

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

APR - 2 2009
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY CLERK

| | | |
|---------------------------------------|---|-----------------|
| JULIA ANN JACKSON, ERICA |) | |
| BERNAL, and MARTIN MARTINEZ |) | |
| Individually and on Behalf of a Class |) | |
| of Others Similarly Situated, |) | |
| |) | |
| |) | |
| Plaintiffs, |) | SA-07-CV-928-FB |
| |) | |
| v. |) | |
| |) | |
| THE COUNTY OF BEXAR, |) | |
| |) | |
| |) | |
| Defendant. |) | |

CONSENT DECREE

On November 15, 2007, Plaintiffs filed their Class Action Complaint (hereafter "Complaint").¹ Plaintiffs and Defendant have consented to the entry of final judgment on the claim for permanent injunctive relief pleaded as the Third Cause of Action of the Complaint (hereafter "Claim for Injunctive Relief"), without demanding or requiring the adjudication of any issue of fact or law, pursuant to the terms of this Consent Decree. The parties have also consented to the entry of the Judgment that accompanies this Consent Decree.

It is hereby agreed upon by the parties, and ORDERED, ADJUDGED, AND DECREED by the Court, as follows:

Jurisdiction and Background

1. The court has jurisdiction over the subject matter of this case and the Defendant.

¹ The complaint was subsequently amended on August 6, 2008 to add additional proposed class representatives.

2. This Consent Decree is in full and final resolution of Plaintiffs' Claim for Injunctive Relief.

3. The Court has determined, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that it is appropriate to enter judgment on less than all of Plaintiffs' claims and that there is no just reason for delaying the entry of judgment on Plaintiffs' Claim for Injunctive Relief.

4. The above-named parties, without conceding any defects in their claims or defenses, have determined that resolution of Plaintiffs' Claim for Injunctive Relief on the terms and conditions set forth in this Consent Decree is in the best interests of all parties to this action and the members of the putative Class on whose behalf this case has been brought.

5. Nothing in this Consent Decree shall be construed as an admission by Defendants of a violation of any provision of the United States Constitution, any statute, or otherwise. The parties further agree the Consent Decree, the revised Bexar County Jail Strip Search Policy attached as Exhibit "A", and Bexar County's changes of its strip search policy shall not be admissible to prove Defendants' liability with respect to allegations made in this lawsuit.

6. This consent Decree shall be final and binding upon its approval and entry in the docket.

7. The Court has fully examined the terms of this consent Decree and finds that they are in accordance with law, appropriate, fair, and just and proper, and in furtherance of the public interest.

Conduct Enjoined

8. Defendant, and its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Consent Decree by personal service or otherwise (collectively "Defendant"), are hereby PERMANETLY ENJOINED AND RESTRAINED, until further order of the court, as follow:

a. Defendant shall not allow, authorize, conduct or sanction the strip search or visual cavity search of persons who are placed into the custody of the Bexar County Jail after being charged with misdemeanors absent reasonable suspicion that such individual is concealing contraband. See revised Bexar County Adult Detention Center Strip Search Policy attached as Exhibit "A".

b. Defendant shall promptly take all necessary and proper actions to ensure that all corrections officers and other personnel of the Bexar County jail responsible for the administration, operation, or supervision of the Jail are fully notified of, the terms of this Consent Decree; shall distribute Exhibit A to all corrections officers and other personnel of the Bexar County Jail responsible for the administration, operation or supervision of the Jail within one week of the entry of this Consent Decree; shall provide proper training to all Bexar County Jail corrections officers with respect to the obligations imposed by this Consent Decree and Exhibit A within 60 days of the entry of this Consent Decree; shall incorporate this training into the basic training of corrections officers and all staff of the Bexar County Jail, as well as into the Jail's in-service training programs on an annual basis and that all such corrections officers and other personnel otherwise abide by this Consent Decree.

c. Bexar County shall provide Plaintiffs' Counsel with a detailed report of their implementation of the Consent Decree on an annual basis until final adjudication of this case.

9. Plaintiffs reserve the right to petition the Court to order, and the Court reserves the right to order, any additional and specific relief that may be necessary to carry out the terms of this Consent Decree, including the establishment and administration of a special training program for corrections officers; and the imposition of recordkeeping, supervisory, and other requirements.

Resolution of Disputes and Retention of Jurisdiction

10. The parties to this consent Decree shall confer in good faith in an attempt to resolve any dispute arising under the terms before seeking the Court's intervention.

11. Jurisdiction is retained for the purpose of allowing any of the parties hereto to apply to the Court at any time until final adjudication for such further orders and directions as may be necessary or appropriate to carry out or construe this Consent Decree; to modify or terminate any of its provisions; or to enforce compliance with it, including by contempt.

