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# Supervision of Inmates

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# Supervision of Inmates

Reference Number: CTAS-1364

The sheriff or other person must remain in the jail every night from 8 o'clock p.m. to 6 o'clock a.m. T.C.A. § 41-4-113.

All prisoners must be personally observed by a staff member at least once every hour on an irregular schedule. More frequent observation must be provided for prisoners who are violent, suicidal, mentally ill or intoxicated, and for prisoners with other special problems or needs. The time of all such checks must be logged, as well as the results. The facility must have a system to physically count prisoners and record the results on a 24 hour basis. *At least one formal count shall be conducted for each shift.* Rules of the Tennessee Corrections Institute, Rule 1400-1-.16(2) and Rule 1400-1-.16(3).

Incidents that involve or endanger the lives or physical welfare of custodial officers or prisoners must be recorded in a daily log and retained. Such incidents shall include, at a minimum:

1. Death;
2. Attempted suicide;
3. Escape;
4. Attempted escape;
5. Fire;
6. Riot;
7. Battery on a staff member or inmate;
8. Serious infectious disease within facility; and
9. Sexual Assault.
  - A. An investigation shall be conducted and documented whenever a sexual assault or threat is reported; and
  - B. Victims of sexual assault are referred under appropriate security provisions to a community facility for treatment and gathering evidence.

Rules of the Tennessee Corrections Institute, Rule 1400-1-.16(4).

Pursuant to state regulations, prisoners are not permitted to supervise, control, assume or exert authority over other prisoners. Rules of the Tennessee Corrections Institute, Rule 1400-1-.16(6). It has been held that the failure to provide adequate personnel to ensure security at the jail and the continued use of inmate trustees to carry out sensitive tasks such as carrying the keys and distributing drugs violates the Eighth Amendment. *Nicholson v. Choctaw County*, 498 F.Supp. 295, 309 (S.D. Ala. 1980); *Gates v. Collier*, 501 F.2d 1291, 1308 (5th Cir. 1974) (holding trusty system, which utilized unscreened inmates violated state law, and which allowed inmates to exercise unchecked authority over other inmates, constituted cruel and unusual punishment in violation of the Eighth Amendment). *See also Dawson v. Kendrick*, 527 F.Supp. 1252, 1289-1290 (S.D. W.Va. 1981) (finding that the inadequacy of the jail's staffing and the systematic inadequacy of supervision at the jail placed prisoners in reasonable fear for their safety and well being and that the understaffing practice was not rationally connected to a legitimate governmental interest; holding that the failure to retain a trained staff of sufficient numbers gave rise to an unreasonable risk of violence in the jail and constituted a violation of the 14th Amendment as to pretrial detainees and the Eighth Amendment as to convicted prisoners).

## Monitoring of Inmates by Guards of the Opposite Sex

Reference Number: CTAS-1365

Pursuant to state regulations, facilities that are used for the confinement of females must have a trained female officer on duty or on call when a female is confined in the facility to perform the following functions: (1) searches, and (2) health and welfare checks. Rules of the Tennessee Corrections Institute, Rule 1400-1-.16(5).

Numerous courts "have viewed female inmates' privacy rights vis-a-vis being monitored or searched by male guards as qualitatively different than the same rights asserted by male inmates vis-a-vis female prison guards." *Colman v. Vasquez*, 142 F.Supp.2d 226, 232 (D. Conn. 2001) (Female inmate assigned by prison to special unit for victims of sexual abuse retained limited right to bodily privacy under Fourth Amendment, and thus could maintain an action against prison officials for subjecting her to pat down search by male guards based on violations of Fourth Amendment.). *See also Hill v. McKinley*, 311 F.3d 899, 904 (8th Cir. 2002) ("Thus, we hold that Hill's Fourth Amendment rights were violated when the

defendants allowed her to remain completely exposed to male guards for a substantial period of time after the threat to security and safety had passed."); *Jordan v. Gardner*, 986 F.2d 1521, 1530-1531 (9th Cir. 1993) (en banc) (holding that the prison's policy, which required male guards to conduct random, nonemergency, suspicionless clothed body searches on female prisoners, constituted cruel and unusual punishment in violation of the Eighth Amendment); *Lee v. Downs*, 641 F.2d 1117, 1120 (4th Cir.1981) (upholding jury verdict for violation of privacy interests of female inmate who was forced to undress in the presence of male guards).

