

**MARIN COUNTY SHERIFF'S DEPARTMENT
CUSTODY DIVISION POLICY AND PROCEDURE MANUAL**

CHAPTER 2 – BOOKING
CUS – 2 – 14
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DATE: 1-4-18

INMATE SEARCHES / CLOTHED, STRIP, BODY SCAN, VISUAL AND PHYSICAL BODY CAVITY

POLICY

All inmate searches conducted in the Marin County Jail shall be based on the legitimate need to maintain security and to prevent the introduction of weapons and contraband into the facility. All strip searches and visual body cavity searches performed in the Marin County Jail shall be conducted in accordance with Section 4030 of the California Penal Code and federal and state case law. Searches shall be conducted in an atmosphere of professional dignity and with a full appreciation of the extent, however necessary, of the intrusion upon what would otherwise be the privacy of the prisoner being searched.

DEFINITIONS

CLOTHED BODY SEARCH: A clothed search of an individual, including a “pat down,” metal detector, Body Scanner or thorough clothing search, conducted to prevent the introduction of weapons and contraband into the Marin County Jail facility.

STRIP SEARCH: A search which requires an individual to remove or arrange some or all of their clothing so as to permit a visual inspection of the underclothing, breasts, buttocks, or genitalia of that person. The person conducting the search may not touch the breasts, buttocks, or genitalia of the person being searched. All persons conducting a strip search will be of the same gender as the person being searched except Physicians or licensed medical personnel.
NOTE: Viewing the arrestee completely unclothed has been deemed by the courts to be a strip search.

BODY SCANNER: X-ray technology used to produce an image revealing the presence of contraband concealed on or inside a person.

VISUAL BODY CAVITY SEARCH: A search that includes the visual inspection of the stomach, rectal, or vaginal cavity. The person conducting the search may not touch the breasts, buttocks, or genitalia of the person being searched.

PHYSICAL BODY CAVITY SEARCH: Any physical intrusion into a body cavity for the purpose of discovering any object concealed in that cavity. This only includes the stomach, rectal, or vaginal cavities. A search warrant is required for this type of search. The search must be conducted under sanitary conditions, and only by a physician, nurse practitioner, registered nurse, licensed vocational nurse, or emergency medical technician. Any physician engaged in providing health care to inmates may conduct a physical body cavity search.

REASONABLE SUSPICION: A degree of knowledge based on specific and articulable facts, sufficient to induce an ordinarily prudent, cautious, and reasonable officer exposed to the same set of circumstances to believe an individual is in possession of a weapon or other item of contraband and a strip search will likely result in the discovery of the weapon or contraband.

Reasonable suspicion may be based on factors including the nature of the offense, the person's appearance and conduct, and the person's prior arrest record. Any prior arrest record that indicates a propensity for carrying or concealing weapons, controlled substances or other items of contraband must be known or determined at the time of booking by the deputy if this information is used to establish reasonable suspicion.

CONTRABAND: Anything not issued or allowed into the Marin County Jail facility by staff, or anything not allowed inside the Marin County Jail facility by law. Contraband, as it specifically applies to this policy, pertains to smuggled weapons, drugs, or any other items that pose a threat to the safety and security of the custody staff, inmate population, or jail facility.

CLOTHING EXCHANGE: The procedure by which individuals being transferred to the housing level of the Marin

County Jail are required to remove all of their clothing in exchange for a set of jail issued clothing. The clothing exchange shall occur at the time the arrestee is required to shower.

TRANSGENDER: A person whose gender identity (internal sense of feeling male or female) is different from the person's assigned sex at birth.

INTERSEX: A person who's sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female.

MASTER STRIP SEARCH FILE: A master file maintained by the Marin County Jail's Administrative Secretary documenting each strip search conducted upon reasonable suspicion at the time of booking and each physical body cavity search conducted as the result of a search warrant or other lawful court order. That file shall be maintained both alphabetically and chronologically.

PROCEDURE

All persons being booked into the Marin County Jail shall be subject to either a pat down search, metal detector search, body scan and/or a thorough clothing search, including the examination and seizure of any item(s) found to be in the subject's purse, pockets, or personal belongings. Persons who have been arrested and are to be booked, but as to whom there is an expectation of immediate release on a written promise or by posting bail shall, regardless of the nature of the offense, only be subjected to a pat down and/or electronic scanning for metal detection, unless there is a threat to the safety or security of the Marin County Jail or persons.

