

Adopted**AMERICAN BAR ASSOCIATION****SECTION OF LITIGATION
SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE
COMMISSION ON DOMESTIC AND SEXUAL VIOLENCE
COMMISSION ON YOUTH AT RISK
COMMISSION ON HOMELESSNESS AND POVERTY
COALITION ON RACIAL AND ETHNIC JUSTICE****REPORT TO THE HOUSE OF DELEGATES****RESOLUTION**

1 RESOLVED, That the American Bar Association urges all federal, state, local,
2 territorial, and tribal governments to adopt policies and contractual provisions that
3 prohibit conducting strip searches of children and youth, except in exceptional
4 circumstances, where the searches are permitted only:

- 5
6 (1) when the child or youth is in custody;
7 (2) when there is reasonable suspicion that the child or youth possesses or has
8 had immediate access to an implement that poses a threat of imminent
9 bodily harm to themselves or others;
10 (3) after all other less intrusive methods of discovering and removing the
11 implement have been exhausted, including the use of alternative search
12 techniques that can be performed while the child or youth is fully clothed;
13 and
14 (4) after the child or youth has been given notice, in a manner that is consistent
15 with the child's or youth's primary language and developmental stage, and
16 that takes into account accommodations for disability, that they will be
17 searched and that they have the opportunity to reveal any implement they
18 are carrying instead of being searched; and
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20

21 FURTHER RESOLVED, That the American Bar Association urges all federal,
22 state, local, territorial, and tribal governments to adopt policies and contractual
23 provisions that require that, if the child or youth must be strip-searched, the search
24 is conducted in a manner that respects the sexual orientation and gender identity
25 of the child or youth and is the least intrusive manner possible; and
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27 FURTHER RESOLVED, That the American Bar Association urges all federal,
28 state, local, territorial, and tribal governments to adopt policies and contractual
29 provisions prohibiting body cavity searches of children and youth; and
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31 FURTHER RESOLVED, That the American Bar Association encourages court
32 systems, lawyers, law enforcement leaders, medical professionals law schools,
33 and bar associations to promote awareness of the harmful effects of strip searches
34 and body cavity searches of children and youth, including trauma and re-
35 victimization.

REPORT

Summary of the Resolution

This Resolution urges all federal, state, local, territorial, and tribal governments to adopt policies and contractual provisions that prohibit strip searches of children and youth, except in exceptional circumstances. The policy is based on evidence that strip searches are harmful and cause trauma to children and youth, and especially to those who have previously been victimized.

For this reason, the Resolution urges prohibiting strip searches except when all of the following conditions are met: (1) the child or youth is in custody; (2) there is probable cause to believe that the child or youth possesses an implement that poses a threat of imminent bodily harm to themselves or others; (3) all other less intrusive methods of discovering and removing the implement have been exhausted, including the use of alternative search techniques that can be performed while the child or youth is fully clothed; and (4) the child or youth has been given notice, in a manner that is consistent with the child's or youth's primary language and developmental stage, and that takes into account accommodations for disability, that they will be searched and that they have an opportunity to reveal any implement they are carrying instead of being searched. The Resolution urges absolutely prohibiting body cavity searches of children and youth. In addition, if a child or youth must be strip-searched, the search shall be conducted in a manner that respects the sexual orientation and gender identity of the child or youth and in the least intrusive manner possible. Finally, the Resolution urges the bar to promote awareness of the harmful and traumatizing effects of strip searches on children and youth.

Definition of Strip Searches

A strip search is a "search that requires a person to remove or arrange some clothing so as to permit a visual inspection of the person's breasts, buttocks, or genitalia."¹ Strip searches may also involve "inspections of the scalp, ears, hands, feet, mouth, and nose."² Depending on state law, a strip search can be visual, physical, or a combination of both

¹ Prison Rape Elimination Act, Juvenile Facility Standards, 28 C.F.R. § 115.6 (2012). See also *Body Searches: Addressing Risk Factors to Prevent Torture and Ill-Treatment*, PENAL REFORM INT'L 1, 1 (2015), [hereinafter *Body Searches*], <https://www.penalreform.org/resource/detention-monitoring-tool-factsheet-body-searches/> at 1.

² KATHERINE HUNT FEDERLE, *CHILDREN & THE LAW: AN INTERDISCIPLINARY APPROACH* (2012). See also Michael Umpierre, *Rights & Responsibilities of Youth, Families, and Staff*, in NAT'L INST. CORRECTIONS, *DESKTOP GUIDE TO QUALITY PRACTICE FOR WORKING WITH YOUTH IN CONFINEMENT* (2017); Anne M. Nelsen, *Management & Facility Administration*, in NAT'L INST. CORRECTIONS, *DESKTOP GUIDE TO QUALITY PRACTICE FOR WORKING WITH YOUTH IN CONFINEMENT* (2017); Anne M. Nelsen, *Admission and Intake*, in NAT'L INST. CORRECTIONS, *DESKTOP GUIDE TO QUALITY PRACTICE FOR WORKING WITH YOUTH IN CONFINEMENT* (2017); *Body Searches*, *supra* note 1, at 1.

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and may also involve a body cavity search.³ In addition, the child or youth may be required to bend over and cough in the presence of a staff member.⁴

Definition of Children and Youth

For purposes of this Resolution, children and youth are defined as an individual who is (1) under the age of 18; or (2) under the age of 22 who remains under the jurisdiction of the juvenile court.⁵

Harm and Trauma Caused By Strip Searches of Children and Youth

Strip searches are “demeaning, dehumanizing, undignified, humiliating, terrifying, unpleasant, embarrassing, repulsive, signifying degradation and submission.”⁶ Strip searches are perceived as particularly intrusive by children and teenagers.⁷ A child or youth does not have to be completely naked to be negatively affected by a strip search, as underwear searches are also “embarrassing, frightening, and humiliating.”⁸ “Scientific and psychological research indicates that a traumatic strip search can have a lifelong impact on an adolescent’s developing mind.”⁹ Because “youth . . . is a . . . condition of life when a person may be most susceptible . . . to psychological damage,”¹⁰ “[c]hildren are especially susceptible to possible traumas from strip searches.”¹¹ As noted by the United States Supreme Court, “adolescent vulnerability intensifies the patent intrusiveness of the exposure” and can “result in serious emotional damage.”¹²

³ See WIS. STAT. § 968.255 (2015); CAL. PENAL CODE § 4031 (2017). See also William Simonitsch, *Visual Body Cavity Searches Incident to Arrest: Validity under the Fourth Amendment*, 54 U. MIAMI L. REV. 665 (2000); *Body Searches*, *supra* note 1, at 1.

