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# Intake

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# Intake

Reference Number: CTAS-1353

Pursuant to state regulations, each jail must have a space where inmates are received, searched, showered, and issued clothing (if provided by the facility) prior to assignment to the living quarters. New facilities shall provide space inside the security perimeter, separate from inmate living areas and administrative offices, for inmate processing as inmates are received and discharged from the facility. This space shall have the following components:

- Pedestrian and/or vehicle sally port;
- Telephone facilities for inmate use;
- Temporary holding rooms which have fixed benches to seat inmates; and
- A shower, toilet and sink.

Rules of the Tennessee Corrections Institute, Rule 1400-1-.04(11).

An intake form must be completed for every person admitted to the jail and must contain the following information, unless otherwise prohibited by statute:

1. Picture;
2. Booking number;
3. Date and time of intake;
4. Name and aliases of person;
5. Last known address;
6. Date and time of commitment and authority therefore;
7. Names, title, signature and authority therefore;
8. Specific charges;
9. Sex;
10. Age;
11. Date of birth;
12. Place of birth;
13. Race;
14. Occupation;
15. Last place of employment;
16. Education;
17. Name and relationship of next of kin;
18. Address of next of kin;
19. Driver's license and social security numbers;
20. Disposition of vehicle, where applicable;
21. Court and sentence (if sentenced inmate);
22. Notation of cash and property;
23. Bonding company;
24. Amount of bond;
25. Date of arrest;
26. Warrant number;
27. Court date and time;
28. Cell assignment;
29. Fingerprints; and,
30. Criminal history check.

Rules of the Tennessee Corrections Institute, Rule 1400-1-.14(2).

The admitting officer must assure himself or herself that each prisoner received is committed under proper legal authority. Rules of the Tennessee Corrections Institute, Rule 1400-1-.14(3). See T.C.A. §§ 8-8-201(a)(3) and 41-4-103(a).

## Inventory Searches

Reference Number: CTAS-1354

Pursuant to state regulations, cash and personal property must be taken from the prisoner upon admission, listed on a receipt form in duplicate, and stored securely pending the prisoner's release. The receipt must be signed by the receiving officer and the prisoner, the duplicate given to the prisoner and the original kept for the record. If the prisoner is in an inebriated state, there must be at least one witness to verify this transaction. As soon as the prisoner is able to understand what he is doing, he must sign and be given the duplicate of the receipt. Rules of the Tennessee Corrections Institute, Rule 1400-1-.14(5).

The constitutional propriety of inventory searches of arrestees is not novel. In *Illinois v. Lafayette* (1983), 462 U.S. 640, the Supreme Court of the United States addressed the question of whether it was constitutionally permissible under the Fourth Amendment to the United States Constitution to inventory the personal effects of a person arrested prior to incarceration without a warrant. The court held such warrantless routine inventory process proper as an incident to booking and incarceration of the arrested person. The justification was determined to rest not on probable cause but upon consideration of orderly police administration. The court stated at page 646 the following:

"At the station house, it is entirely proper for police to remove and list or inventory property found on the person or in the possession of an arrested person who is to be jailed. A range of governmental interests supports an inventory process. It is not unheard of for persons employed in police activities to steal property taken from arrested persons; similarly, arrested persons have been known to make false claims regarding what was taken from their possession at the station house. A standardized procedure for making a list of inventory as soon as reasonable after reaching the stationhouse not only deters false claims but also inhibits theft or careless handling of articles taken from the arrested person. Arrested persons have also been known to injure themselves--or others--with belts, knives, drugs, or other items on their person while being detained. Dangerous instrumentalities--such as razor blades, bombs, or weapons--can be concealed in innocent-looking articles taken from the arrestee's possession. The bare recital of these mundane realities justifies reasonable measures by police to limit these risks--either while the items are in police possession or at the time they are returned to the arrestee upon his release. Examining all the items removed from the arrestee's person or possession and listing or inventorying them is an entirely reasonable administrative procedure."

