



**Submission to the Ministry of Children,  
Community and Social Services  
regarding searches of staff, visitors  
and young persons at youth justice facilities**

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## Overview

The Ministry of Children, Community and Social Services has requested input on proposed regulatory amendments to *Ontario Regulation 155/18* under the *Child, Youth and Family Services Act, 2017*, which would outline additional provisions for searches of staff, visitors and young persons on the premises of youth justice facilities.

I welcome the stated purpose of the proposed regulatory amendments, which is to provide clear and consistent requirements that apply to conducting searches of staff and visitors, and to outline procedures for conducting strip searches of young persons in youth justice custody and detention facilities. However, my review has identified areas where the Ministry should provide further guidance to promote consistency, accountability, and transparency in how strip searches at these facilities are conducted.

## Ombudsman role and jurisdiction

The Ombudsman is appointed under the *Ombudsman Act*<sup>1</sup> as an independent and impartial Officer of the Ontario Legislature. In this role, the Ombudsman has the authority to review and investigate hundreds of public sector bodies, including provincial jails and detention centres, as well as youth justice centres. Since 2019, the Ombudsman's mandate has also included reviewing complaints about the services provided by children's aid societies and residential licensees, and the provision of French language services under the *French Language Services Act*.<sup>2</sup>

My Office has a dedicated team that handles cases related to youth justice centres, and in 2022-2023, my Office received 187 cases (complaints and inquiries) about these facilities. In the past five years, my Office has received nine (9) cases about strip searches at youth justice facilities. Although this is not a significant volume, the issues raised can be serious.

In one recent case, my Office received a complaint from a young person who was being routinely strip searched following meetings with his lawyer, contrary to the Ministry's own policy and the facility's local policies. When he raised his concerns with staff, the young person was told that all youth justice facilities in Ontario followed this practice. Staff at my Office raised this issue with senior officials within the Ministry. As a result of our inquiries, the Ministry sent a memorandum to all directly operated youth justice centres in Ontario reminding them that strip searches should not be conducted as a matter of routine following visits.

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<sup>1</sup> RSO 1990, c O.6.

<sup>2</sup> RSO 1990, c F.32.

In addition to resolving individual complaints, my Office has also conducted one systemic investigation regarding youth justice facilities. In April 2022, I released my report, *Lost Opportunities*<sup>3</sup>, concerning an investigation into the Ministry of Children, Community and Social Services' planning and implementation of the closure of secure custody and detention programs at two youth centres. I made 16 recommendations to improve the planning and implementation of such closures in the future, all of which were accepted by the Ministry.

More generally, my Office has considerable expertise in the area of corrections, and has consistently highlighted the importance of clear policies, rigorous oversight, and comprehensive staff training within Ontario's correctional facilities. For example, in 2017, my Office conducted a systemic investigation into how the then-Ministry of Community Safety and Correctional Services (now the Ministry of the Solicitor General) tracked the admission and placement of segregated inmates, and the adequacy and effectiveness of the review process for such placements. The resulting report – *Out of Oversight, Out of Mind*<sup>4</sup> – made 32 recommendations for improvement, all of which were accepted by the Ministry. I made several recommendations to improve resources, training and technology for tracking inmate placements, and to allow for data on segregated inmates to be analyzed and published annually.

## The proposed regulatory framework

The Ministry of Children, Community and Social Services is proposing regulatory amendments to *Ontario Regulation 155/18* under the *Child, Youth and Family Services Act, 2017*<sup>5</sup> (CYFSA).

The CYFSA governs the provision of services at open youth custody, secure youth custody, and temporary detention facilities. The paramount purpose of the CYFSA is to “promote the best interests, protection and well-being of children.”<sup>6</sup> The CYFSA's preamble states that the Act's aim is to be consistent with and build upon the principles expressed in the United Nations Convention on the Rights of the Child. Article 37(c) of the Convention states that every child who is deprived of liberty shall be treated with

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<sup>3</sup> Ontario Ombudsman, *Lost Opportunities: Investigation into the Ministry of Children, Community and Social Services' implementation of the decision to close custody and detention programs at Creighton Youth Centre and J.J. Kelso Youth Centre* (26 April 2022), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/reports-on-investigations/2022/lost-opportunities>>.

