County Technical Assistance Service
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Misdemeanor Arrestees

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

The University of Tennessee
County Technical Assistance Service
226 Anne Dallas Dudley Boulevard, Suite 400
Nashville, Tennessee 37219
615.532.3555 phone
615.532.3699 fax
www.ctas.tennessee.edu

Misdemeanor Arrestees

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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).

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