*State v. Raines*, 1988 WL 125031, \*2 (Ohio App. 1988). See also *State v. Crutcher*, 989 S.W.2d 295, 301 (Tenn. 1999) (noting that law enforcement authority in cases of incarceration "extends to performing a detailed 'inventory search' of all personal effects in the arrestee's possession") (citing *Illinois v. Lafayette*, 462 U.S. 640, 648, 103 S.Ct. 2605, 77 L.Ed.2d 65 (1983)).

Both the arrestee and the property in his immediate possession may be searched at the jail, and if evidence of a crime is discovered, it may be seized and admitted in evidence. Likewise, the arrestee's clothing or other belongings may be seized upon arrival at the jail and later may be subjected to laboratory analysis, and the test results may be admissible at trial. *United States v. Edwards*, 415 U.S. 800, 803-804, 94 S.Ct. 1234, 1237, 39 L.Ed.2d 771 (1974).

[O]nce the accused is lawfully arrested and is in custody, the effects in his possession at the place of detention that were subject to search at the time and place of his arrest may lawfully be searched and seized without a warrant even though a substantial period of time has elapsed between the arrest and subsequent administrative processing, on the one hand, and the taking of the property for use as evidence, on the other. This is true where the clothing or effects are immediately seized upon arrival at the jail, held under the defendant's name in the 'property room' of the jail, and at a later time searched and taken for use at the subsequent criminal trial. The result is the same where the property is not physically taken from the defendant until sometime after his incarceration.

*Id.* at 807-808, 94 S.Ct. at 1239.

The Tennessee Court of Criminal Appeals has held that no warrant is necessary to search a defendant after he is arrested and transported to jail. *State v. McDougle*, 681 S.W.2d 578, 584 (Tenn. Crim. App. 1984), citing *United States v. Edwards*, 415 U.S. 800, 803, 94 S.Ct. 1234, 1237, 39 L.Ed.2d 771 (1974).

In *Morelock v. State*, 1996 WL 454996, \*4 (Tenn. Crim. App. 1996), the court noted that this "type of inventory or booking search has been routinely upheld in many courts on grounds that those arrested have no privacy interest in items taken from them incident to arrest." See also *State v. Cothran*, 115 S.W.3d 513, 526 (Tenn. Crim. App. 2003), citing *State v. Crutcher*, 989 S.W.2d 295, 301 (Tenn. 1999) (noting that law enforcement authority in cases of incarceration "extends to performing a detailed 'inventory search' of all personal effects in the arrestee's possession"). Cf. *United States v. McCroy*, 102 F.3d 239, 241 (6th Cir. 1996); *United States v. Akins*, 995 F.Supp. 797, 811 (M.D. Tenn. 1998).

## Pat Down Searches

Reference Number: CTAS-1355

Pursuant to state regulations, each jail must have a written policy and procedure providing for searches of facilities and inmates to control contraband. Each newly admitted inmate must be thoroughly searched for weapons and other contraband immediately upon arrival in the jail, regardless of whether the arresting officer has previously conducted a search. A record must be maintained on a search administered to a newly admitted inmate. The procedure must differentiate between the searches allowed (pat down, strip, or orifice) and identify when these may occur and by whom such searches may be made. Inmates must be searched by jail personnel of the same sex except in emergency situations. Rules of the Tennessee Corrections Institute, Rule 1400-1-.07(2) through (6).

While the Fourth Amendment generally requires that the issuance of a warrant, supported by probable cause, precede any search, the Supreme Court has recognized several exceptions to the warrant requirement, including so-called "stationhouse" searches of individuals arrested by the police. See *Illinois v. Lafayette*, 462 U.S. 640, 645-46, 103 S.Ct. 2605, 77 L.Ed.2d 65 (1983); *Mary Beth G. v. City of Chicago*, 723 F.2d 1263, 1270 (7th Cir.1983). As this Court has stated, however, "custodial searches incident to arrest must still be reasonable ones.... This type of police conduct must [still] be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures." *Id.* at 1270-71 (quotations omitted).

*Stanley v. Henson*, 337 F.3d 961, 963 (7th Cir. 2003).