⁴ See JUVENILE LAW CENTER, *Addressing Trauma: Eliminating Strip Searches* (2017) [hereinafter *Addressing Trauma*], <https://jlc.org/resources/addressing-trauma-eliminating-strip-searches>.

⁵ See A.B.A., MODEL ACT GOVERNING THE REPRESENTATION OF CHILDREN IN ABUSE, NEGLECT AND DEPENDENCY CASES 1, 2 (2011), https://www.americanbar.org/content/dam/aba/publications/litigation_committees/childrights/model-act-final-adopted-by-aba-8-11.pdf.

⁶ *Mary Beth G. v. City of Chicago*, 723 F.2d 1263, 1272 (7th Cir. 1983) (citation and internal quotation marks omitted). See also *Body Searches*, *supra* note 1, at 1 (“All types of body search can be intimidating and degrading, and the more intrusive the method, the stronger the feeling of invasion will be.”).

⁷ See, e.g., *Cornfield by Lewis v. Consolidated School District No. 230*, 991 F.2d 1316, 1323 (7th Cir. 1993) (strip search was particularly intrusive for a sixteen-year-old, because that is the “age at which children are extremely self-conscious about their bodies”); *Doe v. Renfrow*, 631 F.2d 91, 93 (7th Cir. 1980) (strip search of a thirteen-year-old was a “violation of any known principle of human decency”). See also *Thomas ex. rel. Thomas v. Roberts*, 261 F.3d 1160, 1168 (11th Cir. 2001) (strip searches represented a serious intrusion on the rights of the children), *vacated on other grounds*, 536 U.S. 953 (2002). See *Body Searches*, *supra* note 1, at 6 (noting that children are particularly vulnerable to the humiliating and degrading effects of strip searches).

⁸ *Safford Unified School District No. 1 v. Redding*, 557 U.S. 364, 374-75 (2009).

⁹ Emily J. Nelson, *Custodial Strip Searches of Juveniles: How Safford Informs a New Two-Tiered Standard of Review*, 52 B.C.L. REV. 339, 361 (2011) (citing Erica J. Adams, *Healing Invisible Wounds: Why Investing in Trauma-Informed Care for Children Makes Sense*, JUST. POL’Y INST. 1, 2 (2010), www.justicepolicy.org/images/upload/10-07_REP_HealingInvisibleWounds_JJ-PS.pdf).

¹⁰ *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982).

¹¹ *Flores v. Meese*, 681 F. Supp. 665, 667 (C.D. Cal. 1988), *rev’d on other grounds*, 507 U.S. 292 (1993).

¹² *Safford*, 557 U.S. at 366, 375 (citations omitted).

Strip searches can seriously traumatize children, leading them to experience negative consequences for years, including anxiety, depression, loss of concentration, sleep disturbances, difficulty performing in school, phobic reactions, and lasting emotional scars.¹³ Consequently, any strip search, no matter the underlying justification, has a debilitating impact that clearly does not account for the child's best interests. Trauma during adolescence may have a particularly significant effect on the development of the frontal lobe, the area in the brain that is responsible for thoughtful decision-making and measured responses. Trauma to the frontal lobe during a youth's development can result in lasting consequences into adulthood.¹⁴

Research in adolescent development also supports the legal conclusion that strip searches impact young people even more severely than adults. With the onset of puberty, teenagers begin to view their bodies critically and compare them to those of their peers and their ideals, making adolescents particularly vulnerable to embarrassment.¹⁵ Surveys confirm a high degree of anxious body preoccupation and dissatisfaction among adolescents.¹⁶ Accordingly, teenagers have a heightened need for personal privacy.¹⁷ For an adolescent, privacy is a "marker of independence and self-differentiation."¹⁸ If the child's privacy is threatened, the resulting stress can seriously undermine the child's self-esteem.¹⁹ Moreover, "a child may well experience a strip search as a form of sexual abuse."²⁰ Children, even at very early ages, understand the concept that certain parts of their body are 'private.' Child-abuse education programs underscore this understanding, telling children that nobody should look at or touch their private parts. Thus, a strip search—being compelled to expose one's private parts to an adult stranger who is not a medical practitioner—is offensive to the child's natural instincts and training.²¹

¹³ See Scott A. Gartner, *Strip Searches of Students: What Johnny Really Learned at School and How Local School Boards Can Help Solve the Problem*, 70 S. Cal. L. Rev. 921, 929 (1997) (describing lasting and debilitating psychological effects of school's strip search of a student).

¹⁴ See *Addressing Trauma*, supra note 4.

¹⁵ See F. PHILLIP RICE & KIM GALE DOLGIN, *THE ADOLESCENT: DEVELOPMENT, RELATIONSHIPS AND CULTURE* 173 (10th ed. 2002).

¹⁶ See Anne C. Peterson & Brandon Taylor, *The Biological Approach to Adolescence: Biological Change and Psychological Adaptation*, in *HANDBOOK OF ADOLESCENT PSYCHOLOGY* 144-45 (Joseph Adelson ed., 1980).

¹⁷ See Gary B. Melton, *Minors and Privacy: Are Legal and Psychological Concepts Compatible?*, 62 NEB. L. REV. 455, 488 (1983). See generally Ellen Marrus, *Please Keep My Secret: Child Abuse Reporting Statutes, Confidentiality and Juvenile Delinquency*, 11 GEO. J. LEGAL ETHICS 509 (1998).

¹⁸ See Melton, supra note 17, at 488.

¹⁹ See William A. Rae, *Common Adolescent-Parent Problems*, in *HANDBOOK OF CLINICAL CHILD PSYCHOLOGY* 561 (C. Eugene Walker & Michael C. Roberts eds., 2d ed. 1992) (noting the importance of confidentiality when working with adolescents); RICE & DOLGIN, supra note 15, at 180 (noting the negative impact of stress upon self-esteem and adolescent development).

²⁰ Steven F. Shatz et al., *The Strip Search of Children and the Fourth Amendment*, 26 U.S.F. L. REV. 1, 12 (1991).

²¹ *Id.* at 12-13.