<sup>4</sup> Ontario Ombudsman, *Out of Oversight, Out of Mind: Investigation into how the Ministry of Community Safety and Correctional Services tracks the admission and placement of segregated inmates, and the adequacy and effectiveness of the review process for such placements* (20 April 2017), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/reports-on-investigations/2017/out-of-oversight,-out-of-mind>>.

<sup>5</sup> SO 2017, c14, Sched 1.

<sup>6</sup> *Ibid*, s 1(1).

humanity and respect for the inherent dignity of the person, and in a manner which takes into account the needs of persons of their age.

Section 155(1) of the *CYFSA* permits a person in charge of a youth justice facility to conduct searches of the facility, including searches of young persons or any other person (e.g. staff, visitors) and their personal possessions. Sections 67-73 of *Ontario Regulation 155/18* set out general rules governing all searches.

As the Ministry's consultation notes, the *Regulation* does not contain specific provisions that set out detailed and consistent requirements for how searches of staff and visitors are to be conducted. The Ministry further acknowledges that the current *Regulation* does not outline procedures for types of searches that can be conducted, including strip searches of young persons. The Ministry's proposed framework would fill this gap, which will promote consistency and transparency for how searches of staff, visitors, and young persons are conducted across youth justice facilities in Ontario.

While the proposed regulatory amendments pertain to searches of staff, visitors, and young persons, my submission will primarily address the proposed amendments relating to strip searches of young persons, given their unique vulnerability.

### *Strip searches of young persons*

The Ministry's consultation documents indicate that it is considering various possible regulatory amendments with respect to strip searches of young persons. The Ministry has proposed that searches be conducted one at a time in a private place and without any physical contact. Young persons would not be completely undressed. Where a staff member witnessing the search is not of the same gender as the young person, they would need to be positioned in a way so as to view only the other staff member and not the young person.

In addition, the proposed regulatory amendments outline the circumstances in which a strip search can be conducted, such as when the young person is admitted to or leaves the facility (e.g. to attend court), as well as when the young person re-enters the facility and they have not been directly observed by staff at all times. The amendments would also permit strip searches where there is reasonable suspicion that a young person is carrying contraband, a less intrusive search is insufficient to find the contraband, and there is a direct risk of harm.

The Ministry also indicates that proposed amendments could require facilities to create a monthly report summarizing every instance of a strip search. The amendments would require the Minister to complete a review of the use of strip searches in youth justice facilities and their operational impact within five years.

## Limiting strip searches of young persons

### *Strip searches as a last resort*

Many Canadian sources highlight the importance of severely limiting the use of strip searches for young people. In *R. v. Golden*, the Supreme Court of Canada held that strip searches are “inherently humiliating and degrading for detainees regardless of the manner in which they are carried out.”<sup>7</sup> The Court emphasized that “[t]he importance of preventing unjustified searches before they occur is particularly acute in the context of strip searches, which involve a significant and very direct interference with personal privacy.”<sup>8</sup>

Ontario’s Independent Police Review Director has stated that strip searches are especially humiliating, degrading, and traumatic experiences for young persons.<sup>9</sup> Courts have recognized that in conducting a strip search of a young person, their youth should be considered.<sup>10</sup> Given that strip searches are particularly traumatic for young persons, I urge the Ministry to minimize the use of strip searches where possible. Strip searches of young persons should be extremely rare and should only be used as a last resort.

In some cases, advances in search technology may eliminate the need for more intrusive types of searches. Full-body security scanning systems can safely scan bodies for external and internal contraband not detected by existing security measures and do not require the person being searched to undress.<sup>11</sup> The province has successfully used these types of scanners for years at some adult correctional facilities. While these types of scanners do not exist at all youth justice facilities, I urge the Ministry to provide specific guidance on how and when body scanning devices should be used as an alternative and less intrusive search method for young people.

