

INMATE STRIP SEARCHES (Detention)

OBJECTIVES

- Staff will learn restrictions on performing strip searches on arrestees being booked into a detention facility
- Staff will review and learn the facility's policies governing inmate searches

The 4th Amendment to the United States Constitution and Section 10 of Article II of the Constitution of the State of New Mexico both protect citizens from unreasonable searches and seizures. Under the state and federal constitutions probable cause is required for a warrant to search a place or seize a person. Because detention facilities have been recognized as “unique place[s] fraught with serious security dangers,” most searches performed in detention facilities do not require a warrant or probable cause. However, people who are arrested and charged with a crime do not lose all of their constitutional protections. Searches performed in a detention facility must be reasonably related to a legitimate governmental objective in order to be lawful.

In 1979 the United States Supreme Court upheld the constitutionality of strip searches of pretrial detainees after every contact visit with a person from outside the institution, even in the absence of probable cause, where the searches were “reasonable.” *Bell v. Wolfish*, 441 U.S. 520 (1979). To determine reasonableness, the *Bell* court explained that the 4th Amendment requires courts to balance the need for a given search against the invasion of personal rights the search entails. Because strip searches constitute a substantial invasion into the privacy rights of the person being searched, courts have since required “reasonable suspicion” that the inmate or detainee is carrying or concealing contraband in order to justify a strip search.

Recently there have been a number of class action lawsuits filed against counties in New Mexico alleging that their detention facility performed unconstitutional strip searches. The plaintiff's in these cases allege that strip searches were performed even when the jail did not have reasonable suspicion that the inmate or arrestee was carrying or concealing contraband. These cases are extremely expensive to defend and resolve. Any individual booked into the facility during the three years prior to the date the complaint is filed is a potential class member. Faced with thousands of potential plaintiffs one New Mexico county recently settled their

lawsuit for over 8 million dollars. When detention staff conducts strip searches without reasonable suspicion that the individual may be carrying or concealing

contraband or fail to adequately document the justifications for their searches they and their county may be subject to civil liability for alleged civil rights violations.

CONSIDERATIONS

- **Scope** of the particular intrusion (pat search versus strip search)
- **Manner** in which it is conducted (professional versus demeaning)
- The **justification** for initiating it (was there reasonable suspicion?)
- The **place** it is conducted (was privacy provided?)

SCOPE

Strip searches constitute a substantial intrusion into the privacy rights of the individual being searched as a matter of law. A strip search involves the visual inspection of an individual's naked body. In addition, strip search procedure generally requires the subject to squat and bend over to expose their anus and genitals for visual inspection. Regardless of whether a complete strip search is performed, any removal or rearrangement of the individual's clothing to permit inspection of their anus, genitals or (female) breasts is considered a strip search for constitutional purposes and subject to the same restrictions. In addition, any practice that requires arrestees to remove **all** of their clothing while visually inspected by detention staff will be considered a strip search even if it is called something else (e.g., shower or clothing exchange procedure or hygiene check).

MANNER

All searches must be performed by staff trained in techniques that protect both inmates and staff from bodily harm and civil liability. Searches may never be used to degrade, harass, embarrass or punish an inmate. They must be performed in a professional and respectful manner by staff trained in the search technique. Strip searches should always be conducted by officers who are the same gender as the individual being searched in a private setting.

JUSTIFICATION- REASONABLE SUSPICION

It is clearly established law that a policy of strip searching all arrestees on intake is unconstitutional. Strip searches may only be conducted when there is reasonable suspicion that the arrestee may be in possession of an item of contraband. Reasonable suspicion may be based upon the following:

- The individual is charged with possession or trafficking of controlled substances (DUI is NOT enough).

- The individual is charged with a crime of violence or a crime in which they used a deadly weapon.
- The individual has previously been convicted of crimes involving drugs, violence or weapons so long as the convictions are sufficiently recent and serious to create reasonable suspicion that they are currently carrying or concealing contraband
- The individual has an institutional history of using or possessing contraband or attempting escape
- The circumstances of the arrest suggest that the individual may be carrying or concealing contraband
- The individual's appearance and behavior suggest they may be carrying or concealing contraband
- Information received from a credible third party that the individual is carrying or concealing contraband
- The pat search revealed the presence of an object concealed beneath the individual's clothing.

To insure compliance with the reasonable suspicion requirement all strip searches of arrestees at intake should be approved in advance by a responsible supervisor.

PLACE

It is essential that strip searches be conducted in a location that provides privacy.

DOCUMENTATION

Every strip search performed on an arrestee at intake should be thoroughly documented. Documentation should include:

- The date/time of the search
- The names of the officer(s) conducting search
- The name of the supervisor approving search
- **All** justifications for the search
- The results of the search

STRIP SEARCH SUMMARY

- No individual booked into the facility should be strip searched unless there is reasonable suspicion to believe they are carrying or concealing contraband.

- Reasonable suspicion may be based on:
 - Current charges or previous convictions for escape, possession/trafficking of drugs or weapons, or crimes of violence
 - Current or historical institutional behaviors of contraband possession or refusals to be searched
- All strip searches conducted as part of booking must be approved in advance by the supervisor identified in your facility policy.
- All strip searches must be performed by same gender staff in a professional and appropriate manner.
- All strip searches must be documented.

POLICY

Discuss the facility's policies and practices pertaining to strip searches performed on individuals booked into the facility.

CLOSING

- *Encourage discussion about strip searches, permissible justifications for conducting strip searches and the process for insuring constitutional practices.*
- *Insure that staff understands no is authorized to approve strip searches on intake and county reporting requirements.*