The United States Supreme Court has held that "the Fourth Amendment proscription against unreasonable searches does not apply within the confines of the prison cell." See *Hudson v. Palmer*, 468 U.S. 517, 526-528, 104 S.Ct. 3194, 3200-3201, 82 L.Ed.2d 393 (1984) (upholding, against Fourth Amendment challenge, a policy permitting random cell searches) ("A right of privacy in traditional Fourth Amendment terms is fundamentally incompatible with the close and continual surveillance of inmates and their cells required to ensure institutional security and internal order.").

At least one court has construed *Hudson* as holding categorically that the Fourth Amendment does not protect privacy interests within prisons. In *Johnson v. Phelan*, 69 F.3d 144 (7th Cir.1995), cert. denied, 519 U.S. 1006, 117 S.Ct. 506, 136 L.Ed.2d 397 (1996), the Seventh Circuit Court of Appeals held that "the [F]ourth [A]mendment does not protect privacy interests within prisons." *Id.* at 150. The court found that permitting female guards to monitor naked male inmates does not violate the inmates' privacy rights and does not constitute cruel and unusual punishment so long as the monitoring policy has not been adopted to humiliate or harass the inmate. *Id.* at 145-150. See also *Canedy v. Boardman*, 16 F.3d 183 (7th Cir.1994), which holds that a right of privacy limits the ability of wardens to subject men to body searches by women, or the reverse. But see *Peckham v. Wisconsin Dept. of Corrections*, 141 F.3d 694, 697 (7th Cir.1998) (narrowing *Johnson v. Phelan*, rejecting interpretation of *Canedy* and *Johnson* that Fourth Amendment does not apply to prisoners).

In 1993, the Ninth Circuit Court of Appeals observed that "prisoners' legitimate expectations of bodily privacy from persons of the opposite sex are extremely limited" and that, while inmates "may have protected privacy interests in freedom from cross-gender clothed body searches, such interests have not yet been judicially recognized. *Jordan v. Gardner*, 986 F.2d 1521, 1524-1525 (9th Cir. 1993) (en banc). However, the court held that the prison's policy, which required male guards to conduct random, nonemergency, suspicionless clothed body searches on female prisoners, constituted cruel and unusual punishment in violation of the Eighth Amendment. *Id.* at 1530-1531.

In *Somers v. Thurman*, 109 F.3d 614 (9th Cir. 1997), the Ninth Circuit considered a male inmate's claim that his Fourth and Eighth Amendment rights were violated when he was subjected to routine visual body cavity searches by female guards and when female guards watched him showering naked. At the outset, the court noted that "we have never held that a prison guard of the opposite sex cannot conduct routine visual body cavity searches of prison inmates ... [n]or have we ever held that guards of the opposite sex are forbidden from viewing showering inmates." *Id.* at 620. The court held that the guards were entitled to qualified immunity on the plaintiff's Fourth Amendment claim. Rejecting the Fourth Amendment claim the court stated: "Thus, it is highly questionable even today whether prison inmates have a Fourth Amendment right to be free from routine unclothed searches by officials of the opposite sex, or from viewing of their unclothed bodies by officials of the opposite sex. Whether or not such a right exists, however, there is no question that it was not clearly established at the time of the alleged conduct." *Id.* at 622. The court also rejected the inmates Eighth Amendment claim noting that "[c]ross-gender searches 'cannot be called inhumane and therefore do[ ] not fall below the floor set by the objective component of the [E]ighth [A]mendment.'" *Id.* at 623 (citation omitted). The court distinguished *Somers* from *Jordan* by noting that the "psychological differences between men and women," ... "may well cause women and especially physically and sexually abused women, to react differently to searches of this type than would male inmates subjected to similar searches by women." *Id.*

