

Act No. 65
Public Acts of 1999
Approved by the Governor
June 24, 1999
Filed with the Secretary of State
June 24, 1999
EFFECTIVE DATE: June 24, 1999

STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 1999

Introduced by Reps. Kowall, Pumford, Bishop, Sanborn and Faunce

ENROLLED HOUSE BILL No. 4669

AN ACT to amend 1927 PA 175, entitled "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," 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:

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

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

(a) The person arrested is being lodged into a detention facility by order of a court or there is reasonable cause to believe that the person is concealing a weapon, a controlled substance, or evidence of a crime.

(b) The strip search is conducted by a person who has obtained prior written authorization from the chief law enforcement officer of the law enforcement agency conducting the strip search, or from that officer's designee; or if the strip search is conducted upon a minor in a juvenile detention facility which is not operated by a law enforcement agency, the strip search is conducted by a person who has obtained prior written authorization from the chief administrative officer of that facility, or from that officer's designee.

(3) A strip search conducted under this section shall be performed by a person of the same sex as the person being searched and shall be performed in a place that prevents the search from being observed by a person not conducting or

necessary to assist with the search. A law enforcement officer who assists in the strip search shall be of the same sex as the person being searched.

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

- (a) The name and sex of the person subjected to the strip search.
- (b) The name and sex of the person conducting the strip search.
- (c) The name and sex of a person who assists in conducting the strip search.
- (d) The time, date, and place of the strip search.
- (e) The justification for conducting a strip search.
- (f) A list of all items recovered from the person who was strip searched.
- (g) A copy of the written authorization required under subsection (2)(b).

(5) A copy of the report required by subsection (4) shall be given without cost to the person who has been searched, subject to deletions permitted by section 13 of the freedom of information act, 1976 PA 442, MCL 15.243.

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

(7) This section shall not apply to the strip search of a person lodged in a detention facility by an order of a court or in a state correctional facility housing prisoners under the jurisdiction of the department of corrections, including a youth correctional facility operated by the department of corrections or a private vendor under section 20g of 1953 PA 232, MCL 791.220g.

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

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

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

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

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

(a) A person serving a sentence for a criminal offense in a detention facility or a state correctional facility housing prisoners under the jurisdiction of the department of corrections, including a youth correctional facility operated by the department of corrections or a private vendor under section 20g of 1953 PA 232, MCL 791.220g.

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

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

(4) If any of the circumstances described in subsection (3)(a), (b), or (c) applies, a search of a body cavity shall not be conducted unless the person conducting the search has obtained prior written authorization from the chief administrative officer of the facility or from that officer's designee.

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

(6) If a body cavity search is conducted under a valid search warrant, the law enforcement officer who executes the warrant required under subsection (2) shall prepare a report containing all of the following:

- (a) A copy of the search warrant required under subsection (2).
- (b) The name and sex of the person searched, if not contained in the warrant.
- (c) The name of the person who conducted the search.
- (d) The time, date, and place of the search.
- (e) A list of all items recovered from the person who was searched.

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

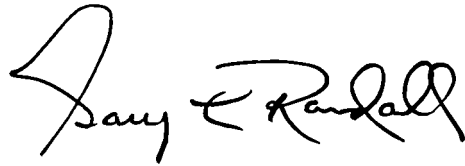
(7) If a body cavity search is conducted under subsections (3) and (4), the personnel authorized to conduct the body cavity search shall prepare a report containing all of the following:

- (a) A copy of the written authorization required under subsection (4).
- (b) The name and sex of the person searched, if not contained in the written authorization.
- (c) The name of the person who conducted the search.
- (d) The time, date, and place of the search.
- (e) A list of all items recovered from the person who was searched.
- (f) The name and sex of all personnel present at the search.

(8) A copy of the report required by subsection (6) or (7) shall be given without cost to the person who has been searched, subject to deletions permitted by section 13 of the freedom of information act, 1976 PA 442, MCL 15.243.

(9) A law enforcement officer, an employee of the law enforcement agency, or the chief administrative officer or personnel of a facility described in subsection (3) who conducts or authorizes a body cavity search in violation of this section is guilty of a misdemeanor.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.