The United States Supreme Court has held "that searches and seizures that could be made on the spot at the time of arrest may legally be conducted later when the accused arrives at the place of detention." *United States v. Edwards*, 415 U.S. 800, 803, 94 S.Ct. 1234, 1237, 39 L.Ed.2d 771 (1974). The police may search an arrestee and inventory his personal effects at the station house following an arrest, prior to confining him. *Illinois v. Lafayette*, 462 U.S. 640, 103 S.Ct. 2605, 77 L.Ed.2d 65 (1983).

## Strip Searches (Visual Body Cavity Search)

Reference Number: CTAS-1356

As used in T.C.A. § 40-7-119, "strip search" means having an arrested person remove or arrange some or all of the person's clothing so as to permit a visual inspection of the genitals, buttocks, anus, female breasts or undergarments of the person. No person arrested for a traffic, regulatory or misdemeanor offense, except in cases involving weapons or a controlled substance, shall be strip searched unless there is reasonable belief that the individual is concealing a weapon, a controlled substance, a controlled substance analogue or other contraband. T.C.A. § 40-7-119(a) and (b). Public Chapter 848 (May 15, 2012) amends Tenn. Code Ann. §§ 40-7-119(b) and 40-7-121(a) by adding under Section 29 controlled substance analogue to list of items that may be searched for during a body cavity search.

In *Timberlake by Timberlake v. Benton*, 786 F.Supp. 676 (M.D. Tenn. 1992), the district court noted that, while T.C.A. § 40-7-119 explicitly sets guidelines for custodial searches of arrested persons, it does not set rules for the location of the search or the manner in which a search is to be conducted. The court stated that this "oversight is critical since the law governing the reasonableness of strip searches is founded upon such factors." *Id.* at 695. Regarding municipal liability, the district court stated that the failure to set a policy governing such a highly intrusive police action can render a municipality's actions as culpable as if they had a policy permitting unreasonable searches themselves. "A local governing body does not shield itself from liability by acting through omission. Thus, when a city provides no guidance to its officers regarding such intrusive actions as strip searches, it must face the consequences of its inaction by being subject to suit." *Id.* at 696, citing *Marchese v. Lucas*, 758 F.2d 181, 189 (6th Cir. 1985), cert. denied, 480 U.S. 916, 107 S.Ct. 1369, 94 L.Ed.2d 685 (1987) (sheriff's failure to train and ratification of unconstitutional behavior subjects county to suit).

Pursuant to state regulations, each jail must have a written policy and procedure providing for searches of

facilities and inmates to control contraband. Each newly admitted inmate must be thoroughly searched for weapons and other contraband immediately upon arrival in the jail, regardless of whether the arresting officer has previously conducted a search. A record must be maintained on a search administered to a newly admitted prisoner. The procedure must differentiate between the searches allowed (pat down, strip, or orifice) and identify when these may occur and by whom such searches may be made. Inmates must be searched by jail personnel of the same sex except in emergency situations. All orifice searches must be done under medical supervision. The jail's policy and procedures must require that all inmates, including trustees, be searched thoroughly by jail personnel whenever the inmates enter or leave the security area. Rules of the Tennessee Corrections Institute, Rule 1400-1-.07(2) - (6).

"Courts have repeatedly held that strip searches that include visual inspection of the anal and genital areas are inherently invasive." *Calvin v. Sheriff of Will County*, --- F.Supp.2d ----, 2005 WL 3446194, \*5 (N.D. Ill. 2005).

In *United States v. Robinson*, 414 U.S. 218, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973), the Court adopted a presumption that a "full search" incident to custodial arrest and aimed toward the discovery of weapons and contraband would be reasonable under the Fourth Amendment, but warned that "extreme or patently abusive" searches might not be. 414 U.S. at 227-236, 94 S.Ct. at 473-77. *United States v. Edwards*, 415 U.S. 800, 94 S.Ct. 1234, 39 L.Ed.2d 771 (1974), authorized warrantless searches of the clothing of arrestees who were confined overnight. As in *Robinson*, the court in *Edwards* reaffirmed that custodial searches incident to arrest must be reasonable. Neither *Robinson* nor *Edwards* specifically addressed "the circumstances in which a strip search of an arrestee may or may not be appropriate." *Illinois v. Lafayette*, 462 U.S. at 646 n.2, 103 S.Ct. at 2609 n.2.

