

Searches

513.1 PURPOSE AND SCOPE

The purpose of this policy is to provide clear direction on maintaining the safety and security of the facility by conducting searches, in balance with protecting the rights afforded by the United States Constitution.

The introduction of contraband, intoxicants or weapons into the Milwaukee County Jail poses a serious risk to the safety and security of staff, inmates, volunteers, contractors and the public. Any item that is not available to all inmates may be used as currency by those who possess the item and will allow those in possession of the item to have control over other inmates. Any item that may be used to disengage a lock, other electronic security devices or the physical plant itself seriously jeopardizes the safety and security of this facility. Carefully restricting the flow of contraband into the facility can only be achieved by thorough searches of inmates and their environment.

Nothing in this policy is intended to prohibit the otherwise lawful collection of trace evidence from an inmate/arrestee.

513.1.1 DEFINITIONS

Definitions related to this policy include:

Contraband - Anything unauthorized for inmates to possess or anything authorized to possess but in an unauthorized manner or quantity.

Custodial search - Complete search from head to feet and after removal of all secondary outer clothing (e.g., coat, jacket, sweatshirt, personal property from the inmate's control). This includes removing shoes and socks, but does not include underwear.

Full-body X-ray scanner - A low-dose X-ray screening system that detects many types of contraband, including illegal substances, drugs, and weapons.

Non-sentenced inmate - An inmate who is in custody for any reason other than to serve a sentence after a conviction.

Pat-down search - The routine search used by correctional officers within this facility to check an individual for weapons or contraband. It involves patting down of outer clothing to locate any weapons or dangerous items that could pose a danger to the correctional officer, the inmate or other inmates.

Physical body cavity search - A search that includes a visual inspection and may include a physical intrusion into a body cavity. Body cavity means the rectal cavity or the vagina.

Sentenced inmate - An inmate who is in custody for the purpose of serving a sentence after a conviction.

Strip search - A search that requires a person to remove or rearrange some or all of his/her clothing to permit a visual inspection of the underclothing, breasts, buttocks, anus or outer genitalia of the person. This includes monitoring of a person showering or changing clothes where

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the person's underclothing, buttocks, genitalia or female breasts are visible to the monitoring employee.

513.2 POLICY

It is the policy of this agency to ensure the safety of staff, inmates and visitors by conducting effective and appropriate searches of inmates and areas within the facility in accordance with applicable laws (Wis. Admin. Code DOC § 350.18).

Searches shall not be used for intimidation, harassment, punishment or retaliation.

513.2.1 PHYSICALLY DISABLED PERSONS

A search of a person who requires an assistive device for mobility, such as a wheelchair, brace, crutch or artificial limb, shall be carefully conducted. If the search requires the removal of such a device or involves a person lacking sensation in some portion of his/her body, the search shall be conducted with extreme care, in cooperation with a person trained in handling those who are physically disabled (Wis. Stat. § 968.256).

513.3 PAT-DOWN SEARCHES

Pat-down searches will be performed on all inmates/arrestees by the arresting officer or deputy prior to entering the secure booking area of the facility. Additionally, pat-down searches shall occur frequently within the facility. At a minimum, the staff shall conduct pat-down searches in circumstances that include:

- (a) When inmates leave their housing units to participate in activities elsewhere in the facility (e.g., recreation, medical, program, visiting, court) and when they return.
- (b) During physical plant searches of entire housing units.
- (c) When inmates come into contact with other inmates housed outside of their housing units, such as work details.
- (d) Any time the staff believes the inmates may have contraband on their persons.

Except in emergencies, male staff may not pat down female inmates and female staff may not pat down male inmates. Absent the availability of a same sex staff member, it is recommended that a witnessing staff member be present during any pat-down search of an individual of the opposite sex. All cross-gender pat-down searches shall be documented (28 CFR 115.15).

513.4 CUSTODIAL SEARCHES

Following an inmate being accepted into the facility by medical and the pre-book officer, all inmates will be subjected to a custodial search.

- (a) Barring an emergency, custodial searches shall be performed by a staff member of the same sex as the person being searched.
 - 1. A custodial search of an inmate who identifies as transgender or intersex may state a preference for which gender staff performs a custodial search. Such a request should be honored when possible. If no request is made, a correctional officer of the same sex shall perform the search.

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- (b) Following a custodial search, an inmate will be subject to metal detection equipment.