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<sup>7</sup> *R. v. Golden*, 2001 SCC 83 at para 90 [*Golden*], online: <<https://canlii.ca/t/51xm>>.

<sup>8</sup> *Ibid* at para 89.

<sup>9</sup> In his 2019 report, *Breaking the Golden Rule: a Review of Police Strip Searches in Ontario*, the Independent Police Review Director noted that “[s]trip searches may be especially traumatic for a young person...” and should be treated with “heightened care”: Office of the Independent Police Review Director, *Breaking the Golden Rule: a Review of Police Strip Searches in Ontario* (March 2019) at 129 [*Breaking the Golden Rule*], online: <[https://www.oiprd.on.ca/wp-content/uploads/OIPRD\\_Breaking-the-Golden-Rule\\_Report\\_Accessible.pdf](https://www.oiprd.on.ca/wp-content/uploads/OIPRD_Breaking-the-Golden-Rule_Report_Accessible.pdf)>.

<sup>10</sup> *R. v. A.(Z.)*, 2012 ONCJ 541 [*R. v. A.(Z.)*] at para 72, online: <<https://canlii.ca/t/fshz2>> and *R. v. M.(S.)*, 2013 ONCJ 219 at footnote 1, online: <<https://canlii.ca/t/fx7x1>>.

<sup>11</sup> Ministry of Community Safety and Correctional Services, “Full-body Scanners to be Installed in all Adult Correctional Facilities”, *Newsroom Ontario* (3 May 2016), online: <<https://news.ontario.ca/en/release/38716/full-body-scanners-to-be-installed-in-all-adult-correctional-facilities>>.

## Proposal 1

**Ontario Regulation 155/18 should be amended to specifically provide that strip searches will only be used as a last resort, when all other options to ensure safety and security in a youth justice facility have been exhausted.**

## Proposal 2

**Ontario Regulation 155/18 should be amended to provide specific guidance on how and when body scanning devices should be used as an alternative and less intrusive search method for young people.**

### *Prohibiting routine strip searches*

The Ministry states that proposed regulatory amendments may outline the circumstances when a strip search of a young person can be conducted, such as during admission to the facility, leaving the facility (e.g. to attend court), and when the young person re-enters the facility and they have not been directly observed by staff at all times. I am concerned that these rules could lead to routine strip searches of young persons, contrary to the *Charter*.

Under section 8 of the *Canadian Charter of Rights and Freedoms*, everyone has the right to be secure against unreasonable search or seizure.<sup>12</sup> In considering the scope of the power of police to conduct strip searches, the Supreme Court of Canada has held that “[t]he fact that a strip search is conducted as a matter of routine policy and is carried out in a reasonable manner does not render the search reasonable within the meaning of s. 8 of the *Charter*.”<sup>13</sup> In *R. v. A.(Z.)*, a strip search of a young person was found to have violated section 8 of the *Charter* because, amongst other things, “the strip search was carried out as a matter of routine policy without regard to the individual circumstances of the youth and the necessity for a strip search in his case.”<sup>14</sup> I encourage the Ministry to prohibit routine strip searches of young persons, such as when they enter or leave facilities, and to state that all searches must be conducted in a manner that has regard to the individual circumstances of the youth and the necessity for a strip search.

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<sup>12</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

<sup>13</sup> *Golden*, *supra* note 7 at para 95.

<sup>14</sup> *R. v. A.(Z.)*, *supra* note 10 at para 73.

### Proposal 3

**Ontario Regulation 155/18 should be amended to prohibit routine strip searches of young persons and to state that all searches must be conducted in a manner that has regard to the individual circumstances of the youth and the necessity for a strip search.**

#### *Defining the types of contraband that can justify a strip search*

The Ministry also proposes allowing strip searches when there is reasonable suspicion that a young person is carrying contraband, a less intrusive search is insufficient to find the contraband, and there is a direct risk of harm. I am encouraged by the Ministry's proposal to clarify the circumstances in which a young person may be strip searched. However, as currently proposed, it is possible that this may lead to strip searches of youth where the contraband item is trivial, and the search is disproportionate to the risk posed.