*Fann v. City of Cleveland*, 616 F.Supp. 305, 310-311 (D.C. Ohio 1985).

The United States Supreme Court's opinion in *Bell v. Wolfish*, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979), is the seminal strip search case. In *Bell*, the Court held that strip and visual body cavity searches may, in certain instances, be conducted on inmates with less than probable cause.

The application of the Fourth Amendment to warrantless strip searches has been developed largely in cases involving such searches in prisons and in schools. In *Bell v. Wolfish*, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979), the Supreme Court held that visual body cavity inspections during strip searches of pre-trial detainees and convicted prisoners after they had contact with outsiders were not "unreasonable" searches under the Fourth Amendment. The searches were conducted at the "federally operated short-term custodial facility in New York City designed primarily to house pretrial detainees." *Id.* at 523, 99 S.Ct. 1861. The Court stated that applying "[t]he test of reasonableness under the Fourth Amendment... [i]n each case ...requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted." *Id.* at 559, 99 S.Ct. 1861. It pointed out that a "detention facility is a unique place fraught with serious security dangers. Smuggling of money, drugs, weapons, and other contraband is all too common an occurrence." *Id.*

*Reynolds v. City of Anchorage*, 379 F.3d 358, 362 (6th Cir. 2004).

Despite holding that particular policy constitutional, *Bell* did not validate a blanket policy of strip searching pretrial detainees. Rather, *Bell* held that pretrial detainees retain constitutional rights, including the Fourth Amendment's protection against unreasonable searches and seizures, which are subject to limitations based on the fact of confinement and the institution's need to maintain security and order.

*Calvin v. Sheriff of Will County*, --- F.Supp.2d ----, 2005 WL 3446194, \*4 (N.D. Ill. 2005) (citations omitted).

Courts, beginning with *Bell*, have consistently held that institutional security is a legitimate law enforcement objective, and may provide a compelling reason for a strip search absent reasonable suspicion of individualized wrongdoing. Courts have given prisons latitude to premise searches on the type of crime for which an inmate is arrested. When the inmate has been charged with only a misdemeanor or traffic violation, crimes not generally associated with weapons or contraband, however, courts have required that officers have a reasonable suspicion that the individual inmate is concealing contraband.

*Id.* at \*5 (citation omitted).

## Misdemeanor Arrestees

## Reference Number: CTAS-1357

Under the law regarding strip searches of persons arrested on a misdemeanor charge it is well established that the Fourth Amendment requires that strip and visual body cavity searches must be justified by at least a reasonable suspicion that the arrestee is concealing contraband or weapons.

In *Masters v. Crouch*, 872 F.2d 1248 (6th Cir. 1989), the Sixth Circuit Court of Appeals held that "authorities may not strip search persons arrested for traffic violations and nonviolent minor offenses solely because such persons ultimately will intermingle with the general population at a jail when there [are] no circumstances to support a reasonable belief that the detainee will carry weapons or other contraband into the jail." *Id.* at 1255.

It is objectively reasonable to conduct a strip search of one charged with a crime of violence before that person comes into contact with other inmates. There is an obvious threat to institutional security. However, normally no such threat exists when the detainee is charged with a traffic violation or other nonviolent minor offense.

The decisions of all the federal courts of appeals that have considered the issue reached the same conclusion: a strip search of a person arrested for a traffic violation or other minor offense not normally associated with violence and concerning whom there is no individualized reasonable suspicion that the arrestee is carrying or concealing a weapon or other contraband, is unreasonable.