513.5 FULL-BODY X-RAY SCANNER

The Milwaukee County Sheriff's Office shall operate a low-dose scanner as required by the State of Wisconsin and in compliance with the Department of Health and Family Services, Radiation Protection Section recommendations and Wis. Admin. Code DHS 157.

- (a) The Milwaukee County Sheriff's Office shall meet all manufacturer recommendations for maintenance on the low-dose body scanner.
- (b) Only correctional officers who have been trained in the use of the device will be authorized to operate the low-dose body scanner.
- (c) No inmates will be left unattended with the body scanner.
- (d) Pregnant correctional officers are not authorized to operate or be in the room when the low-dose body scanner is in use.
- (e) No inmates who are pregnant will be subject to scanning.
- (f) No inmates under the age of 18 will be subject to scanning, including juveniles waived into the adult judicial system.
- (g) No inmates with known pacemakers will be subject to scanning.
- (h) No members shall abuse or misuse the low-dose body scanner.
- (i) The low-dose body scanner may be used to scan any inmate at any time that a correctional officer believes it is necessary for the safety and security of the facility.

513.5.1 REFUSAL TO BE SCANNED

- (a) Inmates who are unable to be scanned because they are uncooperative and/or intoxicated will be isolated until they are able to complete the scan.
- (b) Attempts will be made to scan the inmate once he/she is cooperative. If attempts are unsuccessful, the on-duty supervisor shall determine the course of action.
- (c) An incident report shall be completed for any inmate refusing to be scanned.

513.5.2 POSITIVE SCAN/DETECTION OF CONTRABAND

- (a) The on-duty supervisor should be notified of a positive scan.
- (b) If the inmate being scanned is a new arrest and it is believed that he/she is concealing contraband, the inmate will be directed to remove the contraband.
 - 1. If the contraband is removed, the inmate will be subjected to another scan and the arresting agency will secure and take custody of the contraband.
 - 2. If the inmate refuses to remove the contraband, the arresting officer is required to take the inmate to the hospital for medical clearance in order to be accepted into the Milwaukee County Jail. If the arresting officer is unable to take the inmate to the hospital, the inmate may be subjected to a strip search.

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- (c) If the inmate being scanned is not a new arrest and is confined to the Milwaukee County Jail and it is believed that he/she is concealing contraband, the inmate will be directed to remove the contraband. If the contraband is removed, the inmate is subject to another scan. If the inmate refuses or cannot remove the contraband, the on-duty supervisor shall determine the appropriate course of action, which may include a strip search or transportation to a hospital.

513.6 STRIP SEARCHES AND PHYSICAL BODY CAVITY SEARCHES

Correctional officers will generally consider the reason for the search, the scope, intrusion, manner and location of the search, and will utilize the least invasive search method to meet the need for the search.

513.6.1 STRIP SEARCHES

Strip searches prior to placement in a housing unit shall be conducted as follows (Wis. Stat. § 968.255):

- (a) No person held prior to placement in a housing unit shall be subjected to a strip search unless:
 - 1. The person is an adult arrested for any offense, or is a juvenile taken into custody under Wis. Stat. § 938.19 and ordered by a court to the custody of this facility and there is either:
 - (a) Reasonable suspicion that the person is concealing a weapon or contraband if the person was taken into custody for any felony or any of the following misdemeanor offenses identified in Wis. Stat. § 968.255:
 - 1. Wis. Stat. § 167.30(1) - Use of firearms, etc., near a park
 - 2. Wis. Stat. § 940.19 - Battery, substantial battery, aggravated battery
 - 3. Wis. Stat. § 941.20(1) - Endangering the safety of others by use of a dangerous weapon
 - 4. Wis. Stat. § 941.23 - Carrying a concealed weapon
 - 5. Wis. Stat. § 941.231 - Carrying a concealed knife
 - 6. Wis. Stat. § 941.237 - Carrying a handgun where alcohol may be sold and consumed
 - 7. Wis. Stat. § 948.60 - Possession of a dangerous weapon by a person under the age of 18
 - 8. Wis. Stat. § 948.61 - Dangerous weapons other than firearms on school premises, or
 - (b) Probable cause to believe the person is concealing a weapon or an item that may constitute evidence of the offense for which the person was taken into custody, if the person was taken into custody for any other violation of state law punishable by forfeiture, any local ordinance or a misdemeanor offense.