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Strip searches can also re-traumatize youth who may be victims of abuse or neglect.²² Children and youth in the juvenile or adult criminal legal systems and the child welfare system are particularly vulnerable to lasting harm when strip-searched. National studies show that nearly all of the youth in the juvenile system have experienced trauma, and that nearly two-thirds of young men in the system and three-quarters of young women meet the criteria for one or more psychiatric disorders.²³

Scope and Prevalence of the Problem

Strip searches have customarily been used to discover contraband while individuals are incarcerated, but have become increasingly common in juvenile detention facilities as well as in other spaces and circumstances, including in schools, in immigration detention centers, during child welfare investigations, and prior to children and youth visiting incarcerated family members. While some state laws provide guidance on when and how strip searches can be performed on children and youth,²⁴ individual agencies and facilities have discretion to create their own policies and contractual provisions, particularly when in the interest of furthering public safety. These searches have a harmful impact on children and youth regardless of the circumstances and reasons for the search:

- Juvenile detention centers rely on state and facility policy authorizing strip searches at various times throughout the period of incarceration. Several facilities require searches as part of the intake procedure as well as after any face-to-face visits with family, attorneys, or counselors.²⁵
 - Before a court ruled the practice unconstitutional,²⁶ a county youth jail in Oregon adhered to a policy that required a multi-step search where youth stripped and were made to stand naked while a staff member examined

²² See *N.G. ex rel. S.C. v. Connecticut*, 382 F.3d 225, 239 (2d. Cir. 2004) (Sotomayor, J., dissenting) (“We should be especially wary of strip searches of children, since youth ‘is a time and condition of life when a person may be most susceptible to influence and to psychological damage. . . . [W]ith children who may be victims of sexual abuse, the concerns are even greater.’”). See also *Body Searches*, *supra* note 1, at 4 (“For female detainees, the experience of a body search may be re-traumatizing due to sexual abuse in the past.”)

²³ See *Addressing Trauma*, *supra* note 4.

²⁴ Thirteen states, including Texas and Florida, prohibit strip searches of juveniles unless officers have a reasonable suspicion that a youth has concealed a prohibited item. See Alan Judd, *Georgia’s Juvenile Prisons: Assaults by Guards, Strip Searches, Chaos*, ATLANTA JOURNAL-CONSTITUTION, Nov. 17, 2019, <https://www.ajc.com/news/crime-law/violence-permeates-youth-prisons/7YRQTDEnIT20hGVEnjqybP/>.

²⁵ See *Body Searches*, *supra* note 1, at 2 (“Usually, a systematic search takes place upon admission to a place of detention to ensure that the detainee does not carry dangerous objects (such as weapons) or prohibited items (such as drugs, objects that could be used for escape attempts, or cell phones in some contexts). Searches are subsequently applied when detainees may have had access to such items, for example before and following personal contact with visitors (relatives, friends, lawyers), exercise or activity in workshops, after transfers, including for example for specialized treatment to a hospital, or following home visits or temporary release.”).

²⁶ See *Mashburn v. Yamhill County*, 698 F. Supp. 2d 1233, 1235, 1240-41 (D. Or. 2010).

- them from head to toe. They were also asked to manipulate their breasts and genitals in front of the examiner.²⁷
- In Georgia, a facility requires strip searches when a youth enters a facility for the first time, after being escorted by officers to a medical appointment or court appearance, and after any visit. The Georgia Department of Juvenile Justice policy requires examination of a youth's hair, ears, mouth, armpits, hands, feet, inner thighs, pubic area and outer rectum.²⁸
 - When children are placed in immigration detention, they also risk being strip-searched.
 - Fifteen- and sixteen-year-old girls were regularly strip-searched and subject to vaginal searches at Texas and California detention facilities.²⁹
 - Some prisons also permit correctional staff to strip search children who are visiting their incarcerated family members.
 - In December 2019, the governor of Virginia suspended a policy allowing strip searches of all visitors after an eight-year-old girl was strip-searched before visiting her father, who was incarcerated.³⁰
 - Strip searches have also been used as a tool to discover signs of child abuse.
 - A four-year-old girl in Colorado was strip-searched in her school by a Child Protective Services caseworker.³¹
 - A family of four children, ages 10 months to 5 years old, was strip-searched by a Child Protective Services Worker after their mother left them alone in the car for ten minutes when she ran into a store to get them a snack.³²
 - School personnel also conduct strip searches of children and youth.
 - In 2003, two female school officials in Arizona asked a 13-year-old girl to undress to her undergarments after she was suspected of distributing prescription and over-the-counter ibuprofen to students. She was asked to

²⁷ See *Judge: Youth strip searches at Oregon jail unconstitutional*, ASSOCIATED PRESS, Mar. 27, 2010, https://tdn.com/news/judge-youth-strip-searches-at-oregon-jail-unconstitutional/article_8b212556-3a03-11df-b391-001cc4c03286.html.

²⁸ See Judd, *supra* note 24.

²⁹ See *When Migrant Children Were Detained Among Adults, Strip Searched*, NBC NEWS, July 24, 2014, <https://www.nbcnews.com/storyline/immigration-border-crisis/when-migrant-children-were-detained-among-adults-strip-searched-n161956>.

³⁰ See Gary A. Harki, *An 8-Year-Old Girl Was Strip Searched at a Virginia Prison. She Was Told It Was the Only Way to See Her Dad*, VIRGINIAN-PILOT, Dec. 5, 2019, <https://www.pilotonline.com/government/virginia/vp-nw-strip-search-20191206-wd2e1rtqfqbvkj7xzh7btemu-story.html>. See also *Body Searches*, *supra* note 1, at 7 ("Intrusive search procedures are likely to discourage visitors, and consequently have a negative impact on the maintenance of family and social links which are essential for reintegration following release."); *id.* at 8 ("[T]he Committee on the Rights of the Child recommend[s] measures to ensure that the visit context is respectful to the child's dignity and right to privacy and urged states to ensure that security matters and policies on incarcerated parents take into account the rights of affected children.") (citations and internal quotations omitted).

³¹ See Daniel Leddy, *High Court Passes on Case of School Kid Being Strip-Searched*, *Staten Island Advance*, May 31, 2019, <https://www.silive.com/news/2019/05/high-court-passes-on-case-of-school-kid-being-strip-searched-commentary.html>.

³² See Lenore Skenazy & Diane Redleaf, *How Dare She Dash in for Muffins?*, WASH. POST, May 29, 2019, <https://www.washingtonpost.com/outlook/2019/05/22/how-dare-she-dash-muffins/>.

