

# HOUSE BILL No. 5871

October 1, 2014, Introduced by Reps. McMillin, Robinson, Irwin and Callton and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 25b of chapter IV (MCL 764.25b), as amended by 1999 PA 65.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

CHAPTER IV

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.

(c) "ORAL SWAB TEST" MEANS THE SWABBING IN THE INTERIOR OF A PERSON'S MOUTH FOR A SAMPLE OF SALIVA TO TEST FOR THE PRESENCE OF A

1 CONTROLLED SUBSTANCE OR A CONTROLLED SUBSTANCE ANALOGUE, AS THOSE  
2 TERMS ARE DEFINED IN SECTION 7104 OF THE PUBLIC HEALTH CODE, 1978  
3 PA 368, MCL 333.7104.

4 (2) Except as otherwise provided in this section, a search of  
5 a body cavity **OR AN ORAL SWAB TEST** shall not be conducted without a  
6 valid search warrant **OR THE WRITTEN CONSENT OF THE PERSON BEING**  
7 **SEARCHED.**

8 (3) Subsection (2) does not apply to a body cavity search **OR**  
9 **ORAL SWAB TEST** of a person who is any of the following:

10 (a) A person serving a sentence for a criminal offense in a  
11 detention facility or a state correctional facility housing  
12 prisoners under the jurisdiction of the department of corrections,  
13 including a youth correctional facility operated by the department  
14 of corrections or a private vendor under section 20g of **THE**  
15 **CORRECTIONS CODE OF 1953**, 1953 PA 232, MCL 791.220g.

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

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

26 (4) If any of the circumstances described in subsection  
27 (3)(a), (b), or (c) applies, a search of a body cavity **OR AN ORAL**

1 **SWAB TEST** shall not be conducted unless the person conducting the  
2 search has obtained prior written authorization from the chief  
3 administrative officer of the facility or from that officer's  
4 designee.

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

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

16 (a) A copy of the search warrant required under subsection  
17 (2).

18 (b) The name and sex of the person searched, if not contained  
19 in the warrant.

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

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

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

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

26 (7) If a body cavity search is conducted under subsections (3)  
27 and (4), the personnel authorized to conduct the body cavity search

1 shall prepare a report containing all of the following:

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

4 (b) The name and sex of the person searched, if not contained  
5 in the written authorization.

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

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

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

10 (f) The name and sex of all personnel present at the 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, 1976 PA 442, MCL 15.243.

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