The term "contraband" is defined very broadly under the *CYFSA* to include anything that a young person is not authorized to have, anything that a young person is authorized to have but in a place where they are not authorized to have it, and anything that a young person is authorized to have but that is being used for a purpose for which they are not authorized to use it. This could include, for instance, non-dangerous food that a young person saved from lunch to later eat in their room. While it is important that facilities have the authority to search for dangerous items that pose risk, I encourage the Ministry to carefully consider and narrowly outline the types of contraband that justify the use of strip searches for young people. For instance, the Ministry should clarify and provide specific guidance on the type of "direct risk of harm" that would justify a strip search.

### Proposal 4

**Ontario Regulation 155/18 made under the *CYFSA* should be amended to clearly and narrowly outline the types of contraband that justify the use of strip searches on young people. The *Regulation* should provide specific guidance on the type of "direct risk of harm" that would justify a strip search.**



### *Staff training on conducting strip searches of young persons*

Training staff on the applicable legal requirements, practices, and techniques for conducting strip searches of young persons is important for creating consistency and accountability. Under section 71 of *Ontario Regulation 155/18*, youth justice facilities are required to provide all staff members who deliver direct care to young persons with training and education on conducting searches of young persons. I encourage the Ministry to prescribe that this training must be provided on an annual basis. In addition, I urge the Ministry to ensure that this training includes information on applicable policies, legal requirements, and strategies for reducing strip searches of young persons.<sup>15</sup>

#### **Proposal 5**

***Ontario Regulation 155/18 made under the CYFSA should be amended to state that youth justice centres must provide all staff members who deliver direct care to young persons with annual training on applicable policies, legal requirements, and strategies for reducing strip searches of young persons.***

## **Protecting the privacy and dignity of young persons**

### *Conducting strip searches in a private and confidential area*

It is widely recognized that young persons in custody have a right to privacy, even during strip searches. The Committee on the Rights of the Child is the official body responsible for monitoring the implementation of the *United Nations Convention on the Rights of the Child*. It states that “due regard” should be given to children’s needs for privacy in the child justice system.<sup>16</sup>

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<sup>15</sup> The Ontario Human Rights Commission has similarly recommended that staff in adult correctional facilities should be provided with training on the rules, criteria and jurisprudence limiting the use of strip searches; the rules and criteria for conducting a strip search; and the rules and criteria for fully documenting a strip search: Ontario Human Rights Commission, *Submission of the Ontario Human Rights Commission to the Ministry of the Solicitor General call for submissions on Modernizing the Regulatory Framework for Searches of People in Custody in Ontario’s Adult Correctional Institutions* (31 October 2022) [OHRC Submission], online: <[https://www.ohrc.on.ca/en/submission-ontario-human-rights-commission-ministry-solicitor-general-call-submissions-modernizing#\\_edn12](https://www.ohrc.on.ca/en/submission-ontario-human-rights-commission-ministry-solicitor-general-call-submissions-modernizing#_edn12)>.

<sup>16</sup> Committee on the Rights of the Child, *General comment No. 24 (2019) on children’s rights in the child justice system* (18 September 2019) at s 95(b), online: <<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsglKirKQZLK2M58RF%2F5F0vEnG3QGKUxFivhToQfjGxYjV05tUAlgpOwHQJsFPdJXCiixFSrDRwow8HeKLLh8cgOw1SN6vJ%2Bf0RPR9UMtGkA4>>.