*Id.* See, e.g., *Skurstenis v. Jones*, 236 F.3d 678, 682 (11th Cir. 2000) (holding jail policy violated the Fourth Amendment because it did not require reasonable suspicion as a predicate to strip searching newly admitted detainees); *Shain v. Ellison*, 273 F.3d 56, 64-66 (2d Cir. 2001) (holding county's policy of conducting strip searches of misdemeanor arrestees remanded to local jail following arraignment, absent reasonable suspicion that arrestees were carrying contraband or weapons, violated the Fourth Amendment); *Weber v. Dell*, 804 F.2d 796, 802 (2d Cir. 1986) (holding that the Fourth Amendment precludes jail officials from performing strip/body cavity searches of arrestees charged with misdemeanors or other minor offenses unless the officials have a reasonable suspicion that the arrestee is concealing weapons or other contraband based on the crime charged, the particular characteristics of the arrestee, and/or the circumstances of the arrest); *Giles v. Ackerman*, 746 F.2d 614 (9th Cir. 1984), *cert. denied*, 471 U.S. 1053, 105 S.Ct. 2114, 85 L.Ed.2d 479 (1985) (holding jail policy requiring all persons booked into the county jail to be strip searched unconstitutional); *Mary Beth G. v. City of Chicago*, 723 F.2d 1263, 1272 (7th Cir. 1983) (holding city's policy of subjecting women, but not men, who had been arrested and detained on misdemeanor charges, to a strip search regardless of the charges against them or whether detention officers had any reasonable suspicion that a particular woman was concealing weapons or contraband, violated the Fourth Amendment); *Logan v. Shealy*, 660 F.2d 1007, 1013 (4th Cir. 1981) (holding indiscriminate strip search policy routinely applied to all detainees cannot be constitutionally justified simply on the basis of administrative ease in attending to security considerations); *Tinetti v. Wittke*, 620 F.2d 160 (7th Cir. 1980) (*per curiam*) (holding strip searches of persons arrested and detained overnight for non-misdemeanor traffic offenses without probable cause to believe that detainees are concealing contraband or weapons on their bodies are unconstitutional). *But see Dobrowolskyj v. Jefferson County*, 823 F.2d 955 (6th Cir. 1987) (holding that a pretrial detainee's Fourth Amendment rights were not violated when he was searched immediately before being transferred to a situation where he would have contact with the general prison population); *Evans v. Stephens*, 407 F.3d 1272, 1278 (11th Cir. 2005) (*en banc*) ("Most of us are uncertain that jailers are required to have reasonable suspicion of weapons or contraband before strip searching-for security and safety purposes-arrestees bound for the general jail population. Never has the Supreme Court imposed such a requirement.").

In other situations, at least one court has found that it is not *per se* unconstitutional to strip search pretrial detainees charged with minor, nonviolent offenses. In *Richerson v. Lexington Fayette Urban County Gov't*, 958 F.Supp. 299, (E.D. Ky. 1996), the federal district court, while noting that a blanket policy allowing strip searches of all pretrial detainees during the booking/intake process, including those detained on minor misdemeanor charges or traffic offenses, is unconstitutional, held:

[W]here pretrial detainees, including those charged with minor, nonviolent offenses, are kept in a detention center's general population prior to arraignment, and are thereafter ...put in a position where exposure to the general public presents a very real danger of contraband being passed to a detainee, a policy of strip searching the detainees upon their return from the courthouse and prior to their being placed back in the general population of the detention center is both justified and reasonable. The detention center's legitimate security interests outweigh the detainees' privacy interests in such a situation.

*Id.* at 307. See also *Black v. Franklin County*, 2005 WL 1993445 (E.D. Ky. 2005).

# Felony Arrestees

Reference Number: CTAS-1358

It is unclear whether the strip search of an arrestee charged with a felony offense is *per se* constitutional when it is based solely on the offense charged (i.e., absent a reasonable suspicion that the arrestee is carrying or concealing a weapon or other contraband.) In one case, the Sixth Circuit Court of Appeals, the circuit under which Tennessee falls, found that the strip search of a felony arrestee was constitutional even though reasonable suspicion was lacking. However, other federal circuits do not agree and this issue has not been decided by the United States Supreme Court.

In *Dufrin v. Spreen*, 712 F.2d 1084 (6th Cir. 1983), the court held that the visual body cavity search conducted at a county jail by a female jailer did not violate the Fourth Amendment rights of a female inmate who had been arrested for felonious assault. Finding the search constitutional, the court noted: "It is enough here that (a) the arrestee was formally charged with a felony involving violence, (b) that her detention was under circumstances which would subject her potentially to mingle with the jail population as a whole, and (c) that the search actually conducted was visual only, and was carried out discreetly and in privacy." *Id.* at 1089.