GENERAL INFORMATION

- A. For the purposes of this policy, the term "strip search" refers to strip searches, visual body cavity searches, and forcible strip searches, as defined above.
- B. While a strip search necessarily involves the removal of some or all of an arrestee/inmate's clothing, not all clothing removals constitute or necessitate a strip search under the terms of this policy. For example, removal of an arrestee/inmate's clothing due to concerns that they may be suicidal is done solely out of concern for the safety of the person (refer to Safety Cell Use: CUS-2-18).
- C. The purpose of pat searches and strip searches shall be to locate concealed weapons or contraband that could impact the Sheriff's Office's ability to maintain safety and security in its jail; searches shall not be conducted for purposes of punishment or retaliation, or for any other purpose inconsistent with this policy.
- D. A person who knowingly and willfully authorizes a strip search in violation of Penal Code § 4030 is guilty of a misdemeanor (see Penal Code 4030(M)).
- E. Strip searches and religious head coverings: A strip search may necessitate the removal of a head covering worn for religious purposes to preserve modesty.

PROCEDURES

A pat search may be conducted on any arrestee or inmate at any time. Pat searches shall be conducted whenever an inmate leaves or enters the facility. Visitors who do not clear the metal detector may be pat searched before entering the facility for their visit. The following protocols shall apply to all pat searches:

1. Inmates being booked into the facility will remain handcuffed until a pat search has been completed.
 2. Protective gloves shall be provided by the Department and can be worn by the Deputy anytime a pat search is conducted.
 3. Female inmates may only be pat searched by female Deputies, except in exigent circumstances.
- A. To conduct a pat search, a deputy shall comply with the following.
1. In booking, arrestees/ inmates shall be pat searched immediately upon entering the secured portion of the facility.
 2. Visually check the inmate for physical abnormalities and obvious items of contraband.
 3. Remove and search any prosthetic device the inmate may have, with the exception of false eyes. The Deputy shall return the device to the inmate unless it is deemed a possible safety and/or security risk.
 4. Remove and search any wig or hairpiece the inmate may have. The Deputy shall return the wig or hairpiece to the inmate, who may retain possession of the item until they are dressed in for housing.
 - a. Wigs and hairpieces that are removable will be placed in the inmate's property at

dress-in.

- b. Inmates who have hair extensions are not required to remove them during the initial search or when being housed. At any time the extensions grow out and/or are easily removed, they shall be removed and placed in the inmate's property.
- B. Contraband found during a booking pat search shall be turned over to the arresting officer. If contraband is found during any other pat search, the procedures for securing and processing evidence will be strictly adhered to. Additionally, an ARS Report will be generated to document the discovery of the contraband.
- C. Searching Females, Transgender, and Intersex - Avoiding false claims of misconduct or sexual abuse.
1. The following does not apply to pat searches in the field, only in the custodial facilities (Jail and Courts) as outlined in this policy.
 2. Absent exigent circumstances, female inmates will not be pat searched by male deputies. Exigent circumstances must be documented in a memorandum to the facility commander, via the chain of command.
 3. When a pat search of a transgender or intersex inmate becomes necessary, the inmate shall be allowed to choose the gender of the deputy performing the search. If, through this search, it is determined the inmate's choice is inappropriate, it shall be noted which gender of staff should conduct future searches.
 - a. When searching females, transgender, and intersex detainees/inmates, either by a male deputy or female deputy, the technique is the same.
 - b. Searches of the upper torso, between and underneath the breasts shall be performed with a bladed hand. The thumb is tucked in, the fingers are fully extended, and physical contact is with the ridge of the hand and the side of the index finger. While searching under the breasts, the hand positioning is the same; however, the deputy's palm is facing downward, towards the ground while contact remains the same. With the ridge of the hand and side of the index finger. All inquiries made to the inmate during the search shall be done so in a professional manner.
 4. Searches or examinations of transgender or intersex inmates solely for the purpose of determining the inmate's genital status are forbidden. If the inmate's genital status is unknown, staff should use other means to determine the person's sex, such as reviewing arrest history, available databases, available medical records, or by speaking with the individual.