In *Carlin v. Manu*, 72 F.Supp.2d 1177 (D. Or. 1999), female inmates in the state prison brought an action against male correctional officers alleging that skin searches performed on the female inmates in the presence of the male officers violated their Fourth and Eighth Amendment rights. The district court held that the male correctional officers were entitled to qualified immunity on the female inmates' claims that skin searches by female correctional officers in the presence of the male officers violated their Fourth and Eighth Amendment rights, since observation by male guards during strip searches of female inmates was not clearly identified as unlawful under existing constitutional law. Significant to the court's holding were the facts that although the male guards looked at female inmates they did not touch them, and the observation was an isolated event occasioned by emergency removal of female inmates to a male prison. The court concluded "that while precedent indicates that it is possible the Court of Appeals might in the future recognize a right by female inmates to be free from the presence of and viewing by male guards while they were being strip searched, that right is not now, and was not in February 1996, a 'clearly

established' one which would foreclose the defendants from qualified immunity." *Id.* at 1178.

Other courts, including the Sixth Circuit, have concluded that inmates retain limited rights to bodily privacy under the Fourth Amendment. In *Cornwell v. Dahlberg*, 963 F.2d 912, 916 (6th Cir.1992) the Sixth Circuit noted that it has joined other circuits "in recognizing that a convicted prisoner maintains some reasonable expectations of privacy while in prison, particularly where those claims are related to forced exposure to strangers of the opposite sex, even though those privacy rights may be less than those enjoyed by non-prisoners." The court held that "in challenging the conditions of his outdoor strip search before several female OSR correctional officers, Cornwell raised a valid privacy claim under the Fourth Amendment ..." *Id.* The court based its conclusion on the Fourth Amendment but without mentioning *Hudson*. See also *Everson v. Michigan Dept. of Corrections*, 391 F.3d 737, 757 (6th Cir. 2004).

In an earlier case the Sixth Circuit did cite *Hudson* and noted that the United States Supreme Court has never held that the Fourth Amendment "right to privacy" encompasses the right to shield one's naked body from view by members of the opposite sex. *Kent v. Johnson*, 821 F.2d 1220, 1226 (6th Cir.1987). Nevertheless, the court concluded "that there must be a fundamental constitutional right to be free from forced exposure of one's person to strangers of the opposite sex." *Id.* The court went on to hold that "assuming that there is some vestige of the right to privacy retained by state prisoners and that this right protects them from being forced unnecessarily to expose their bodies to guards of the opposite sex, the instant complaint did state a constitutional claim upon which relief can be granted." The court also held that the male inmate had stated a claim under the Eighth Amendment by alleging that female prison guards had allowed themselves unrestricted views of his naked body in the shower, at close range and for extended periods of time, to retaliate against, punish and harass him for asserting his right to privacy. *Id.* at 1227-1228.

In a more recent case, the Sixth Circuit held that the accidental viewing of a female pretrial detainee's bare breasts by a male jailer while she was being searched by two female jailers did not violate the Fourth Amendment in the absence of any evidence that either the normal search policy was unconstitutional or that it was carried out in an unconstitutional manner. *Mills v. City of Barbourville*, 389 F.3d 568, 578-579 (6th Cir. 2004). However, the court noted that "[a]s to jail employees of the opposite gender viewing prison inmates or detainees, we have recognized that a prison policy forcing prisoners to be searched by members of the opposite sex or to be exposed to regular surveillance by officers of the opposite sex while naked--for example while in the shower or using a toilet in a cell--would provide the basis of a claim on which relief could be granted." *Id.* See also *Roden v. Sowders*, 84 Fed.Appx. 611 (6th Cir. 2003) (Strip search of male prisoner in the presence of female sergeant did not violate prisoner's Fourth Amendment privacy rights or Eighth Amendment rights. Search was reasonable under the circumstances and was reasonably related to the legitimate penological interest of security and order.); *Henning v. Sowders*, 19 F.3d 1433 (Table) (6th Cir. 1994) (Involuntary body cavity search of female inmate in the presence of male officers did not violate prisoner's Fourth Amendment privacy rights and was reasonably related to the legitimate penological interests of safety and security.); *Rose v. Saginaw County*, 353 F.Supp.2d 900 (E.D. Mich. 2005) (Jail policy of taking all the clothing from detainees confined in administrative segregation violates the Fourth and Fourteenth Amendments of the Constitution based upon the facts of the case.); *Wilson v. City of Kalamazoo*, 127 F.Supp.2d 855 (W.D. Mich. 2000) (Detaining arrestee in jail without any clothing or covering, with limited exposure to viewing by members of the opposite sex, violates detainee's right of privacy under the Fourth Amendment. The removal of detainee's underclothing was not adequately justified even if they were removed as a suicide prevention measure.); *Johnson v. City of Kalamazoo*, 124 F.Supp.2d 1099 (W.D. Mich. 2000) (Stripping male pretrial detainees to their underwear after detainees refused to answer intake question as to whether they were suicidal did not violate detainees' right of privacy under Fourth Amendment, even though disrobing occurred in presence of female officers.).