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- (b) Factors to be considered in determining reasonable suspicion or probable cause include, but are not limited to:
 - 1. The detection of an object during a pat-down search that may be a weapon or contraband and cannot be safely retrieved without a strip search.
 - 2. Circumstances of a current arrest that specifically indicate the person may be concealing a weapon or contraband. A felony arrest charge or being under the influence of a controlled substance should not suffice as reasonable suspicion or probable cause absent other facts.
 - 3. Custody history (past possession of contraband while in custody, assaults on staff, escape attempts, etc.).
 - 4. The person's actions or demeanor.
 - 5. Criminal history (level of experience in a custody setting, etc.).
 - 6. Detection of potential contraband on low-dose body scanner.
 - 7. When the inmate has entered an environment where contraband or weapons may be accessed (e.g., return from court, medical appointments, kitchen worker, contact visit).
- (c) No strip search of an inmate shall be conducted prior to admittance to a housing unit without prior written authorization from the Shift Commander (e.g., email). Verbal authorization from a supervisor is sufficient if there is probable cause to believe that the person is concealing a weapon.
- (d) The staff member conducting the strip search shall:
 - 1. Document the facts that led to the decision to perform a strip search of the inmate on the strip search documentation form.
 - 2. Document the reasons less intrusive methods of searching were not used or were insufficient.
 - 3. Document the supervisor's approval.
 - 4. Document the time, date and location of the search.
 - 5. Document the names, sex and roles of any staff present.
 - 6. Itemize in writing all contraband and weapons discovered by the search.
 - 7. Process all contraband and weapons in accordance with the agency's current evidence procedures.
 - 8. If appropriate, complete a crime report and/or disciplinary report.
- (e) The documentation shall be placed in the inmate's Arrest Detention Report. A copy of the authorization shall be provided to the inmate or other authorized representative.
- (f) Inmates returning from court with release orders shall not be subject to strip searches unless reasonable suspicion exists based on specific and articulable facts that the person is concealing a weapon or contraband.

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513.6.2 STRIP SEARCH PROCEDURES

All strip searches shall be conducted in a professional manner under sanitary conditions and in an area of privacy so that the search cannot be observed by persons not participating or assisting in the search. The search will not be audio- or video-recorded (Wis. Stat. § 968.255).

Unless conducted by a qualified health care professional or in case of an emergency, a strip search shall be conducted by staff members of the same sex as the person being searched (Wis. Stat. § 968.255). Cross-gender strip searches shall be documented (28 CFR 115.15).

Whenever possible, a second staff member of the same sex should assist with the search for security purposes and to witness the discovery of evidence.

The staff member conducting a strip search shall not touch the breasts, buttocks or genitalia of the person being searched unless in accordance with Wis. Stat. § 968.255(1)(b). These areas may be touched through the clothing during a custodial or pat-down search.

- (a) The searching staff member will instruct the inmate to:
 - 1. Remove his/her clothing.
 - 2. Raise his/her arms above the head and turn 360 degrees.
 - 3. Bend forward and run his/her hands through his/her hair.
 - 4. Turn his/her head first to the left and then to the right so the searching correctional officer can inspect the inmate's ear orifices.
 - 5. Open his/her mouth and run a finger over the upper and lower gum areas, then raise the tongue so the correctional officer can inspect the interior of the inmate's mouth. Remove dentures if applicable.
 - 6. Turn around and raise one foot first, then the other so the correctional officer can check the bottom of each foot.
 - 7. For a visual cavity search, turn around, bend forward and spread the buttocks if necessary to view the anus.
- (b) At the completion of the search, the inmate should be instructed to dress.

513.6.3 PHYSICAL BODY CAVITY SEARCH

Physical body cavity searches shall be completed as follows:

- (a) No person shall be subjected to a physical body cavity search without written approval of the Jail Commander or the authorized designee and only with the issuance of a search warrant. A copy of any search warrant and the results of the physical body cavity search shall be included with the related reports. The report will be made available, upon request, to inmates or authorized representatives (except for those portions of the warrant ordered sealed by a court).
- (b) Only a physician, physician assistant or registered nurse may conduct a physical body cavity search (Wis. Stat. § 968.255). Except in exigent circumstances, only a physician, physician assistant or registered nurse who is not responsible for providing ongoing care to the inmate may conduct the search.