STRIP SEARCHES – CONDITIONS AND REQUIREMENTS

- A. All arrestees/inmates are subject to being strip searched immediately before or during his or her jail housing. All pre-arraignment detainees, who have yet to be housed, will remain separated from all other inmates who have already been housed during transportation to court. All inmates held post-arraignment are subject to being strip searched regardless of the nature of their criminal charges or detention. Completion of Authorization for Strip Search Forms is not required to strip search inmates who are generally eligible for such searches.
1. However, inmates who have been ordered released by the Court (and have no holds) but remain in temporary custody pending release shall not be strip searched unless there is reasonable suspicion to believe the inmate is concealing a weapon or contraband, and that a strip search would result in the discovery of the weapon/contraband. Such reasonable suspicion shall be documented on an Authorization for Strip Search Form, which must be approved by the Booking Sergeant prior to the search.
- B. All arrestees/inmates eligible for a strip search will be strip searched immediately before being housed in the jail.
1. No person arrested and held in custody shall be strip searched if it is reasonably expected that he/she will be released (i.e., through a citation and release, bail, or own recognizance release) before being placed into housing. However, even in such circumstances, a strip search may be conducted if there appears to be a threat to the safety or security of the facility or persons; in such cases, an Authorization for Strip Search Form must be completed and approved by the Booking Sergeant prior to the search.
- C. All inmates may be strip searched after they have had direct contact with third parties. Such third party contacts include inmate contact visits with friends, families, or outside professionals; inmates returning from court without a release order; inmates returning from an out-of-facility activity such as a medical appointment, temporary release, or transfer between facilities.
- D. Civil commitments, whether sentenced or un-sentenced, require individualized reasonable suspicion, as was defined above, to be strip searched. In such cases where reasonable suspicion exists, an Authorization

for Strip Search Form must be completed and approved by a sergeant prior to the strip search taking place.

CONDITIONS FOR ISSUING AN AUTHORIZATION FOR STRIP SEARCH FORM

- A. If an arrestee/inmate is not subject to being strip searched without an Authorization for Strip Search Form, he/she shall be strip searched only if a Peace Officer reasonably suspects that he/she is concealing a weapon or other contraband, and that a strip search would likely result in the discovery of the weapon/contraband.
1. Reasonable suspicion to conduct a strip search must be based on specific and articulable facts, which may include:
 - a. The arrestee's criminal history, arrest history, parole/probation history, and/or in-custody history includes violence, weapons, drugs, serious types or significant numbers of entries, and/or other factors which would indicate the possibility that the arrestee might carry or attempt to conceal weapons or other contraband into the facility.
 - b. The particular appearance of the arrestee/inmate, including conduct prior to, during, or following arrest; conduct at the jail during the booking process; or general actions indicating that the arrestee/inmate is possibly concealing weapons or other contraband.
 2. A Peace Officer's reasonable suspicion that an arrestee/inmate is concealing a weapon or contraband, and that a strip search would result in the discovery of the weapon/contraband, may be based on reliable information provided by other persons (who are not Peace Officers).
 3. Upon a determination that reasonable suspicion exists to conduct a strip search, the Peace Officer must document the specific and articulable facts demonstrating reasonable suspicion on an Authorization for Strip Search Form to request a strip search, which must be approved by the Booking Sergeant prior to the search.
 - a. The original Authorization for Strip Search Form shall be placed in the jail's Authorization for Strip Search Form binder.
 - b. If an incident report is written the Deputy writing the report shall mention that an Authorization for Strip Search form has been completed.

CONDITIONS FOR FACILITY SEARCHES

- A. All facility searches involving strip searches shall be based on specific, articulable facts indicating the possible presence of weapons or other contraband in a designated area of the facility. Facility searches shall be approved by the Housing Sergeant, and documented in a CMS Incident Report.

STRIP SEARCHES – PROCEDURES

- A. To begin a strip search, the Deputy shall escort the arrestee/inmate into an area, which shall provide privacy for the search.
1. Searches are to be viewed only by Deputies participating in the search.
All strip searches shall be conducted in an area of privacy so that the search cannot be observed by any person not participating in the search. Persons are considered to be participating in the search if their official duties relative to the search procedure require them to be present at the time the search is conducted. Deputies in training or conducting training, or Deputies filming the search pursuant to facility protocols, may observe the search as participants.
 2. Inmates shall not be strip searched within the sight of other inmates.
- B. When conducting a strip search, Deputies shall comply with the following:
1. Any person conducting or otherwise present during a strip search must be of the same sex as the person being searched, except for physicians, licensed medical personnel, or if exigent circumstances require otherwise.
 - a. In the event exigent circumstances require that a person of the opposite sex participate in a strip search, all reasonable actions shall be taken to prevent the person of the opposite sex from viewing the body cavities, breasts, buttocks, or genitalia of the person being searched.
 - b. When conducting a strip search of a transsexual, the sex of the Deputies chosen to conduct or participate in the search shall be determined based on the

predominant sexual characteristics of the genitalia of the transsexual being searched.