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pull her bra out and to the side to expose her breasts, to shake, and to pull out the elastic in her underpants, which exposed her pelvic area.³³

- An assistant principal in a Houston school “ordered a mass, suspicionless strip search of the underwear of twenty-two preteen girls” in a sixth-grade choir class after \$50 went missing.³⁴ A school nurse “strip searched them, taking them one at a time into a bathroom, where she ‘check[ed] around the waistband of [their] panties,’ loosened their bras, and checked under their shirts. The girls were made to lift their shirts so they were exposed from the shoulder to the waist.”³⁵
- An assistant principal in Clayton County, Georgia instructed a 12-year-old boy to pull his underpants down to his ankles, exposing his genitals to other school personnel and classmates, because a classmate claimed the boy had marijuana.³⁶

Court Rulings on Strip Searches of Children and Youth

Schools

Courts have made clear that strip searches in schools are such a significant intrusion into personal privacy that they should only occur when the government need is substantial.³⁷ The United States Supreme Court has held that searches in schools must be “reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.”³⁸ In the case of Savana Redding, the 13-year-old strip searched for ibuprofen, the Supreme Court held that the intrusiveness of the search outweighed the degree of suspicion about drug possession and thus violated her constitutional rights.³⁹ Similarly, federal courts found that the mass strip search of a 6th grade choir class was impermissibly intrusive,⁴⁰ as was requiring a 7th grade boy to stand naked in front of his classmates.⁴¹

Juvenile detention facilities

Juvenile detention centers most commonly house children and youth when they have been charged with a criminal offense. However, they also house children and youth who have run away from home or violated curfew, are beyond the control of their parents or

³³ See *Safford Unified School District No. 1 v. Redding*, 557 U.S. 364, 368-69 (2009).

³⁴ *Littell v. Houston Independent School District*, 894 F.3d 616, 619 (5th Cir. 2018).

³⁵ *Id.* at 620.

³⁶ See *D.H. by Dawson v. Clayton County School District*, 830 F.3d 1306, 1308, 1311-1312 (11th Cir. 2016).

³⁷ See *Safford*, 557 U.S. at 375-77 (holding that a 13-year-old student's constitutional rights were violated when she was subjected to a search of her bra and underpants by school officials acting on reasonable suspicion that she had brought forbidden prescription and over-the-counter drugs to school, because there was no reason to suspect the drugs presented a danger or were concealed in her underwear).

³⁸ *New Jersey v. T.L.O.*, 469 U.S. 325, 349 (1985).

³⁹ See *Safford*, 557 U.S. at 375-77.

⁴⁰ See *Littell v. Houston Independent School District*, 894 F.3d 616, 623-34 (5th Cir. 2018).

⁴¹ See *D.H.*, 830 F.3d at 1317-18. The court, however, did find that the assistant principal did not violate the 12-year-old D.H.'s constitutional rights when, prior to instructing the child to remove his underpants, the principal asked the boy to pull the waistband of his underpants away from his body, thus exposing his genitals; three other students had marijuana, and one of them had produced the marijuana from his underpants. *Id.*

truant, or have mental health issues.⁴² The United States Supreme Court has never considered the constitutionality of strip searches of children and youth in detention centers.⁴³ The lower courts that have addressed challenges to these practices have been largely deferential to personnel in juvenile detention.

The cases examining strip searches of children and youth in detention facilities distinguish between searches done when the child first arrives at the facility, and searches conducted at other times during the child's detention. Prior to 2012, federal courts of appeal upheld the constitutionality of strip searches upon admission to detention facilities on the grounds that the detention of youth was a "special needs" situation; the government's need to protect the youth in their custody outweighed the intrusion on the youth's privacy and, therefore, the individualized suspicion requirement was waived.⁴⁴ For example, the Eighth Circuit found that a juvenile detention center did not violate the constitutional rights of children and youth who were required to strip down to their undergarments for an intake search when they first arrived at the facility.⁴⁵ The Second Circuit similarly upheld initial admission searches.⁴⁶ Notably, during this same time period, some federal courts of appeals prohibited the strip search of adults charged with minor offenses.⁴⁷

In 2012, the United States Supreme Court overturned the circuit court opinions, holding in *Florence v. Board of Chosen Freeholders of County of Burlington* that intake strip and cavity searches of adults detained after arrest, even for minor offenses, did not violate the Constitution even though correctional officials lacked individualized suspicion.⁴⁸ The *Florence* court held that a regulation or policy "impinging on an inmate's constitutional rights must be upheld if it is reasonably related to legitimate penological interests,"⁴⁹ and that search policies aimed at maintaining security in correctional facilities are owed deference "in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response ... courts should ordinarily defer to their expert judgment in such matters."⁵⁰

⁴² See *N.G. ex rel. S.C. v. Connecticut*, 382 F.3d 225, 227 (2d Cir. 2004).

⁴³ See Nelson, *supra* note 9, at 341.

⁴⁴ See, e.g., *Smook v. Minnehaha County*, 457 F.3d 806, 809, 811-812 (8th Cir. 2006) (strip search of 16-year-old girl admitted to detention center for curfew violation did not violate Constitution where youth was allowed to remain in her undergarments in a private room with a female staff member, who touched the girl to look under her arms, between her toes, and through her hair and scalp).

⁴⁵ *Id.*

⁴⁶ See *N.G.*, 382 F.3d at 239 (Sotomayor, J., dissenting).

⁴⁷ See Nelson, *supra* note 9, at 342 n.21 (citing *Miller v. Kennebec County*, 219 F.3d 8, 12-13 (1st Cir. 2000) that required reasonable suspicion for a search after the defendant failed to pay a fine. *Masters v. Crouch*, 872 F.2d 1248, 1249-50, 1253-55 (6th Cir. 1989) required reasonable suspicion for a strip search after the defendant failed to appear in court for motor vehicle violations. See also *N.G.*, 382 F.3d at 232 (noting that the federal courts of appeal have uniformly held that strip searches may not be performed on adults confined after arrests for misdemeanors in the absence of reasonable suspicion that they possess contraband) (collecting cases).

⁴⁸ 566 U.S. 318 (2012).

⁴⁹ *Id.* at 326 (internal quotations and citations omitted).

⁵⁰ *Id.* at 328 (internal quotations and citations omitted).

