

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2A:161A-1 - 2A:161A-10 ("Strip searches--prescribe allowable procedures and conditions")

LAWS OF: 1985 **CHAPTER:** 70

Bill No: A701

Sponsor(s): Hardwick

Date Introduced: Pre-filed

Committee: **Assembly:** Judiciary
Senate: Judiciary

Amended during passage: Yes Assembly Committee. Substitute (OCR) enacted. Amendments during passage denoted by asterisks

Date of Passage: **Assembly:** Apr. 30, 1984
Senate: Dec. 17, 1984

Date of Approval: March 7, 1985

Following statements are attached if available:

Sponsor statement: Yes Attached: Senate amendments, adopted 11-19-84 (w/statement).

Committee statement: **Assembly** Yes
Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: No

See newspaper clipping file in New Jersey Reference Department, "New Jersey - search and seizure - 1984--".

70 85
3-7-85

[OFFICIAL COPY REPRINT]
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 701

STATE OF NEW JERSEY

ADOPTED MARCH 15, 1984

Sponsored by Assemblyman HARDWICK

AN ACT concerning personal searches and supplementing Title 2C
of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. No strip search ****[or body cavity search]**** may be conducted
2 upon a person who has been detained or arrested for the commis-
3 sion of an offense other than a crime, without a warrant or the con-
4 sent of the person to be searched unless there is probable cause to
5 believe that a weapon, controlled dangerous substance, as defined
6 by the "New Jersey Controlled Dangerous Substances Act," P. L.
7 1970, c. 226 (C. 24:21-1 et seq.), or evidence of ***[an offense]*** **a*
8 *crime** will be found ***[and exigent circumstances justify the failure**
9 **to obtain a warrant]***.

1 ****2.** *No body cavity search may be conducted upon a person who*
2 *has been detained or arrested for the commission of an offense*
3 *other than a crime, without a warrant or the consent of the person*
4 *to be searched.***

1 ****[2.]**** ****3.**** For the purpose of this act, "strip search" means
2 any search of an arrested or detained person which requires the
3 removal or rearrangement of some or all of his clothes so as to
4 permit a visual inspection of the genitals, buttocks, anus, female
5 breasts or underwear covering those areas of the person. "Body
6 cavity search" means any search of the anal or vaginal cavities.

1 ****[3.]**** ****4.**** Any strip search or body cavity search conducted
2 under this act shall be performed by persons of the same sex as the
3 arrested person and at a location where the search cannot be ob-
4 served by persons not physically conducting the search. The law

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Senate committee amendments adopted September 20, 1984.**

****—Senate amendments adopted November 19, 1984.**

5 enforcement officer or other person authorized to conduct a strip
 6 search or body cavity search shall obtain permission of the officer
 7 in charge of the stationhouse to conduct the search and shall report
 8 the reason for the search on the record of arrest. This report shall
 9 not be deemed a public record pursuant to P. L. 1963, c. 73 (C.
 10 47:1A-1 et seq.) but shall be released only to the person searched
 11 upon the written request of that person or upon court order.
 12 Where emergency conditions require immediate action to prevent
 13 bodily harm to the officer or others, the requirements of this section
 14 shall not apply. In all cases where a strip search ****[or body cavity**
 15 **search]**** is conducted as an exception to the requirements of this
 16 section, the officer conducting the search shall file a separate written
 17 report setting forth the emergency conditions which required the
 18 immediate action. This written report shall be filed with and re-
 19 viewed by the officer in charge who had the authority to authorize
 20 a strip search.

1 ****[4.]**** ****5.**** a. Where it is determined that a strip search or
 2 body cavity search is necessary, it shall be performed under sanitary
 3 conditions. A body cavity search, pursuant to section ****[1]**** ****2****
 4 of this act, shall be conducted by a licensed physician or registered
 5 professional nurse.

6 b. A physician or nurse who conducts a body cavity search
 7 pursuant to the requirements of this act and in a medically accepted
 8 manner, shall be immune from civil or criminal liability for so
 9 acting, provided the skill and care given are those ordinarily re-
 10 quired and exercised by others in the profession. Immunity from
 11 civil or criminal liability shall extend to the hospital or other
 12 medical facility on whose premises or under whose auspices the
 13 body cavity search is conducted, provided the skill, care and
 14 facilities provided are those ordinarily provided by similar medical
 15 facilities.

16 c. Any person conducting a body cavity search pursuant to this
 17 act, shall, upon request, furnish to any law enforcement agency a
 18 certificate stating that the body cavity search was pursuant to the
 19 requirements of this act and performed in a medically acceptable
 20 manner. The certificate shall be signed under oath before a notary
 21 public or other person empowered to take oaths and shall be ad-
 22 missible in any proceeding as evidence of the statements contained
 23 therein.

24 d. No person may claim the physician and patient privilege
 25 under section 2 of P. L. 1963, c. 185 (C. 2A:34A-22.2) with respect
 26 to the conducting of a body cavity search pursuant to this act.

