 court before January 1, 1998 or by the family division of the
23 circuit court on or after January 1, 1998, is residing in a juve-
24 nile detention facility.

25 (4) If any of the circumstances described in subsection
26 (3)(a), (b), or (c) applies, a search of a body cavity shall not
27 be conducted unless the person conducting the search has obtained

1 prior written authorization from the chief administrative officer
2 of the facility or from that officer's designee.

3 (5) A body cavity search shall be conducted by a licensed
4 physician or a physician's assistant, licensed practical nurse,
5 or registered professional nurse acting with the approval of a
6 licensed physician. If the body cavity search is conducted by a
7 person of the opposite sex as the person being searched, the
8 search shall be conducted in the presence of a person of the same
9 sex as the person being searched.

10 (6) If a body cavity search is conducted under a valid
11 search warrant, the law enforcement officer who executes the war-
12 rant required under subsection (2) shall prepare a report con-
13 taining all of the following:

14 (a) A copy of the search warrant required under subsection
15 (2).

16 (b) The name and sex of the person searched, if not con-
17 tained in the warrant.

18 (c) The name of the person who conducted the search.

19 (d) The time, date, and place of the search.

20 (e) A list of all items recovered from the person who was
21 searched.

22 (f) The name and sex of all law enforcement officers or
23 employees of the law enforcement agency present at the search.

24 (7) If a body cavity search is conducted under subsections
25 (3) and (4), the personnel authorized to conduct the body cavity
26 search shall prepare a report containing all of the following:

1 (a) A copy of the written authorization required under
2 subsection (4).

3 (b) The name and sex of the person searched, if not con-
4 tained in the written authorization.

5 (c) The name of the person who conducted the search.

6 (d) The time, date, and place of the search.

7 (e) A list of all items recovered from the person who was
8 searched.

9 (f) The name and sex of all personnel present at the
10 search.

11 (8) A copy of the report required by subsection (6) or (7)
12 shall be given without cost to the person who has been searched,
13 subject to deletions permitted by section 13 of the freedom of
14 information act, ~~Act No. 442 of the Public Acts of 1976~~ 1976 PA
15 442, MCL 15.243.

16 (9) A law enforcement officer, an employee of the law
17 enforcement agency, or the chief administrative officer or per-
18 sonnel of a facility described in subsection (3) who conducts or
19 authorizes a body cavity search in violation of this section is
20 guilty of a misdemeanor.