It is critical that strip searches are conducted in a manner that protects the privacy and dignity of young persons to the greatest extent possible.<sup>17</sup> In 2004, 16-year-old David Meffe died by suicide at the Toronto Youth Assessment Centre, a youth justice facility. The inquest jury that examined his death made 40 recommendations, including that strip searches of youth should be conducted in a private and confidential area away from the view of other youth. The jury stated that this recommendation was intended “[t]o protect the dignity and confidentiality of the youth.” In making this recommendation, the jury noted that “[t]he strip search is already a very degrading experience; having it viewed by other youth creates additional risks for victimization and reduced self-esteem.” Consistent with the jury’s recommendation, the Ministry’s consultation document proposes a requirement that searches are conducted one at a time in a private place and without any physical contact. I urge the Ministry to adopt this requirement and prescribe that strip searches of young persons must be conducted in a private and confidential area.

## Proposal 6

**Ontario Regulation 155/18 made under the CYFSA should be amended to state that strip searches of young persons must be conducted in a private and confidential area away from the view of other young persons.**

### *Rules concerning the gender of staff conducting strip searches*

The Ontario Human Rights Commission has recommended that strip searches should be conducted by staff of the same gender as the person being searched, unless specific circumstances relating to the person’s gender identity require a different approach.<sup>18</sup>

At present, *Ontario Regulation 155/18* states that a strip search shall not be conducted by a person of the opposite sex, unless there is “reasonable cause to believe that an immediate search is necessary because the young person is concealing contraband that poses an immediate threat to the safety of young persons, staff members or any other person in the place, or to the safety or security of the place.”<sup>19</sup> The Regulation further states that transgender young persons can request that a search be conducted by either a male staff member, female staff member, or staff members of both sexes, subject to this same exception.<sup>20</sup>

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<sup>17</sup> The Supreme Court of Canada has stated that when strip searches are carried out as incident to arrest, they should be “conducted in a manner that interferes with the privacy and dignity of the person being searched as little as possible”: *Golden*, *supra* note 7 at para 104.

<sup>18</sup> *Golden*, *supra* note 7 at para 90; *OHRC Submission*, *supra* note 15; *Breaking the Golden Rule*, *supra* note 9 at 20.

<sup>19</sup> s 68(4)(ii).

<sup>20</sup> s 68(4)(iii).

Transgender and gender-diverse young persons are uniquely vulnerable, especially when being strip searched, and youth justice facilities should proactively consult with these young people to determine how they wish to be searched. I encourage the Ministry to specifically require youth justice facilities to meaningfully consult transgender and gender diverse young people regarding their preferences with respect to the gender of staff conducting a strip search.

### **Proposal 7**

***Ontario Regulation 155/18 made under the CYFSA should be amended to require that transgender and gender-diverse young persons are consulted regarding their preference with respect to the gender of staff conducting a strip search.***

*Clarify that young persons can file a complaint about a strip search*

The Ministry's proposal indicates that the amended regulation may allow staff and visitors to make a complaint about how a search was conducted and require that each facility has a process for addressing these complaints in a timely manner.

Pursuant to section 18 of the CYFSA and section 22 of *Ontario Regulation 155/18*, youth justice facilities must provide young persons with access to a written complaint procedure that meets various requirements. The Ministry should amend the *Regulation* to specifically indicate that the existing complaint mechanism empowers young persons in youth justice facilities to complain about how a strip search was conducted.

### **Proposal 8**

***The Ministry should amend Ontario Regulation 155/18 to specifically provide that the existing written complaint mechanism for young persons in youth justice facilities empowers them to complain about how a strip search was conducted.***

## **Reporting requirements**

The Ministry's proposal indicates that the amended regulation may include a requirement that a record summarizing every instance of a strip search be reported on a monthly basis. The Ministry has not yet stated who will be responsible for submitting and reviewing these monthly reports. To promote clarity and consistency, the Ministry should clearly state the person or body that will be responsible for submitting these records, as well as the person or body responsible for receiving and reviewing them.