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Consequently, federal courts of appeals have relied on *Florence* to rule constitutional the practice of detention centers conducting full strip searches of children and youth upon admission. For example, the Fifth Circuit held constitutional the intake strip and body cavity search of a 12-year-old girl who was arrested for a fight at school.⁵¹ The detention center officer found no contraband after using a metal wand and patting down the girl. Nevertheless, the girl was “made to strip naked, bend over, spread her buttocks, display the anal cavity, and cough”.⁵²

In pre-*Florence* cases where courts upheld the strip search of youth in detention, the decisions cited to the state’s responsibility to act in the place of the parents (in loco parentis) when the children are in government custody, therefore holding that the searches were needed to protect them from harm, either self-inflicted or by others, as the government interest that outweighed the harm to the children.⁵³ But suspicionless admissions searches generally yield little in the way of contraband.⁵⁴ Often, “the detention centers’ own documentation of contraband discoveries provides absolutely no evidence that suspicionless strip searches were necessary, or even helpful, in any case.”⁵⁵ Testimony by detention center staff—who have conducted strip searches on thousands of youth without yielding contraband—further establishes that suspicionless strip searches are unnecessary to ensure child safety.⁵⁶ Post-*Florence* courts now put the burden on the child or youth to introduce evidence to show that the blanket policy of admission strip searches is an unreasonable, exaggerated or irrational response to security needs.⁵⁷ Detention centers better fulfill their duty to protect the well-being of children and youth in their custody by limiting highly-intrusive, harmful strip searches to those situations in which officials have probable cause to believe they are in possession of items that could cause injury.

⁵¹ See *Mabry v. Lee County*, 849 F.3d 232, 238-39 (5th Cir. 2017).

⁵² *Id.* at 234. See also *J.B. ex rel. Benjamin v. Fassnacht*, 801 F.3d 336, 338 (3d Cir. 2015) (finding lawful suspicionless strip and body cavity searches as part of routine admission to juvenile detention center).

⁵³ *Smook v. Minnehaha County*, 457 F.3d 806, 811 (8th Cir. 2006) (citing *N.G.*, 382 F.3d at 232).

⁵⁴ See *N.G.*, 382 F.3d at 242 (Sotomayor, J., dissenting) (noting that the detention center produced thirty-four “event reports” for the years 1995 through 2000 where contraband was discovered in the possession of the detainees; thirty-two reports described contraband that either “(1) was discovered through a search that was less intrusive than a full strip search; (2) could have been discovered through a search that was less intrusive than a full strip search; or (3) could have been discovered through a policy that allowed strip searches only in cases of individualized suspicion. With regard to the remaining two reports, it is unclear whether a strip search was necessary for discovery of the contraband; it is also unclear if individualized suspicion existed.”).

⁵⁵ *Id.* (Sotomayor, J., dissenting). See also *Mabry v. Lee County*, 849 F.3d 232, 238-39 (5th Cir. 2017) (“[A]t oral argument, counsel for the County could not point to even one instance in which contraband was found via the strip and cavity search that could not have been found through use of the metal detecting wand and pat-down. . . . Indeed, at no point in its brief does the County point to any evidence whatsoever legitimating any components of the Center’s intake procedures, including the search policy.”).

⁵⁶ See *N.G.*, 382 F.3d at 242-43 (Sotomayor, J., dissenting) (“One supervisor testified that of the one hundred strip searches she personally conducted, not one yielded evidence of contraband. A director of one of the facilities testified that out of 2,500 strip searches performed since that facility was built, only two strip searches revealed contraband that otherwise would not have been found. Those two recovered items of contraband were a piece of jewelry attached to a child’s belly button and cocaine that was discovered in a child’s clothing. Full nudity would not have been necessary to uncover these items.”).

⁵⁷ See *Mabry*, 849 F.3d at 238-39 (citing *Florence v. Bd. of Chosen Freeholders*, 132 S.Ct.1510, 1517 (2012)).

Courts have been less deferential to juvenile detention centers conducting strip searches outside the initial admission/intake context absent individualized suspicion that the child or youth possessed an implement that could cause harm. Courts have struck down policies that required children and youth to be strip-searched multiple times while in detention. For example, the Second Circuit invalidated suspicionless strip-searches of youth transferred from one facility to another, and when pencils went missing.⁵⁸ A federal district court in Oregon held that it was unconstitutional to strip search youth after visits with their attorneys or other visitors; the center's policy subjected youth to as many as eight strip-searches over five days.⁵⁹

Child welfare system

Courts have considered the lawfulness of strip searches by child protective services caseworkers who are investigating allegations of abuse. There is a split among the federal courts of appeals as to whether such strip searches are constitutional absent a warrant or judicial order. The Fourth and Seventh circuits have held that such searches can proceed without a warrant if the search passes the "special needs" balancing test.⁶⁰ By contrast, four other circuits have held that strip searches of children based on suspicions of abuse are not amenable to the "special needs" test and are only valid subject to a court order or search warrant, or exigent circumstances.⁶¹ The United State Supreme Court recently denied certiorari on a case out of the Tenth Circuit that highlighted the split authority; thus, the conflicting approaches will not be resolved soon.⁶²

International Law⁶³

Under basic principles of human rights, children have the fundamental right to be treated with dignity and humanity. This is especially important when children are confined or in

⁵⁸ See N.G., 382 F.3d at 233-34, 237-38.

⁵⁹ See *Mashburn v. Yamhill County*, 698 F. Supp. 2d 1233, 1235, 1240-41 (D. Or. 2010).

⁶⁰ See *Darryl H. v. Coler*, 801 F.2d 893 (7th Cir. 1986); *Wildauer v. Frederick Cty.*, 993 F.2d 369 (4th Cir. 1993).

⁶¹ See *Good v. Dauphin Cty. Soc. Servs. Children & Youth*, 891 F.2d 1087 (3d Cir. 1989) (holding that social workers' search of a child in his home required either a search warrant, consent, or exigent circumstances); *Calabretta v. Floyd*, 189 F.3d 808 (9th Cir. 1999) (holding that a social worker performing a search on a child to investigate possible abuse must have a warrant, consent, or exigent circumstances, and may not rely on the special needs doctrine); *Tenenbaum v. Williams*, 193 F.3d 581 (2d Cir. 1999) (judicial authorization was required for social workers to examine a student upon suspicion of abuse); *Roe v. Texas Dep't Protective & Regulatory Servs.*, 299 F.3d 395 (5th Cir. 2002) (social workers performing a visual body cavity search for suspected abuse needed a court order based on probable cause or exigent circumstances, and that they could not rely on the special needs doctrine).