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- (c) Except for the medical professional conducting the search, persons present must be of the same sex as the person being searched. Only the necessary staff needed to maintain the safety and security of the medical personnel shall be present.
- (d) Privacy requirements, including restricted touching of body parts and sanitary condition requirements, are the same as required for a strip search.
- (e) All such searches shall be documented, including:
 - 1. The facts that led to the decision to perform a physical body cavity search of the inmate.
 - 2. The reasons less intrusive methods of searching were not used or were insufficient.
 - 3. The Jail Commander's written approval.
 - 4. A copy of the search warrant.
 - 5. The time, date and location of the search.
 - 6. The medical personnel present.
 - 7. The names, sex and roles of any staff present.
 - 8. Any contraband or weapons discovered by the search.
- (f) Completed documentation should be placed in the Arrest Detention Report packet and stored in the appropriate records management system.
- (g) All contraband and weapons should be processed in accordance with the agency's current evidence procedures.
- (h) If appropriate, the staff member shall complete a crime report and/or disciplinary report.

513.7 TRANSGENDER OR INTERSEX SEARCHES

Staff shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining genital status (see Prison Rape Elimination Act Policy for transgender and intersex definitions). If genital status is unknown, it may be determined during conversations with the inmate, by reviewing medical records or, if necessary, by obtaining that information as part of a broader medical examination conducted in private by a qualified health care professional (28 CFR 115.15).

513.8 CONTRABAND SEARCHES

The staff shall always be alert to the possible presence of contraband and shall take immediate action to seize the contraband when practicable. There are several types of searches that contribute to contraband control and to maintaining a safe and secure environment.

513.9 HOUSING UNIT SEARCHES

Housing unit searches (i.e. Shakedowns) shall occur as directed by a supervisor. These searches should include all of the living spaces occupied by inmates. Housing unit searches should be

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scheduled in a manner that does not create a pattern where the inmates can predict such searches. During a housing unit search:

- (a) All inmates shall vacate their living areas and be searched by staff.
- (b) Inmates may be escorted to a separate holding area, such as the gym.
- (c) Staff shall search the living areas of the inmates, including bedding, personal storage areas, bunks and other areas with inmate access.
- (d) Any weapons or contraband located shall be processed in accordance with the current evidence procedures.
- (e) The staff shall attempt to identify the inmate who possessed the contraband and file appropriate inmate discipline and/or crime reports.
- (f) Any authorized item found in excess of the limited quantity (e.g., food items, newspapers) shall be seized and discarded.

At the conclusion of the housing unit search, closely supervised inmate workers should clean the unit. All authorized inmate personal property shall be respected and living areas should be returned to an orderly condition (Wis. Admin. Code DOC § 350.18(5)).

513.10 PHYSICAL PLANT SEARCHES

The following areas of this facility shall be periodically searched for contraband (Wis. Admin. Code DOC § 350.18(5)):

- (a) The gym shall be searched for contraband prior to and after each inmate group occupies the gym.
- (b) Holding cells shall be searched prior to and after each inmate occupies the cell.
- (c) Program areas, such as classrooms and multipurpose rooms shall be searched after each use by an inmate or inmate group.
- (d) Laundry areas shall be searched before and after each inmate group occupies the area.
- (e) Kitchen areas shall be frequently searched for contraband and to account for tools, knives and food items.
- (f) Any common inmate or visitor restrooms.
- (g) Inmate visiting and public areas shall be frequently inspected for contraband.
- (h) The facility perimeter shall be searched at least once each shift for contraband.

513.10.1 CANINE-ASSISTED SEARCHES

It is the policy of this facility to use canines to assist the staff in searching for contraband. Only canines trained in the detection of contraband, such as drugs, alcohol and weapons, will be allowed within the secure perimeter of the facility.

Canines will generally be used to assist the staff in general physical plant or living area searches. Contact between inmates and canines should be kept to a minimum (see the Canines Policy).

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513.11 CRIMINAL EVIDENCE SEARCHES

The Jail Commander or the authorized designee shall be notified, as soon as practicable, any time it is suspected that a crime has been committed in the facility or other area controlled by the facility staff, and there is a need to search for evidence related to the crime.

Any evidence collected in connection with an alleged crime shall be reported, documented and stored to protect it from contamination, loss or tampering, and to establish the appropriate chain of custody. A search for evidence may be conducted by staff whenever there is a need for such action.

513.12 TRAINING

The Training Director shall provide training for staff in how to conduct pat-downs, custodial searches and strip searches in a professional and respectful manner and in the least intrusive manner possible, consistent with facility security needs (Wis. Stat. § 968.255). This training shall include cross-gender pat downs and searches, as well as searches of transgender and intersex inmates (28 CFR 115.15).