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Body Cavity Searches

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

Sincerely,

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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's Fourth Amendment rights. 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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