

House Bill 16-1389
Need for Safety Procedures for Children During the Collection of Photographic Evidence of
Child Abuse or Neglect

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This proposed bill would make children safer. First, it would protect them from trauma of intimate and intrusive searches by adult strangers. It would also ensure that examinations for physical injury are done by medical professionals who are qualified for a safety evaluation, and can gather and secure evidence, making the process more reliable.

This bill would protect children from having private areas of their bodies examined or photographed by government employees without: (1) consent from either a parent or guardian, or the child between the ages of 15 and 18; or (2) a court order for a medical examination; or (3) a reasonable belief that exigent circumstances exist that constitute a medical emergency, or a reasonable suspicion that an examination is reasonably necessary to prevent or treat serious bodily injury of which there is an immediate threat. The bill would also require that the state board of human services adopt rules regarding the security and storage of any photographs or digital images, and give training on how to conduct legal and appropriate searches.

What circumstances currently exist that make such a bill necessary? Sworn deposition testimony of El Paso County Department of Human Services employees and briefing by their attorneys indicate the following is currently true, at least of EPCDHS:

- DHS regularly examines private areas of children, likely hundreds annually.
- DHS does not believe it needs to notify parents, ask for consent, or seek a court order—all it needs is a “reasonable belief” in “possible abuse.” In some cases, parents were never notified of the strip search, even afterwards.
- DHS denies that these searches are traumatizing to children.
- These searches happen in schools, homes, and other casual environments, rather than a medical setting.
- DHS employees take color photographs of both the child’s face and the area of the body, to match the two together, whether there are marks or not.
- DHS caseworkers use cell phones to take photographs.
- DHS has no safeguards to prevent pictures of children’s private areas from being uploaded to the Internet or synced to personal devices.
- DHS has hundreds of photographs of children’s private areas.
- Eventually, the prints are stored in a file room accessible to DHS employees.
- DHS has no child protection policies outlining safety measures for interacting with children, like those adopted by churches or the Boy Scouts.
- Child interviews are not normally audiotaped or videotaped.
- DHS caseworkers and supervisors are not trained on Fourth Amendment protections.

This bill is important because the practices of DHS are harmful to children in the following ways:

- Children experience strip-searches as humiliating, degrading, and even as sexual abuse, thus creating trauma both for abused children, and children who have not otherwise been abused (as nationally only about one out of 10 children reported to DHS as potentially being abuse is found to have suffered abuse¹).
- Being searched and photographed by adult strangers in casual settings reduces children's resistance to showing their private areas to adult strangers, and thus to child sexual abuse, as it erodes child safety training.
- Caseworkers are not sufficiently trained to diagnose physical trauma. Not only are they likely practicing medicine without a license, but this can lead directly to serious abuse being undetected, because of the lack of medical diagnosis.
- A system with so few safeguards, where caseworkers have such broad discretion to view and photograph children's private areas, is an invitation to real predators.
- Such searches violate the Fourth Amendment constitutional rights of children.

The safeguards provided by the bill are also superior because:

- Currently, so few safeguards exist for handling the photographs and images, and so many employees currently have access to them, that there is a real danger the images may enter the stream of child pornography.
- In a medical setting, the exam is conducted discreetly, and HIPAA controls the storage of the photographs.
- Evidence gathered in the manner specified under the bill has a better chain of custody and credibility for use in dependency and neglect cases or criminal prosecutions.

The bill adequately provides for DHS' ability to investigate child abuse. First, the caseworker may obtain consent from a parent, and may even arrange with the parent for the child to be evaluated by the child's own physician. If the parent will not consent, magistrate judges are on call at all times for emergency child welfare orders. The judge may order an examination by a SANE nurse or an independent medical provider. The bill provides ample avenues to carry out the investigation.

¹ U.S. Dep't of Health & Human Servs., *Child Maltreatment 2013*, p. xii (of 3.5 million referrals alleging abuse to 6.4 million children, there are about 679,000 victims of abuse).