2. Deputies shall not deliberately touch the breasts, buttocks, or genitalia of the person being searched.
- C. If contraband is located during a strip search, the Deputies conducting the strip search shall document their findings in a CMS Incident Report, as applicable, and shall comply with the following:
1. Any weapons or contraband located and seized pursuant to a search should be processed as evidence, and/or be disposed of for the purpose of destruction.
 2. If any weapons or contraband are visible in a body cavity of an inmate, the Deputy shall handcuff the inmate and refer to the requirements of Body Cavity Search below.
- D. At the conclusion of a strip search, the inmate shall be issued clothing and allowed to dress in privacy, outside the purview of any staff or inmates. Deputies may be present when the inmate's behavior presents a risk to safety and security.
- E. Searching Females, Transgender and Intersex - The following does not apply to pat searches in the field, only in the custodial facilities (Jail and Courts) as outlined in this policy.
1. Absent exigent circumstances, female inmates will not be pat searched by male deputies. Exigent circumstances must be documented to the facility commander, via the chain of command.
 2. When a pat search of a transgender or intersex inmate becomes necessary, the inmate shall be allowed to choose the gender of the deputy performing the search. If, through this search, it is determined the inmate's choice is inappropriate, it shall be noted which gender of staff should conduct future searches.
 - a. When searching females, transgender, and intersex detainees/inmates, either by a male deputy or female deputy, the technique is the same.
 - b. Searches of the upper torso, between and underneath the breasts shall be performed with a bladed hand. The thumb is tucked in, the fingers are fully extended, and physical contact is with the ridge of the hand and the side of the index finger. While searching under the breasts, the hand positioning is the same; however, the deputy's palm is facing downward, towards the ground while contact remains the same. With the ridge of the hand and side of the index finger. All inquiries made to the inmate during the search shall be done so in a professional manner.
 3. Searches or examinations of transgender or intersex inmates solely for the purpose of determining the inmate's genital status are forbidden. If the inmate's genital status is unknown, staff should use other means to determine the person's sex, such as reviewing arrest history, available databases, available medical records, or by speaking with the individual.

CONDUCTING FORCIBLE STRIP SEARCHES

- A. Should an arrestee/inmate refuse to comply with a Deputy's request to conduct a strip search, the Deputy shall notify the Booking Sergeant and request direction.
- B. The Booking Sergeant, or Deputy under his/her supervision, shall use reasonable efforts to attempt to convince the arrestee/inmate to submit to the strip search voluntarily, and shall notify the arrestee/inmate that he/she shall be forcibly strip searched if he/she does not comply.
 1. If the Booking Sergeant determines that there is a reasonable possibility of obtaining the arrestee/inmate's compliance through additional measures, then he/she may direct Deputies to take one or more of the following actions in an effort to gain compliance:
 - a. Place the inmate in a holding cell unrestrained.
 - b. Place the inmate alone in a holding cell restrained based on legitimate security needs.
 2. If such additional measures intended to gain an arrestee/inmate's compliance to submit to a strip search continue to fail after a period of approximately one (1) hour, then the Booking Sergeant may direct Deputies to conduct a forcible strip search.
- C. Before conducting a forcible strip search, Deputies shall take the following actions:
 1. Restrain the arrestee/inmate using handcuffs or waist chains and leg irons, as appropriate.
 2. Utilize a metal detector to identify any metal weapons or contraband that may be concealed.
 3. Conduct a thorough pat search of the arrestee/inmate to determine if there are easily discovered items of contraband in his/her possession.
- D. Deputies shall direct the arrestee/inmate to an appropriate area for a forcible strip search (e.g. a Safety Cell, a Sobering Cell, or the showers in Booking, etc.), and shall use only force that is reasonable for the purpose of locating weapons or contraband. All other strip search requirements set forth in this policy are

applicable to forcible strip searches.

- E. All forcible strip searches shall be video recorded. In addition, the Booking Sergeant shall designate a Deputy to write an Incident Report documenting the facts of the forcible strip search as well as actions taken to obtain the inmate's compliance; a copy of the video recording shall be included with the report.

