

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 1053

(Senator Brochin, *et al.*)

Judicial Proceedings

Rules and Executive Nominations

**Criminal Procedure - Strip Search or Body Cavity Search of an Arrestee -
Restrictions**

This bill prohibits a “police officer” from conducting or supervising a “strip search” or “body cavity search” of: (1) a person arrested or held in custody for a misdemeanor or traffic offense that does not involve weapons, controlled dangerous substances, or violence; or (2) a minor detained for an act that would be a misdemeanor if committed by an adult or a traffic offense that does not involve weapons, controlled dangerous substances, or violence.

The bill specifies that an officer may conduct such a search only if the officer has a specified reasonable suspicion and is granted authorization from the highest ranking, supervising officer on duty. The bill specifies the manner and location of such an allowable strip search or body cavity search. A complaint against an officer for violation of these provisions must be investigated in accordance with disciplinary provisions of the Law Enforcement Officers’ Bill of Rights. The bill’s provisions may not be construed as limiting or repealing any common law or statutory rights regarding any action for damages or injunctive relief.

Fiscal Summary

State Effect: None. The bill’s requirements can be handled by the existing budgeted resources of any affected State agency, including the Department of State Police, the Baltimore City Correctional Center, and the Department of Juvenile Services.

Local Effect: None. Many local jurisdictions already have policies in place that meet or exceed the standards set under the bill. Other local law enforcement and correctional agencies can comply with the bill’s requirements with existing resources.

Small Business Effect: None.

Analysis

Current Law/ Background: Maryland law does not address strip searches or body cavity searches. According to the National Conference of State Legislatures, there are currently 16 states that limit or prohibit strip searches, under certain circumstances: California, Colorado, Connecticut, Florida, Illinois, Iowa, Kansas, Michigan, Missouri, New Jersey, Ohio, South Dakota, Tennessee, Virginia, Washington, and Wisconsin.

The Law Enforcement Officers' Bill of Rights was enacted in 1974 to guarantee police officers specified procedural safeguards in any investigation that could lead to disciplinary action. It extends to the statutorily enumerated law enforcement officers having arrest powers, but does not extend to any correctional officers in the State.

In 2007, the Court of Appeals in the case of *Paulino v. State*, 399 Md. 341 articulated the perimeters of what constitutes a strip search, a body cavity search, and when the police may conduct such activity incident to an arrest. In *Paulino*, the Court of Appeals held (with three dissenting judges) on Fourth Amendment grounds that, “. . . the Court must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted. The police officers' search of an arrestee is unreasonable when the officers conduct a highly intrusive search in the parking lot of a public business in the presence of others and there were no exigent circumstances requiring an immediate search.”

Paulino also cited definitions of terms from a U.S. Court of Appeals for the First Circuit case. In *Blackburn v. Snow*, 771 F.2d 556 (1st Cir. 1985), n. 3., the court said:

A “strip search,” though an umbrella term, generally refers to an inspection of a naked individual, without any scrutiny of the subject's body cavities. A “visual body cavity search” extends to a visual inspection of the anal and genital areas. A “manual body cavity search” includes some degree of touching or probing of body cavities.

Local Fiscal Effect: Baltimore City and Montgomery County report that this bill would have no fiscal impact. Worcester County indicates that the sheriff's department has similar policies in place, with space for such searches in privacy. Kent County reports that body cavity searches are completed by an authorized physician in a hospital setting. The City of Bowie indicates that such searches take place at the county detention facility at intake. The Washington County Sheriff's Office reports policies in place more restrictive than under the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Kent County, Montgomery County, Washington County, Worcester County, City of Bowie, Baltimore City, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Legislative Services

Fiscal Note History: First Reader - March 20, 2009
ncs/hlb Revised - Senate Third Reader - April 29, 2009

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