## Cell Searches

Reference Number: CTAS-1366

It is clear that prisoners have no Fourth Amendment rights against searches of their prison cells.

In *Hudson v. Palmer*, 468 U.S. 517, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984), the United States Supreme Court addressed the question of whether the Fourth Amendment applies within a prison cell. The court held that it does not.

[W]e hold that society is not prepared to recognize as legitimate any subjective expectation of privacy that a prisoner might have in his prison cell and that, accordingly, the Fourth Amendment proscription against unreasonable searches does not apply within the confines of the prison cell. The recognition of privacy rights for prisoners in their individual cells simply cannot be reconciled with the concept of incarceration and the needs and objectives of penal institutions.

*Id.* at 526-528, 104 S.Ct. at 3200-3201.

The *Hudson* Court upheld, against a Fourth Amendment challenge, a policy permitting random cell searches.

The uncertainty that attends random searches of cells renders these searches perhaps the most effective weapon of the prison administrator in the constant fight against the proliferation of knives and guns, illicit drugs, and other contraband. The Court of Appeals candidly acknowledged that "the device [of random cell searches] is of obvious utility in achieving the goal of prison security."

A requirement that even random searches be conducted pursuant to an established plan would seriously undermine the effectiveness of this weapon. It is simply naive to believe that prisoners would not eventually decipher any plan officials might devise for "planned random searches," and thus be able routinely to anticipate searches. The Supreme Court of Virginia identified the shortcomings of an approach such as that adopted by the Court of Appeals and the necessity of allowing prison administrators flexibility:

"For one to advocate that prison searches must be conducted only pursuant to an enunciated general policy or when suspicion is directed at a particular inmate is to ignore the realities of prison operation. Random searches of inmates, individually or collectively, and their cells and lockers are valid and necessary to ensure the security of the institution and the safety of inmates and all others within its boundaries. This type of search allows prison officers flexibility and prevents inmates from anticipating, and thereby thwarting, a search for contraband." *Marrero v. Commonwealth*, 222 Va. 754, 757, 284 S.E.2d 809, 811 (1981).

We share the concerns so well expressed by the Supreme Court and its view that wholly random searches are essential to the effective security of penal institutions.

*Id.* at 528-529, 104 S.Ct. at 3201-3202. *See also Block v. Rutherford*, 468 U.S. 576, 589-591, 104 S.Ct. 3227, 3234-3235, 82 L.Ed.2d 438 (1984) (holding that a county jail's practice of conducting random, irregular shakedown searches of pretrial detainees' cells in the absence of the detainees was a reasonable response by jail officials to legitimate security concerns and did not violate the Due Process Clause of the Fourteenth Amendment); *Bell v. Wolfish*, 441 U.S. 520, 555-557, 99 S.Ct. 1861, 1882-1884, 60 L.Ed.2d 447 (1979) (holding requirement that pretrial detainees remain outside their cells during routine "shakedown" inspections by prison officials did not violate the Fourth Amendment, but simply facilitated the safe and effective performance of searches); *State v. Dulsworth*, 781 S.W.2d 277 (Tenn. Crim. App. 1989) (A prisoner does not have a justifiable, reasonable or legitimate expectation of privacy that is subject to invasion by law enforcement officers, as the United States Supreme Court ruled in *Hudson v. Palmer*, 468 U.S. 517, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984)); *State v. Gant*, 537 S.W.2d 711 (Tenn. Crim. App. 1975) (We think it is recognized that, for safety and security purposes, prison officials are authorized to search a prisoner's cell without a warrant for weapons.).

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