⁶² See *Doe v. Woodard*, 912 F.3d 1278 (10th Cir. 2019), *cert. denied*, 139 S.Ct. 2616 (2019).

⁶³ International law has played a larger role in constitutional analysis in the last two decades and is particularly persuasive when considering the "evolving standards of decency" in the world community. Diane Marie Amann, "Raise the Flag and Let It Talk": *On the Use of External Norms in Constitutional Decision Making*, 2 INT'L J. CONST. L. 597, 602 (2004) (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)). "The incorporation of a right to human dignity into the Fourth Amendment's 'privacy' provisions is consistent not only with U.S. constitutional law, but also with the international law obligations of the U.S., which require it to respect and ensure the rights of prisoners (and others) to human dignity." Kim Shayo Buchanan, *Beyond Modesty: Privacy in Prison and the Risk of Sexual Abuse*, 88 MARQ. L. REV. 751, 797 (2005).

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conflict with the law. The U.N. Convention on the Rights of the Child mandates treatment of children

consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.⁶⁴

The Convention also requires treatment with humanity and "respect for the inherent dignity" of the child, taking into account the particular needs of the child.⁶⁵ Similarly, the United Nations rules for the protection of children who are deprived of their liberty establishes children's right to facilities and services that meet all the requirements of health and human dignity.⁶⁶ The institution is required to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.⁶⁷

Consistent with these principles, the Unaccompanied Alien Child Protection Act prohibits the "unreasonable use" of shackling, handcuffing, solitary confinement, and pat or strip searches, which may violate a child's sense of dignity and respect.⁶⁸ More broadly, the International Convention on Civil and Political Rights⁶⁹ states that "[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation."⁷⁰

⁶⁴ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989) at art. 40 para. 1. The United States has not yet ratified the Convention on the Rights of the Child, but is a signatory. Johan D. van der Vyver, *American Exceptionalism: Human Rights, International Criminal Justice, and National Self-Righteousness*, 50 EMORY L.J. 775, 778 (2001). The United States, South Sudan, and Somalia are the only countries in the world that have not ratified the Convention. *Id.*

⁶⁵ Convention on the Rights of the Child, *supra* note 64, art. 37(c).

⁶⁶ U.N. Rules for the Protection of Juveniles Deprived of Their Liberty, G.A. Res. 45/113, U.N. Doc. A/RES/45/113 (Dec. 14, 1990) at Part IV.D para. 31. See also U.N. Standard Minimum Rules for the Treatment of Prisoners, U.N. Doc. A/CONF/ 611, Annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977).

⁶⁷ See U.N. Standard Minimum Rules for the Treatment of Prisoners, U.N. Doc. A/CONF/ 611, Annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977), which became applicable to juveniles in 1985. U.N. Standard Minimum Rules for the Administration of Juvenile Justice, G.A. Res. 40/33, U.N. Doc. A/RES/40/33 (Nov. 29, 1985).

⁶⁸ See Joyce Koo Dalrymple, *Seeking Asylum Alone: Using the Best Interests of the Child Principle to Protect Unaccompanied Minors*, 26 B.C. THIRD WORLD L.J. 131 (2006). See also Unaccompanied Alien Child Protection Act of 2005, S. 119, 109th Cong. (2005).

⁶⁹ International Covenant on Civil and Political Rights ("ICCPR"), opened for signature Dec. 16, 1966, 999 U.N.T.S. 171, available at www.unhchr.ch/html/menu3/b/a_ccpr.htm.

⁷⁰ *Id.* art. 17. The United States has been a party to the ICCPR since 1992. See Office of the U.N. High Comm'r for Human Rights, *Status of Ratifications of the Principal International Human Rights Treaties* 1, 11 (June 9, 2004), available at <http://www.unhchr.ch/pdf/report.pdf>.

Individual courts around the globe have also addressed this issue. In one case, the European Court of Human Rights held that strip searches without medical necessity were unlawful and inhumane. See *Y.F. v. Turkey*, No. 24209/94, 2003-IX Eur. Ct. H.R. para. 43, available at

Scope and Application of Resolution

This Resolution applies to professionals and agencies who come into contact with children and youth including, but not limited to: schools and educational institutions, and their personnel; child welfare agencies and facilities and their personnel, including foster parents; mental health treatment agencies and facilities, and their personnel; programs and facilities for children and youth with developmental disabilities, and their personnel; law enforcement; juvenile justice agencies and facilities, and their personnel; and criminal justice agencies and facilities, and their personnel.

The Resolution prohibits strip searches except when all of the following conditions are met.

- (1) the child or youth is in the physical and legal custody of the entity conducting the search; and
- (2) there is probable cause to believe that the child or youth possesses an implement that poses a threat of imminent bodily harm to themselves or others;⁷¹ and
- (3) all other less intrusive methods of discovering and removing the implement have been exhausted, including the use of alternative search techniques that can be performed while the child or youth is fully clothed; and
- (4) the child or youth has been given notice, in a manner that is consistent with the child's or youth's primary language and developmental stage, and that takes into account accommodations for disability, that they will be searched and an opportunity to reveal any implement they are carrying instead of being searched.

Strip searches are intended to locate contraband, but less intrusive approaches can accomplish the same goal. For example, the facility may use a handheld metal detector wand or body scanner that can be utilized while the youth is fully clothed.⁷² Additionally,

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=9&portal=hbkm&action=html&highlight=Y.F.&sessionId=3321244&skin=hudoc-en>. In this case, a young woman was forced to submit to a gynecological exam upon detention to prove that she was not sexually assaulted by her guards. *Id.* para. 12. The court, citing the country's constitution, accordingly held that the physical interference with a person's body is only permitted in the case of medical necessity or if allowed by law. *Id.* para. 23. The court reasoned that a person's body concerns the most intimate aspect of one's private life and thus, medical intervention, even if of minor importance, constitutes an interference with the right to privacy. *Id.* para. 33. For similar reasons – and recognizing the unique dangers to children when their privacy is breached by a strip search – the British government passed protective legislation to decrease the use of strip-searches on juveniles. As a result, youth in Britain are strip searched at much lower rates than adults. See Tim Newburn et al., *Race, Crime and Injustice: Strip Search and the Treatment of Suspects in Custody*, 44 BRIT. J. CRIMINOLOGY 677, 683-84 (2004).