## Proposal 9

**Ontario Regulation 155/18 made under the CYFSA should be amended to clearly state the person or body that is responsible for submitting the monthly strip search records, as well as the person or body responsible for receiving and reviewing them.**

I also encourage the Ministry to outline the type of information that should be included in these records, such as the reason for the search, the outcome of the search, and the race and gender of the person being searched. Collecting this data will promote accountability and oversight, and will assist in identifying trends and formulating best practices with respect to strip searches of young persons.<sup>21</sup> In addition, this approach would be consistent with the recommendations of the Ontario Human Rights Commission, which also recommends that correctional institutions record the race, gender, creed, and physical and/or mental health disability, if any, of any individual being strip searched.<sup>22</sup> Similarly, the Office of the Independent Police Review Director (OIPRD) has recommended that all police services in Ontario should maintain statistics of the number of persons strip searched and the justifications provided for such strip searches. The OIPRD further recommends that these statistics should identify, among other things, the race of the person subjected to such a search.

## Proposal 10

**Ontario Regulation 155/18 made under the CYFSA should be amended to outline the information that should be contained in the monthly strip search records, including the reason for the search, the outcome of the search, and the race and gender of the person being searched.**

Publicly reporting on this data in an anonymized manner will help to further promote oversight with respect to strip searches of young persons. The Ministry should publicly report in an aggregate fashion on the information contained in these monthly records, taking care to ensure that public reports do not contain information that could identify a young person.<sup>23</sup> These records would be an invaluable tool in identifying concerning trends and formulating best practices with respect to strip searches of young persons.

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<sup>21</sup> *Breaking the Golden Rule*, *supra* note 9 at 14.

<sup>22</sup> *OHRC Submission*, *supra* note 15.

<sup>23</sup> Both the Ontario Human Rights Commission and the Independent Police Review Director have also recommended that statistics about the number of persons strip searched should be publicly reported on an annual basis: *OHRC Submission*, *supra* note 15 and *Breaking the Golden Rule*, *supra* note 9 at 14.

## Proposal 11

***Ontario Regulation 155/18 made under the CYFSA should be amended to state that the Ministry will publicly report in an aggregate fashion on information included in the monthly strip search records on an annual basis. The Regulation should state that these public reports must not contain any information that could identify a young person.***

The Ministry states that the proposed regulatory amendments may require the Minister to complete a review of the use of strip searches in youth custody/detention facilities within five years of these amendments coming into force. I also encourage the Ministry to regularly review the monthly strip search records prior to this five-year review process to ensure that facilities are following the regulatory requirements. Ensuring that the Ministry plays an active oversight role in reviewing the monthly strip search records will help verify that youth justice centres are following the relevant policies, procedures and legal requirements.

## Proposal 12

***Ontario Regulation 155/18 made under the CYFSA should be amended to include clear processes and timelines for the Ministry to monitor and review the monthly strip search records.***

## French language services

The Ministry has stated that the proposed regulatory amendments would require young persons to be informed of the purpose of a search and the process for conducting it. My Office's experience has revealed that Francophone children and youth do not always receive services under the *CYFSA* in a manner that affirms the linguistic rights and interests of the French-speaking population of Ontario. The Ministry should prescribe that facilities must offer information about strip searches in both English and French, where appropriate, in accordance with section 16 of the *CYFSA*. This will help ensure that young persons understand the purpose of the search and the process for conducting it.

## Proposal 13

***Ontario Regulation 155/18 made under the CYFSA should be amended to require that facilities offer to provide young persons with information about the purpose of a search and the process for conducting it in French, where appropriate.***

## Conclusion

I am encouraged by the Ministry's efforts to improve *Ontario Regulation 155/18* in order to promote accountability and transparency with respect to how searches are conducted at youth justice facilities. My review has identified additional areas where the Ministry should provide further guidance in order to promote consistency, accountability, transparency and oversight with respect to the procedures for conducting strip searches of young persons

My staff would be pleased to provide further information and answer questions regarding these proposals.



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**Paul Dubé**  
**Ombudsman of Ontario**

*Ce rapport est aussi disponible en français*