1 ****[5.]**** ****6.**** Failure to comply with any provisions of this act

2 shall subject the law enforcement officer or other authorized person
 3 to administrative disciplinary action. Nothing in this section shall
 4 be construed as limiting such person's criminal liability pursuant
 5 to the laws of this State.

1 ****[6.]** **7.**** Nothing in this act shall be construed as limiting
 2 any statutory or common law rights of any person for purposes of
 3 any civil action or injunctive relief.

1 ****[7.]** **8.**** **Nothing in this act shall prohibit a strip search**
 2 **or body cavity search of a person lodged by court order or pursuant**
 3 **to an arrest authorized by law in a lockup, detention facility, prison,**
 4 **jail or penal institution.]** **Nothing in this act shall prohibit a*
 5 *strip search or body cavity search of a person unable to post bail*
 6 *after a reasonable opportunity to do so, who is lodged by court*
 7 *order or pursuant to an arrest authorized by law in a lockup,*
 8 *detention facility, prison, jail or penal institution. The Adminis-*
 9 *trative Office of the Courts shall promulgate a bail schedule for all*
 10 *offenses, other than crimes, and bail may be fixed and accepted by*
 11 *the law enforcement officer in charge of the station house.**

1 ****[8.]** **9.**** Notwithstanding any law, rule or regulation to
 2 the contrary, no procedures as set forth in this act shall supersede
 3 any procedures of the State's penal institutions.

1 ****[9.]** **10.**** A violation of the provisions of sections ****[3**
 2 **and]** **** 4 **and 5**** of this act shall not affect the admissibility of
 3 evidence seized pursuant to a strip search or body cavity search.

1 ****[10.]** **11.**** This act shall take effect on the 90th day after
 2 enactment.

STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 701

STATE OF NEW JERSEY

DATED: MARCH 5, 1984

This Assembly Committee Substitute requires that a warrant be obtained before any strip search or body cavity search may be conducted on a person detained or arrested for the commission of an offense other than a crime. A strip search or body cavity search may be conducted, however, without a warrant if the person consents to the search or there is probable cause to believe that a weapon, controlled dangerous substance or evidence will be found and exigent circumstances justify the failure to obtain a warrant.

This Assembly Committee Substitute specifically defines strip search and body cavity search and requires that any search conducted under the provisions of the bill be performed by a person of the same sex as the person searched and at a location where it cannot be observed by other persons.

A report stating the reason for the search is to be made; this report is not to be a public record and is to be released only to the person searched upon written request of that person or upon court order. In cases in which a search is conducted as an exception to the requirements of the bill, a separate written report is to be filed setting forth the emergency conditions which necessitated the immediate action.

The performance of a search is to be under sanitary conditions and by a licensed physician or registered professional nurse. Immunity from civil or criminal liability is accorded to a physician, nurse, hospital or medical facility under whose auspices a body cavity search is being conducted provided that the search is conducted as prescribed in the bill. It is further established that no person may claim a physician and patient privilege with regard to the conducting of a body cavity search.

The provisions of this bill are not to apply to any search of a person who is lodged by court order or to a person arrested and authorized by law to be in a lockup, detention facility, prison, jail or penal institution. Failure by any law enforcement officer or other authorized personnel to comply with the provisions of the bill would subject the person to administrative disciplinary action as well as criminal liability.

It is also specifically established in section 9 of the Assembly Com-

mittee Substitute that the admissibility of evidence seized pursuant to a strip search or body cavity search conducted under the provisions of the Assembly Committee Substitute are not to be affected by any violation of procedure in carrying out the search; however, in those instances where the right to make the search is at issue the committee determined that current standards for search and seizure are to apply.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 701

STATE OF NEW JERSEY

DATED: SEPTEMBER 20, 1984

This bill is aimed at establishing statutory guidelines for the conducting of strip searches by law enforcement officers. The basic policy set forth in this bill is that no strip search or body cavity search may be conducted on a person who has been detained or arrested for the commission of an offense other than a crime without a warrant or the consent of the person to be searched.

There are three exceptions to this basic policy. Warrantless searches would be permitted if there is probable cause to believe that the person is concealing a weapon or a controlled dangerous substance. Prior to committee consideration, the bill would also have permitted a search if there was probable cause to believe that the person was concealing evidence of an offense and that exigent circumstances justify the failure to obtain a warrant. The amendments adopted by the committee limit this exception to evidence of a crime and delete the reference to exigent circumstances.

The bill requires that any strip or body cavity search performed by a person of the same sex as the person being searched and at a location where it cannot be observed by other persons.

If a search is made, the reason is to be noted on the arrest record. This information would be available only to the person searched or upon court order.

If emergency conditions require immediate action to prevent bodily harm to officers, the requirements described above with regard to the conducting of searches shall not apply but a written report detailing the emergency conditions is to be filed.

Strip and body cavity searches are to be conducted under sanitary conditions and a body cavity search is to be conducted by a doctor or nurse. Medical personnel and facilities involved in body cavity searches would be immune from liability provided that the search is conducted with the ordinarily required skill and care.

Failure of a law enforcement office to comply with the provisions of the bill would subject the officer to administrative disciplinary action.