⁷¹ See *Body Searches*, *supra* note 1, at 3 (“Body searches are only permissible when strictly necessary, based on a case-by-case assessment and if there is a specific suspicion. Where they are conducted on a routine basis, too frequently, in a systematic or collective way to all detainees, body searches become arbitrary measures and may in themselves constitute humiliating or degrading treatment.”).

⁷² See *id.* at 1 (“Alternatives, such as electronic scanning devices, should be developed and used wherever possible and when body searches are unavoidable, the least invasive method should be applied.”).

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children and youth should be permitted to remain dressed in a layer of undergarments during the search.⁷³

The Resolution also contemplates a graduated response scheme before a child or youth is subjected to a strip search.

- First, the child or youth should be notified, in a manner that is consistent with the child's or youth's primary language and developmental stage, and that takes into account accommodations for disability, of the reported suspicion that they are in possession of contraband, including what specific contraband it is and the process by which the adult will attempt to locate and retrieve the contraband.
- Second, the adult must exhaust all communicative intervention techniques to persuade the child or youth to voluntarily surrender any possible contraband. To the extent possible, the child or youth should be permitted to have the assistance of a mental health professional—such as a child/youth psychologist or therapist—or a trusted adult designated by the child or youth, to facilitate this verbal intervention.
- Third, if all communicative intervention techniques fail to result in the retrieval of the contraband, the adult must permit the child or youth to ask questions before any search is conducted.
- Fourth, the adult must first attempt least intrusive methods to discover contraband, such as use of a hand-held metal detector wand or body scanner while the child or youth remains fully clothed. The adult should instruct the child or youth to remove an item on their person if the detector's alarm sounds.
- Fifth, where both a discussion and the use of a detection device fail in the retrieval of contraband, the adult must inform the child or youth that the next step in the search will involve a visual, manual, or physical search of the youth's body, including the area of the body the staff will inspect. If a child or youth expresses concerns about being touched before or during a search, staff must be sensitive and accommodate such requests to prevent trauma and/or re-victimization.

Special Considerations for Gender and Gender Identity

If a child or youth must be strip-searched, the search should be conducted by an adult of the same gender of the child or youth. Most states require strip searches to be performed by members of the same gender as the individual being searched. Transgender and intersex children and youth must be given an opportunity to request the gender of the individual conducting their search. Strip searches should never be conducted to determine the biological gender of the child or youth.⁷⁴ Per current policy, a number of

⁷³ See, e.g., KY. DEP'T. JUV. JUST., POLICY & PROCEDURE: SEARCHES (2018), <https://djj.ky.gov/Policy%20Manual1/DJJ%20714%20Searches.pdf>.

⁷⁴ For transgender or intersex individuals, the Prison Rape Elimination Act (PREA) prohibits searches or physical examinations "for the sole purpose of determining...genital status." Prison Rape Elimination Act, Juvenile Facility Standards, 28 C.F.R. § 115.315 (2012).

states allow transgender or intersex youth an opportunity to request whom they would prefer to conduct the search.⁷⁵

Prohibition on Body Cavity Searches

Body cavity searches “are a physical examination of body orifices (such as vagina or anus). This type of search includes rectal and pelvic examination, and is physically and psychologically the most intrusive method” of body searches.⁷⁶ Body cavity searches “constitute the most intrusive search method.”⁷⁷ While “all types of body search can be intimidating and degrading, and the more intrusive the method, the stronger the feeling of invasion will be.”⁷⁸ Indeed, “the interests in human dignity and privacy which the Fourth Amendment protects forbid [searches involving intrusions beyond the body’s surface] on the mere chance that desired evidence might be obtained.”⁷⁹

This Resolution absolutely prohibits body cavity searches of children and youth because they carry a high risk of causing physical and psychological injury.⁸⁰ Alternatives to conducting a body cavity search include using modern scanning technology, or keeping the child or youth under close supervision until such time as any item is naturally expelled from the body, as recommended by the World Health Organization.⁸¹ Body cavity searches are unreasonable given that less invasive search methods are available.⁸²

Conclusion

Strip searches are harmful and cause trauma to children and youth, particularly those who have previously been victimized. Therefore, strip searches should only be performed in exceptional circumstances and body cavity searches must be prohibited.

⁷⁵ See, e.g., WASH. ST. DEP’T SOC. & HEALTH SERVS., JUVENILE REHABILITATION ADMINISTRATION POLICY, POLICY 5.70 CONDUCTING SEARCHES (2015), <https://www.dcyf.wa.gov/sites/default/files/pdf/jr-policies/Policy5.70.pdf>. See also *Body Searches*, *supra* note 1, at 5 (noting that Lesbian, Gay, Bisexual, Transgender and Intersex individuals should be allowed to request a gender preference regarding the staff member who will conduct the search).

⁷⁶ *Body Searches*, *supra* note 1, at 1.

⁷⁷ See *id.* at 3.

⁷⁸ See *id.* at 1.

⁷⁹ See *Schmerber v. California*, 384 U.S. 757, 86 S.Ct. 1826 (1966).

⁸⁰ *Body Searches*, *supra* note 1, at 3.

⁸¹ See *id.* at n.17 (citing WORLD HEALTH ORG. EUR., HEALTH, HEALTH IN PRISONS: A WHO GUIDE TO THE ESSENTIALS IN PRISON HEALTH 36 (Møller et al. eds. 2007); PENAL REFORM INT’L & THAILAND INST. JUST., GUIDANCE ON THE UNITED NATIONS RULES ON THE TREATMENT OF WOMEN PRISONERS AND NON-CUSTODIAL MEASURES FOR WOMEN OFFENDERS (THE BANGKOK RULES) 63 (2013). Further, the Inter-American Commission on Human Rights prohibits body cavity searches, as does France and five states in Brazil. See *id.* at 3 (citations omitted).

⁸² See *U.S. v. Gray*, 669 F.3d 556, 564-65 (5th Cir.), *rev’d on other grounds*, 133 S.Ct. 151 (2012).