In *Black v. Franklin County*, 2005 WL 1993445 (E.D. Ky. 2005), the district court found that the strip search of an arrestee did not violate the constitutional rights of the arrestee who was charged with driving on a suspended license, possession of a controlled substance in the first degree, and possession of a controlled substance in the third degree. *Id.* at \*9.

Both the First and Fifth Circuit Courts of Appeal have approved of strip searches based upon the nature of the crime charged. See *Roberts v. Rhode Island*, 239 F.3d 107, 112 (1st Cir. 2001) ("The reasonable suspicion standard may be met simply by the fact that the inmate was charged with a violent felony."); *Watt v. City of Richardson Police Dep't*, 849 F.2d 195, 198 (5th Cir. 1988) ("Reasonableness under the fourth amendment must afford police the right to strip search arrestees whose offenses posed the very threat of violence by weapons or contraband drugs that they must curtail in prisons."). Cf. *Giles v. Ackerman*, 746 F.2d 614, 617 (9th Cir. 1984) ("Reasonable suspicion may be based on such factors as the nature of the offense, the arrestee's appearance and conduct, and the prior arrest record.").

In contrast, the Ninth Circuit Court of Appeals, in *Kennedy v. Los Angeles Police Dept.*, 901 F.2d 702 (9th Cir.1990) (as amended), found the Los Angeles Police Department's blanket policy of performing strip and body cavity searches on all felony arrestees was unconstitutional. However, the court noted that a body cavity search could be justified where officials had "reasonable suspicion" to conduct a particular search. *Id.* at 715. See also *Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1446 (9th Cir. 1991) (Applying *Kennedy*, the court again found that the policy of the Los Angeles Police Department to subject all felony arrestees to strip/visual body cavity searches was unconstitutional.).

One federal district court has held that it is unconstitutional to strip search arrestees charged with a nonviolent, nonweapon, nondrug felony offense, absent a reasonable suspicion that the arrestee is carrying or concealing a weapon or other contraband. *Tardiff v. Knox County*, 397 F.Supp.2d 115 (D. Me. 2005).

While the First Circuit has not directly addressed the appropriate test for the validity of a strip search during the booking process at a local jail and incident to a felony arrest, this Court concludes that, with respect to detainees charged with a non-violent, non-weapon, non-drug felony, the particularized reasonable suspicion test is applicable, rather than strip searches of all felony arrestees being authorized based solely on the fact that they had been arrested on a charge categorized under state law as a felony. *Swain*, 117 F.3d at 7 ("[I]t is clear that at least the reasonable suspicion standard governs strip and visual body cavity searches in the arrestee context...."). This conclusion is based in part on the First Circuit's clear statements about constitutional protections applicable to individuals who are the subject of a governmentally initiated strip search. The law in this Circuit does not countenance a policy permitting strip searches of all non-violent, non-weapon, non-drug felony detainees upon arrival at a local correctional facility simply because they stand accused of a felony. The distinction between felony and misdemeanor detainees alone fails to address the likelihood that a detainee would be concealing drugs, weapons, or other contraband. See *Tennessee v. Garner*, 471 U.S. 1, 14, 105 S.Ct. 1694, 85 L.Ed.2d 1, (1985) ("[T]he assumption that a 'felon' is more dangerous than a misdemeanor [is] untenable."). Moreover, a non-violent, non-weapon, non-drug felony charge fails to create a presumption of reasonable suspicion required to perform a strip search.

Though the crime for which a detainee is charged is an important factor for consideration, it does not independently establish reasonable suspicion necessary under the Fourth Amendment. Officers



should evaluate whether the crime charged involves violence, drugs, or some other feature from which an officer could reasonably suspect that an arrestee was hiding weapons or contraband as well as other factors like the circumstances of the arrest and the particular characteristics of the arrestee. When these factors are considered, it is possible that the strip search of many accused felons may be legitimate. Nevertheless, strip searching all individuals charged with felony crimes that do not involve violence, weapons, or drugs as part of the booking process at a local jail is unconstitutional.