BODY SCAN

- A. Only staff that has successfully completed training on the ConPass Body Scanner shall operate the device.
- B. All persons conducting the body scan or otherwise within sight of the visual display of the body scan (e.g., monitor, image) shall be of the same sex as the inmate being scanned, except for physicians or licensed medical personnel. Furthermore, body scan viewing monitors or generated images shall only be viewed by authorized personnel (sworn staff, medical staff) and shall not be in an area with direct view by inmates.
- C. As stated in California Penal Code section 4030 (d) (1): Notwithstanding any other law, including Section 40304.5 of the Vehicle Code, if a person is arrested and taken into custody, that person may be subjected to pat down searches, metal detector searches, body scanners, and thorough clothing searches in order to discover and retrieve concealed weapons and contraband substances prior to being placed in a booking cell.
- D. Inmates who are screened by Jail Medical and are known to be pregnant will not be subjected to a body scan.
- E. All arrestees will be subject to a body scan prior to being housed in the Marin County Jail.
 - 1. In the event an anomaly appears within a subject's body, the deputy conducting the scan will inquire with the arrestee to identify the anomaly. If the anomaly is believed to be concealed contraband, the deputy will ask the arrestee to voluntarily turn over the item(s). The deputy will utilize a private area to obtain the contraband. Once the deputy has obtained the items, the arrestee will need to be re-scanned to verify all contraband was removed.
 - 2. Staff operating the body scanner shall save the image in the "positive tab folder" with a descriptive label for future reference and or comparison.
 - 3. If the anomaly is still present on the body scan and/or x-ray, and the arrestee is suspected of concealing contraband, the arrestee shall be assessed for placement on Contraband Watch. If deemed necessary, a search warrant will be obtained for the retrieval of the contraband. Additionally, an ARS Report will be generated to document the discovery of any illegal contraband. If the contraband is only a rule violation but otherwise not illegal, a jail incident report will be generated.
- F. All in-custody inmates may be subject to a body scan to include:
 - 1. Inmates who are returning to the facility from court, clinic runs, temporary out of custody, work assignments, or any other event that caused the inmate to be removed from the secure area of the facility.
 - 2. Inmates returning from contact visits.
 - 3. Inmate workers returning to their housing unit after performing their assigned duties.
- G. In the event a new arrestee or in-custody inmate refuses to undergo a body scan, staff shall not use physical force to compel the inmate's cooperation.
 - 1. The arrestee shall be separated from those inmates who have already been scanned. The inmate will be strip searched in accordance with the strip search procedure of this policy and re-classified as deemed appropriate.
 - 2. Should an arrestee/inmate continue to refuse to comply with a Deputy's request to conduct a body scan, the Deputy shall notify the Booking Sergeant and request direction.
 - a. The Booking Sergeant, or Deputy under his/her supervision, shall use reasonable efforts to attempt to convince the arrestee/inmate to submit to a body scan voluntarily.

- b. If the Booking Sergeant determines that there is a reasonable possibility of obtaining the arrestee/inmate's compliance through additional measures, then he/she may direct Deputies to take one or more of the following actions in an effort to gain compliance:
 - i. Place the inmate in a holding cell unrestrained.
 - ii. Place the inmate alone in a holding cell restrained, based on legitimate security needs.
- c. If such additional measures intended to gain an arrestee/inmate's compliance to submit to a body scan are unsuccessful, the inmate will not be sent to the housing level for placement in the pods unless the Booking Sergeant approves the housing of the inmate.

CONDUCTING BODY CAVITY SEARCHES

- A. Physical body cavity searches may only be conducted under the following circumstances: (NOTE: Custody staff shall refuse to accept new arrestees in need of a Physical Body Cavity search from an arresting agency. The search must be conducted prior to acceptance into the facility.)
 1. The Operations Lieutenant, or his or his designee, must approve the search request.
 2. Physical body-cavity searches shall be conducted by medically trained personnel and only when under the authority of a search warrant issued by a magistrate specifically authorizing the physical body cavity search.
 3. Only those staff members necessary to maintain security shall be present during a physical body search. All staff members present during a physical body cavity search shall be of the same sex as the inmate being searched, except for authorized medical personnel. One of the Deputies present during the search shall write an ARS report articulating the facts for the Cavity Search and the subsequent results or findings from the search.
 4. Physical Body Cavity searches shall be conducted in an area of privacy so that persons not participating in the search cannot observe the search. Persons are considered to be participating in the search if their official duties relative to search procedures require them to be present at the time the search is conducted.
 5. A copy of the search warrant and the Strip Search Authorization form documenting the results of the search shall be forwarded to the Operations Lieutenant for review. Copies shall also be placed in the arrestee/inmate's booking jacket/file and the Jail Administration's Master Strip Search File.

RELATED STANDARDS Penal Code § 4030

Bull v. City & County of San Francisco, 595 F.3d 964 (9th Cir. 2010)

Florence v. Board of Chosen Freeholders of County of Burlington, 132 S. Ct. 1510 (2012) Title 28 C.F.R. § 115.15

ATTACHMENTS:

Marin County Sheriff's Office "Strip Search Authorization Form"

RELATED STANDARDS: California Penal Code,
Section 4030

DATE REVISED:

08-30-94

05-01-99

08-01-03

10-01-03

11-30-06

07-22-16

By order of

JAMIE SCARDINA
BUREAU COMMANDER