As clarified by the amendments adopted by the committee, nothing in the bill is intended to prohibit a strip or body cavity search of a person unable to post bail after a reasonable opportunity to do so, who is lodged in a lock-up, detention facility or jail.

ADOPTED

NOV 19 1984

XIV-9-js
11/19/84

Senate Amendments
(sponsored by Senator Bassano)
to

Assembly Bill No. 701 SR, ACS
(sponsored by Assemblyman Hardwick)

Amend:

| Page | Sec. | Line | |
|------|------|------------|---|
| 1 | 1 | 1 | Omit "or body cavity search" |
| 1 | 1 | After 9 | Insert new section 2 "2. No body cavity search may be conducted upon a person who has been detained or arrested for the commission of an offense other than a crime, without a warrant or the consent of the person to be searched." |
| 1-3 | 2-10 | | Renumber as ^{sections} sections "3." to "11." |
| 2 | 3 | 14-15 | Omit "or body cavity search" |
| 2 | 4 | 3 | Omit "1" insert "2" |
| 3 | 9 | 1 | Omit "3 and" after "4" insert "and 5" |

STATEMENT

These amendments limit the circumstances under which a body cavity may be conducted.

Passed
11-19-84
[Signature]

6 the immediate supervisor prior to conducting the search and shall
7 report the reason for the search on the record of arrest which
8 shall be made available, upon request, in accordance with the rules
9 of court or the right to know law, P. L. 1963, c. 73 (C. 47:1A-1
10 et seq.), whichever is applicable.

1 4. Where it is determined that a strip search or body cavity
2 search is necessary, it shall be performed under sanitary conditions.
3 In the case of a body cavity search, it shall be conducted either
4 by or under the supervision of a licensed physician, registered
5 nurse or other person designated by the law enforcement officer
6 conducting the search, who is trained in the proper medical process
7 and the potential health problems involved in a body cavity search.

1 5. Any law enforcement officer or other authorized person who
2 knowingly or intentionally fails to comply with any provisions of
3 this act is a disorderly person.

1 6. Nothing in this act shall be construed as limiting any statutory
2 or common law rights of any person for purposes of any civil action
3 or injunctive relief.

1 7. This act shall take effect immediately.

STATEMENT

This bill limits the use of strip searches of those persons arrested for disorderly persons offenses, to those situations where it is vital to preserve evidence or protect the arresting officer. In those situations where a strip search would be appropriate the issuance of a search warrant would be required and would only be waived in cases where there is an arrest for a weapon or a controlled dangerous substance or there was probable cause to believe that there was concealment of a weapon or a controlled dangerous substance.

The procedure outlined in the bill would require that a search be carried out by a person of the same sex as the arrested person and authorized by the immediate supervisor of the law enforcement officer seeking to conduct the search. The reason for the search is to be documented on the record of arrest and made available in accordance with the rules of court on the right to know statute, P. L. 1963, c. 63 (C. 47:1A-1 et seq.). A strip search or a body cavity search is to be performed under sanitary conditions and by authorized personnel. A failure to comply with this procedure would be a disorderly persons offense.



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MAR 7 1985

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NEWS RELEASE

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CN-001

Contact: CARL GOLDEN
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Release: THURS., MARCH 7, 1985

Governor Thomas H. Kean today signed legislation prohibiting so-called "strip searches" of persons being held for noncriminal offenses and establishing standards under which such searches may be conducted.

The Governor also signed legislation providing for criminal history background checks for prospective foster parents, those seeking to operate child care centers and others for whom such an investigation is requested.

Both bills were signed by the Governor at public ceremonies in his office.

The strip search bill, A-701, was sponsored by Assembly Minority Leader Chuck Hardwick, R-Union, and explicitly prohibits such searches of a person detained or arrested for a noncriminal offense without a warrant or the consent of the person.

"It is an outrageous abuse of authority to subject a person detained for a motor vehicle violation, for instance, to a strip search," Kean said. "It has consistently been held by the courts that such conduct is a violation of individual civil rights.

"But, beyond that, it is a violation of a person's privacy and dignity and cannot be tolerated or condoned," the Governor said.

The legislation, effective in 90 days, establishes standards under which a strip search or a body cavity search would be permitted on a person charged with a criminal offense.

- more -

The provisions are:

* The search must be performed by a person of the same sex as the person being detained.

* Permission for such a search must be obtained from the officer in charge and the reason must be reported on the arrest record.

* Searches must be performed under sanitary conditions.

* A body cavity search may be conducted only by a licensed physician or registered professional nurse.

Failure to comply with the provisions of the law will result in the officer or officers facing administrative disciplinary action.

The criminal background check legislation, A-788, sponsored by Senate President Carmen A. Orechio, D-Essex, was conditionally vetoed by the Governor on January 8, and his recommendations were accepted by the Legislature in February.

It establishes a user fee for the background checks, but waives the fee for prospective foster parents and their families. These costs will be paid by the Department of Human Services.

The fees charged are to be paid by the agency of government which requests the check or which oversees a particular program, with the funds going to the Division of State Police which is responsible for the investigations.