*Id.* at 130-131. See also *Dodge v. County of Orange*, 282 F.Supp.2d 41, 85 (S.D. N.Y. 2003), *app. dismissed, case remanded on other grounds*, 103 Fed.Appx. 688, 2004 WL 1567870 (2d Cir. 2004) (finding county policy was unconstitutional insofar as it called for strip searching all newly-admitted detainees arrested on suspicion of a felony); *Sarnicola v. County of Westchester*, 229 F.Supp.2d 259, 270 (S.D. N.Y.2002) (holding that the mere arrest for felony drug charges does not permit strip search absent reasonable suspicion that the individual is secreting drugs or other contraband within body cavities).

## Body Cavity Searches

Reference Number: CTAS-1359

State law defines a "body cavity search" as an inspection, probing or examination of the inside of a person's anus, vagina or genitals for the purpose of determining whether such person is concealing evidence of a criminal offense, a weapon, a controlled substance, a controlled substance analogue or other contraband. T.C.A. 40-7-121(a). Pursuant to state law, no person shall be subjected to a body cavity search by a law enforcement officer or by another person acting under the direction, supervision or authority of a law enforcement officer unless the search is conducted pursuant to a search warrant issued in accordance with Rule 41 of the Tennessee Rules of Criminal Procedure. T.C.A. 40-7-121(b). Furthermore, a body cavity search conducted pursuant to T.C.A. 40-7-121 must be performed by a licensed physician or a licensed nurse. T.C.A. 40-7-121(g). A law enforcement officer who conducts or causes to be conducted a body cavity search in violation of T.C.A. 40-7-121, and the governmental entity employing such officer, shall be subject to a civil cause of action as now provided by law. T.C.A. 40-7-121(f).

Note: The provisions of T.C.A. 40-7-121 do not apply to a body cavity search conducted pursuant to a written jail or prison security procedures policy if the policy requires such a search at the time it was conducted. T.C.A. 40-7-121(e).

Procedures shall differentiate between the searches allowed (orifice, pat, or strip) and identify when these shall occur and by whom such searches may be conducted. All orifice (body cavity) searches shall be done under medical supervision. Inmates shall be searched by facility employees of the same sex, except in emergency situations. The TCI reference rule should read 1400-1-.07(5). Rules of the Tennessee Corrections Institute, Rule 1400-1-.07(6).

In *Bell [v. Wolfish]*, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979)], the Supreme Court considered the propriety of body cavity searches of pretrial detainees as well as convicted prisoners under a Fourth Amendment standard, though it appeared to assume, rather than decide, that this was the proper standard. *Id.* at 558. Several years after the Supreme Court decided *Bell*, it held that a prison inmate lacks a reasonable expectation of privacy in his prison cell and thus cannot sustain a Fourth Amendment claim regarding a search of his cell. *Hudson v. Palmer*, 468 U.S. 517, 526, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984). But *Hudson* did not disturb *Bell's* application of the Fourth Amendment to searches of a detainee's or inmate's person, and courts have continued to apply the Fourth Amendment when assessing the propriety of strip searches and body cavity searches of arrestees, pretrial detainees, and convicted prisoners.

*Thompson v. County of Cook*, 2005 WL 1950363, \* (N.D. Ill. 2005) (citing cases).

"Whether a body cavity search is 'reasonable' under the Fourth Amendment requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted." *Levoy v. Mills*, 788 F.2d 1437, 1439 (10th Cir. 1986), *citing Bell v. Wolfish*, 441 U.S. 520, 559, 99 S.Ct. 1861, 1884, 60 L.Ed.2d 447 (1979). In *Levoy*, the Court did not formulate a particular standard of suspicion to warrant an anal body cavity search, but it did hold that the government must demonstrate a legitimate need to conduct such a search. *Id.* See also *Calvin v. Sheriff of Will County*, --- F.Supp.2d ---, 2005 WL 3446194, \*4 (N.D. Ill. 2005) (In balancing the Fourth Amendment rights of an inmate with the interests of a penal institution with respect to a search, a court must consider four factors: (1) the scope of the particular intrusion; (2) the manner in which it is

conducted; (3) the place in which it is conducted; and (4) the justification for initiating it.).