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Respectfully submitted,

Barbara J. Dawson
Chair, Section of Litigation
August 2020

GENERAL INFORMATION FORM

Submitting Entity: Section of Litigation

Submitted By: Barbara J. Dawson

1. Summary of the Resolution(s). This Resolution urges all federal, state, local, territorial, and tribal governments to adopt policies and contractual provisions that prohibit conducting strip searches of children and youth, except in exceptional circumstances. The Resolution is based on evidence that strip searches are harmful and cause trauma to children and youth, and especially to those children and youth who have previously been victimized. For this reason, the Resolution prohibits strip searches except when all of the following conditions are met: (1) the child or youth is in custody; (2) there is probable cause to believe that the child or youth possesses an implement that poses a threat of imminent bodily harm to themselves or others; (3) all other less intrusive methods of discovering and removing the implement have been exhausted, including the use of alternative search techniques that can be performed while the child or youth is fully clothed; and (4) the child or youth has been given notice, in a manner that is consistent with the child's or youth's primary language and developmental stage, and that takes into account accommodations for disability, that they will be searched and that they have an opportunity to reveal any implement they are carrying instead of being searched. The Resolution absolutely prohibits body cavity searches of children and youth. In addition, if a child or youth must be strip-searched, the search shall be conducted in a manner that respects the sexual orientation and gender identity of the child or youth and in the least intrusive manner possible. Finally, the Resolution urges the bar to promote awareness of the harmful and traumatizing effects of strip searches and body cavity searches on children and youth.

2. Approval by Submitting Entity.

The Section of Litigation Council approved this resolution April 24, 2020.

3. Has this or a similar resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

The ABA has Juvenile Justice Standards that do not specifically mention strip searches of juveniles, though they do touch on general searches of juveniles (IJA/ABA Juvenile Justice Standards, Annotated, 1996). This Resolution is consistent with the Juvenile Justice Standard's overall approach to a juvenile's rights and privacy, while balancing a need for safety.

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The ABA has a policy on Trauma-Informed Advocacy for Children and Youth and this Resolution is consistent with its recommendation for the “the development of trauma-informed, evidence-based approaches and practices on behalf of justice system-involved children and youth who have been exposed to violence, including victims of child abuse and neglect or other crimes and those subject to delinquency or status offense proceedings” (American Bar Association Trauma-Informed Advocacy for Children and Youth February 2014).

5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A

6. Status of Legislation. (If applicable) N/A

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates. The Children’s Rights Litigation Committee of the Section of Litigation will develop and implement a public education program to inform lawmakers and policymakers across the country about the trauma and harm caused by strip searches, and the need to enact laws and policies and promulgate contractual provisions in alignment with the resolution.

8. Cost to the Association. (Both direct and indirect costs) None

9. Disclosure of Interest. (If applicable) N/A

10. Referrals.

Center for Human Rights
Commission on Domestic and Sexual Violence
Commission on Homelessness and Poverty
Commission on Racial and Ethnic Justice
Commission on Sexual Orientation and Gender Identity
Commission on Youth at Risk
Juvenile Justice Committee, Criminal Justice Section
Section of Civil Rights and Social Justice

11. Name and Contact Information (Prior to the Meeting. Please include name, telephone number and e-mail address). *Be aware that this information will be available to anyone who views the House of Delegates agenda online.)*

Delegate Eileen Letts, 312-346-1100, eletts@zublerlawler.com

12. Name and Contact Information. (Who will present the Resolution with Report to the House?) Please include best contact information to use when on-site at the meeting. *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*

Delegate Eileen Letts, 312-346-1100, eletts@zublerlawler.com

EXECUTIVE SUMMARY

1. Summary of the Resolution.

This Resolution urges all federal, state, local, territorial, and tribal governments to adopt policies and contractual provisions that prohibit conducting strip searches of children and youth, except in exceptional circumstances. The Resolution is based on evidence that strip searches are harmful and cause trauma to children and youth, and especially to those children and youth who have previously been victimized. For this reason, the Resolution prohibits strip searches except when all of the following conditions are met: (1) the child or youth is in custody; (2) there is probable cause to believe that the child or youth possesses an implement that poses a threat of imminent bodily harm to themselves or others; (3) all other less intrusive methods of discovering and removing the implement have been exhausted, including the use of alternative search techniques that can be performed while the child or youth is fully clothed; and (4) the child or youth has been given notice, in a manner that is consistent with the child's or youth's primary language and developmental stage, and that takes into account accommodations for disability, that they will be searched and that they have an opportunity to reveal any implement they are carrying instead of being searched. The Resolution absolutely prohibits body cavity searches of children and youth. In addition, if a child or youth must be strip-searched, the search shall be conducted in a manner that respects the sexual orientation and gender identity of the child or youth and in the least intrusive manner possible. Finally, the Resolution urges the bar to promote awareness of the harmful and traumatizing effects of strip searches and body cavity searches on children and youth.

2. Summary of the issue that the resolution addresses.

Strip searches are demeaning, dehumanizing, undignified, humiliating, terrifying, unpleasant, embarrassing, and repulsive, signifying degradation and submission. Strip searches are perceived as particularly intrusive by children and youth. And a child or youth does not have to be completely naked to be negatively affected by a strip search, as underwear searches are embarrassing, frightening, and humiliating. Scientific and psychological research indicates that a traumatic strip search can have a lifelong impact on an adolescent's developing mind. Indeed, because youth is a condition of life when a person may be most susceptible to psychological damage, children are especially susceptible to possible traumas from strip searches. As noted by the U.S. Supreme Court, adolescent vulnerability intensifies the patent intrusiveness of the exposure and can result in serious emotional damage. Research in adolescent development supports the legal conclusion that strip searches impact children and youth even more severely than adults.

Strip searches have customarily been used to discover contraband while individuals are incarcerated, but have become increasingly common in juvenile detention facilities as well as in other spaces and circumstances, including in schools, in immigration detention centers, during child welfare investigations, and prior to children and youth visiting incarcerated family members. While some state laws provide guidance on when and how strip searches can be performed on children and youth, individual agencies and facilities are often left to their own discretion to create policies.

3. Please explain how the proposed policy position will address the issue.

This Resolution addresses the issue by urging all federal, state, local, territorial, and tribal governments to adopt laws, regulations, policies, and contractual provisions that would: prohibit adults who interact with children and youth from conducting strip searches of children and youth, except in exceptional circumstances; stipulate that when strip searches are necessary that they be conducted in the least intrusive manner possible and with respect to the sexual orientation and gender identity of the child or youth; and prohibit body cavity searches. In addition, the Resolution urges the bar to promote awareness of the harmful and traumatizing effects of strip searches on children and youth.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

None identified.