

Proposed regulatory amendments under the Child, Youth and Family Services Act, 2017 to outline provisions for searches of staff, visitors and young persons on the premises of youth justice custody/detention facilities

Overview:

The *Child, Youth and Family Services Act, 2017* (CYFSA) includes provisions that authorize a person in charge of a open/secure youth custody/detention facility to authorize a search of the facility, including searches of young persons or any other person (e.g. staff, visitors), or their personal possessions (e.g., clothing, bags, gifts, food) on the premises to be carried out in accordance with the rules set out in the CYFSA and the regulations.

Currently, [Ontario Regulation 155/18 ss. 67–73](#) sets out specific rules governing all searches but does not provide detailed procedures for types of searches such as strip searches, or outline procedures for searching staff or visitors.

Formalizing these requirements in regulation will create consistency and transparency for how staff and visitor searches and strip searches of young persons are conducted across youth custody/detention facilities in Ontario and will support the health and safety of all staff, visitors and young persons in custody/detention by putting in place measures that will help reduce instances of contraband entering facilities. Regulatory requirements will also provide a basis for establishing oversight and monitoring compliance so that all staff, visitor and young person searches are conducted fairly, respectfully and consistently across the province.

We are seeking your input on what the proposed regulatory amendments should include, or consider, with respect to these search provisions.

Why this is needed:

Searches including searches of young persons, staff and visitors are intended to identify contraband and prevent situations that might be dangerous or detrimental to the safety and security of youth, staff, visitors, and the overall security of the facility. The proposed changes are intended to create consistency and transparency with how searches are conducted across youth justice custody/detention facilities in Ontario.

Contraband is defined in the CYFSA, s. 155 (2) as:

- a) anything that a young person is not authorized to have,

- b) anything that a young person is authorized to have, but in a place where they are not authorized to have it, and
- c) 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.

Contraband can be found in many forms in youth justice facilities including drugs, weapons and other items such as cell phones.

Despite existing measures to prevent, detect and reduce contraband, it remains a serious risk to the health and safety of staff, young persons in custody/detention and visitors in youth justice facilities in Ontario.

By establishing requirements that apply to searches in regulation, service providers will have clear and consistent requirements for how to conduct these searches, and this will support accountability and oversight.

Guiding principles for all searches include:

- 1. Protection of human rights and dignity
- 2. Safety and security of the facility
- 3. Prevention of bias in searches

General search rules:

Section 68 of the regulation currently contains general provisions that apply to all searches, including staff, visitor and young persons. This includes that all searches shall be conducted in a manner that:

- i. respects the dignity of the person being searched and does not subject the person to undue embarrassment or humiliation,
- ii. considers the cultural, religious and spiritual beliefs of the person being searched,
- iii. respects any personal property or clothing that has cultural, religious or spiritual value to the person being searched, and
- iv. respects any personal property so that it will not be wilfully discarded, broken or misplaced.

In addition, a person shall be given the opportunity to express their views as to how a search of their person or property are conducted.

Proposed regulation amendments may include:

Staff and Visitors

- Requirements to ensure that opportunities for expressing views include preferences related to gender of staff conducting the search are provided.
- That any search that may involve physical contact will involve at least two staff members.

Young Person Strip Searches

- Searches are conducted one at a time in a private place.
- Searches are conducted visually without any physical contact.
- The young person must not be completely undressed for any period of time.
- Where a staff member witnessing the search is not of the same gender as the young person they must be positioned in a way so as to view only the other staff member and not the young person.

We want to hear from you!

Are there other safeguards that should be considered to ensure that all searches are fair and respectful?

Notices regarding searches:

Current regulatory requirements state that a facility must:

- i. Post conspicuous notices stating that all persons and items entering or exiting the place may be searched in accordance with the Act and the regulations.
- ii. Advise a person before they, or their property is searched of any policies governing searches that have been established in accordance with the Act and the regulations, including providing a description of all search equipment that may be used at the place and describing the circumstances when the equipment may be used.

Proposed regulation amendments may include:

Staff and Visitors

- That a person is advised of this process in a way that they understand.
- That a person is able to make a complaint regarding how the search process was conducted and that the facility must have a process to address complaints in a timely manner.

Young Person Strip Searches

- Informing the young person of the purpose of the search and the process for conducting it.

We want to hear from you!

Are there any additional considerations to ensure persons attending or admitted to the facility are aware of potential search procedures?

Search procedures:

Additional procedures regarding searches of staff, visitors and young persons will ensure clear and consistent standards across the province. Further policies and procedures that detail how this process will function on an individual facility level will be outlined in ministry policy and local facility operating policies. The more localized policies will align with the minimum requirements that will be set out in the proposed regulation.

Proposed regulatory amendments may include:

Rules for visitors

1. Visitors shall be permitted to leave the premises if they do not consent to a search.
2. Under no circumstances will force be used to compel a visitor or staff to undergo a search.
3. When a visitor refuses a search or fails to co-operate with a search, the person in charge of the facility may place conditions or limitations on the visitor, including but not limited to:
 - a. restricting the visitor to a non-contact visit; or,
 - b. denying the visitor entry to the facility and advising the visitor of their right to leave the premises

Rules for staff

4. The person in charge of the facility shall establish and maintain written procedures to be followed when a staff member refuses a search or fails to co-operate with an authorized non-intrusive search of the staff member or the staff member's property.
5. Before searching a staff member's property, the person in charge of the place shall ensure the staff member is notified of the search and that the staff member may be present during the search.

General rules

6. The service provider shall advise staff members that they have no authority to arrest or detain a visitor or staff member or to seize items from visitors/staff.
7. The person in charge of the place shall establish a complaint procedure setting out:
 - a. how a visitor or staff member can make a complaint about how a search was conducted, either verbally or in writing, and;
 - b. how the facility will respond to a complaint in a timely manner.

Young Persons Strip Searches

8. Circumstances when a strip search can be conducted including during admission to the facility, leaving the facility (e.g. to attend court), when the young person re-enters the facility and they have not been directly observed by staff at all times, when there is reasonable suspicion that a young person is carrying contraband and a less intrusive search is insufficient to find the contraband and there is a direct risk of harm.
9. A record that summarizes every instance of strip searches to be reported on a monthly basis.
10. The minister shall complete a review of the use of strip searches in custody/detention facilities and their operational impact within five years of these amendments coming into force.

We want to hear from you!

Are there any other procedures that should be considered?

If you have any thoughts, questions or comments about the proposed amendments, please reach out to Christopher.Dinadis@ontario.ca and Laura.Hawkings@ontario.ca

Thank you for taking the time to provide your input!