Case law suggests that "[t]he more intrusive the search, the closer governmental authorities must come to demonstrating probable cause for believing that the search will uncover the objects for which the search is being conducted." *Nelson v. Dicke*, 2002 WL 511449 (D. Minn. 2002), citing *Jones v. Edwards*, 770 F.2d 739, 741 (8th Cir. 1985) (quoting *Mary Beth G. v. City of Chicago*, 723 F.2d 1263, 1273 (7th Cir. 1983)). See also *Levoy v. Mills*, 788 F.2d 1437, 1439 (10th Cir. 1986) (It is an established Fourth Amendment principle that "the greater the intrusion, the greater must be the reason for conducting a search."). When weighing the competing interests in a Fourth Amendment challenge, greater intrusiveness in a search must be offset by greater justification for the search. *State v. Wallace*, 642 N.W.2d 549, 559 (Wis. App. 2002), citing *Security and Law Enforcement Employees, Dist. Council 82 v. Carey*, 737 F.2d 187, 208 (2d Cir. 1984) ("[T]he greater the intrusion, the greater must be the reason for conducting a search." (citation omitted)); *United States v. Quintero-Castro*, 705 F.2d 1099, 1100 (9th Cir. 1983) ("[A]s a search becomes more intrusive, it must be justified by a correspondingly higher level of suspicion of wrongdoing." (citation omitted)).

When determining the reasonableness of a body cavity search, courts also consider the manner in which the search was conducted. "To make this determination, courts consider issues such as privacy, hygiene, the training of those conducting the searches, and whether the search was conducted in a professional manner." *Isby v. Duckworth*, 175 F.3d 1020, 1999 WL 236880, \*2 (7th Cir. 1999). See also *Hill v. Koon*, 977 F.2d 589, \*1 (Table) (9th Cir. 1992) ("This circuit has established that three requirements must be satisfied in order for a digital body cavity search of an inmate to be constitutional under the Fourth Amendment. First, there must be reasonable suspicion to believe that the person searched is concealing contraband. In addition to reasonable suspicion, there must also be a valid penological need for the search. Finally, the search must be conducted in a reasonable manner. This requires considering whether the search was performed in private by trained personnel under hygienic conditions.").

In *Evans v. Stephens*, 407 F.3d 1272, 1281 (11th Cir. 2005), the Eleventh Circuit Court of Appeals found the manner in which a body cavity search was conducted violated the suspects' Fourth Amendment right's. However, the court did not hold that body cavity searches that penetrate orifices are *per se* unconstitutional. *Id.* at 1281, n. 11.

## Clothing Exchange

Reference Number: CTAS-1360

Pursuant to state regulations, each jail must have a space where inmates are received, searched, showered, and issued clothing (if provided by the facility) prior to assignment to the living quarters. Rules of the Tennessee Corrections Institute, Rule 1400-1-.04(11).

Inmates shall be issued clothing within a reasonable time frame that is properly fitted and suitable for the climate and shall include the following:

1. Clean socks;
2. Clean undergarments;
3. Clean outer garments; and
4. Footwear.

Clean prisoner's personal clothing (if available) may be substituted for institutional clothing at the discretion of the jail administrator. Prisoner clothing, whether personal or institutional, must be exchanged and cleaned at least twice weekly unless work, climatic conditions or illness necessitate more frequent change. Rules of the Tennessee Corrections Institute, Rule 1400-1-.15(2) and Rule 1400-1-.15(8).

In *Stanley v. Henson*, 337 F.3d 961 (7th Cir. 2003), the Seventh Circuit Court of Appeals found that a jail's clothing-exchange procedure, which required a female arrestee to change into a jail uniform in a small room in the presence of a female officer, was reasonable and did not violate the arrestee's Fourth Amendment search and seizure rights. The court noted that the observed clothing-exchange policy employed by the jail was a rational approach to achieving the objective of preventing the smuggling of weapons or other contraband into the general jail population, a rather substantial concern given the nature of the jail system, and to ensure that a full and complete inventory was accomplished. *Id.* at 966-967.

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