Plaintiffs' Claim for Damages and Attorneys' Fees

12. Nothing in this Consent Decree addresses or resolves Plaintiffs' claims for compensatory damages, punitive damages, or any relief sought in the Complaint other than permanent injunctive relief.

13. Plaintiffs reserve the right to move the court for an award of attorneys' fees and costs at or before the conclusion of this case. Plaintiff need not move the Court for an award of attorneys' fees within 14 days of the entry of judgment on Plaintiffs' Claim for Injunctive Relief, as Fed.R.Civ.P. 54(d)(2)(A) would otherwise require.


14. The parties reserve the right to petition the Court to incorporate this Consent Decree into any other that may be entered disposing of the claims not addressed by this Consent Decree.

15. The parties agree that mandatory venue for any future claims, suits, or disputes relating to this Consent Decree or the amended policy attached as Exhibit "A" is the United States District Court in the Western District of Texas San Antonio Division.

16. The Defendant is given thirty (30) days from the Court's signature to implement the provisions of the Bexar County Jail Strip Search Policy attached as Exhibit "A."

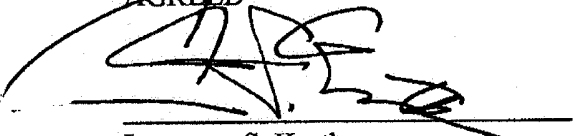
It is so ORDERED

SIGNED April ²2, 2009


FRED BIERY
UNITED STATES DISTRICT JUDGE

By and through their undersigned counsel, the parties consent to the entry of this Consent Decree:

AGREED


Laurence S. Kurth
Counsel for Defendant

AGREED

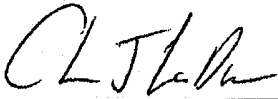

Mr. Charles J. LaDuca
Counsel for Plaintiffs

EXHIBIT A

| | | |
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| Bexar County Sheriff's Office | BC No: 900.08-02 | Page 1 of 3 |
| Detention Division Manual of Policy and Procedures | TCJS: 265.2 (b) | Date: 11-01-89, 04-23-98 Revised: 03-20-09 |
| Chapter 9: Security and Control | Subject: Strip Search | |
| Reviewed by: Debra A. Jordan Deputy Chief, Support Services | Approved for Implementation: Roger Dovalina Deputy Chief, Jail Administrator | |

- I. **POLICY:** The Bexar County Sheriff's Office (BCSO) desires to maintain and operate a safe and secure detention facility to ensure the welfare of inmates and staff. Strip Searches will not be conducted for harassment or punishment, but rather to detect, reduce and prevent the introduction of weapons or contraband inside the Bexar County Adult Detention Center (BCADC) system. When detention staff have reasonable suspicion, as defined in Part IIIB below, inmates should undergo a thorough strip search for weapons and contraband which may pose a threat to the security and safety of the detention facility.
- II. **PURPOSE:** This policy provides guidelines for officers of the BCSO regarding Strip Searches of inmates upon initial intake and subsequently in the custody of the BCADC system.
- III. **DEFINITIONS:**
- A. **Strip Search:** In a strip search the inmate is required to remove all clothing. An officer will then visually inspect the inmate's nude body, including the outer areas of orifices and cavities. All clothing items of the inmate shall also be searched thoroughly in the process. Strip searches shall be conducted in a suitably private area by an officer of the same sex as the inmate.
- B. **Reasonable Suspicion:** An officer's rational belief, based on credible and articulate information and circumstances, that an offense may have occurred or that a particular person may have committed an offense (carrying or concealing contraband). (Bexar County Sheriff's Manual of Policy and Procedures, Chapter 28)
- IV. **CRITERIA FOR STRIP SEARCHES (Booking Intake Process):** Inmates that have been arrested but not yet assigned or moved to housing in the BCADC, may be subject to a strip search **ONLY** after the authorization from the Section Sergeant and when there is reasonable suspicion to believe that the inmate possesses weapons, drugs or other contraband. With regard to inmates being processed in the Intake/Release Section, reasonable suspicion of possession of contraband must be determined on a case-by-case basis. Reasonable suspicion **shall not** be based on race, ethnic origin, gender, or other subjective factors which indicate prejudice or an irrational predisposition to suspect persons solely as a result of their being a part of an otherwise legitimate organization or group.
- A. Reasonable suspicion can be based on information available to the searching officer including, but not limited to:
1. Current charges or previous convictions involving escape, drugs, weapons, or violence.
 2. History of possession of contraband or prohibited property while in custody.
 3. Institutional history of escape attempts.
 4. Contact with the public or exposure to public areas or transport to the hospital after arrest and before entering the custody of the Detention Center.
 5. Refusal or resistance to being frisk (Pat Down) searched (BC No: 900.08-1, Frisk Search).
 6. Discovery of weapons or drugs during the frisk search.
 7. Alerted by electronic detection devices.
 8. Furtive movements, behavior or gestures that raise reasonable suspicion that the inmate is attempting to conceal contraband on his/her person.
 9. Receipt of other reliable information that the arrestee may be in possession of weapons or drugs.
- B. **ELECTRONIC DETECTION DEVICES:** Any electronic control detection device (i.e. Hand-Held Metal Detectors and Body Orifice Security Scanners, B.O.S.S.) may be used to detect contraband as deemed necessary by the Intake /Release Section Sergeant/Supervisor.
- C. Written **JUSTIFICATION** for a strip search **shall** be documented on a Facility Incident Report (FIR) and in a Strip Search Authorization Log Book located in the Booking (Intake/Release) Section.
1. Facility Incident Report shall include:

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- a. Officers must be able to articulate not only which factors were relied upon, but should also indicate how and why the factor(s) create the requisite level of suspicion, if not obvious.
 - b. The Section Sergeant's name that gave the authorization or denied it.
 - c. The date, approximate time, inmates name and SID number shall be annotated.
2. Strip Search Authorization Log Book shall include:
- a. The FIR assignment number, date, approximate time, inmates name and SID number shall be annotated.
 - b. The Section Sergeant shall acknowledge the search with their signature of approval.
 - c. The log book shall be monitored and reviewed by the Senior Captain of Security Operations.
- D. Pending authorization, the inmate should be isolated.
- E. When contraband is discovered on an inmate as a result of a strip search, the Intake/Release Section Sergeant/Supervisor and Shift Supervisor shall be immediately notified and the appropriate reports shall be prepared in accordance with **(BC No: 900.22, Incident Report Processing)**.
- F. If contraband is suspected or discovered inside an inmate's body cavity the inspecting officer shall not touch the inmate in order to obtain the suspected contraband. The officer shall immediately notify the Intake/Release Section Sergeant/Supervisor to request a body cavity search by medical staff. **(BC No: 900.08-03, Body Cavity Search)**
- G. Upon completion of the strip search, a systematic inspection of all clothing removed by the inmate shall be conducted by the officer. Inspect the seams, folds and pockets on all clothing. As each item is inspected relinquish the item back to the inmate.
- H. The strip searches shall be conducted in a reasonable and dignified manner and place. All officers shall make sure the search is conducted out of the view of other inmates or non-authorized staff. The privacy partitions provided in the clothing room areas (Main Jail and Annex) shall be utilized. Officer(s) will direct one inmate per stall in order to perform the searches in the least offensive manner possible. Inmates who are not subject to be strip searched will be allowed to change clothes behind a privacy shield.

V. **CRITERIA FOR STRIP SEARCHES OF INMATES HOUSED IN THE BCADC SYSTEM:**

- A. Circumstances in which inmates in custody may be subject to strip searches include the following:
1. After the inmate has been in contact with the public or upon re-entry into the facility. (i.e. Work Release Program inmates, Inmate Workers, inmates returning from outside medical appointments, funeral viewings Volunteers, MATCH/PATCH Program inmates.)
 2. After the inmate has had access to tools, cleaning equipment, medical instruments, or kitchen utensils within the facility. (i.e. Inmate Workers assigned to the kitchen, laundry, jail industries, medical sections, booking, and other areas of the facility.)
 3. On discovery of contraband in the inmate's cell or living area.
 4. On refusal of a less intrusive search.
 5. After inmate involvement in a serious incident in the facility.
 6. On placement in segregation for disciplinary reasons or for the inmate's protection.
 7. During Contraband, Health and Sanitation Inspections.
 8. On receipt of reliable information that the inmate may possess contraband.
- B. When minor contraband (which does not seriously threaten facility security or the safety of others) is discovered on an inmate as a result of a strip search, the Section Sergeant/Supervisor shall be immediately notified and the appropriate reports shall be prepared in accordance with policy.
- C. When major contraband (which seriously threatens facility security or the safety of others) is discovered on an inmate as a result of a strip search, the Section Sergeant/Supervisor and Shift Supervisor shall be immediately notified and the appropriate reports shall be prepared in accordance with policy.

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- D. If contraband is suspected or discovered inside an inmate's body cavity the inspecting officer shall not touch the inmate in order to obtain the suspected contraband. The officer shall immediately notify the Section Sergeant/Supervisor to request a body cavity search by medical staff. (BC No: 900.08-03, Body Cavity Search)
- E. Before and after the strip search, officers shall permit inmates to wear underwear unless it is suspected that the inmate is in possession of contraband or if contraband in the nature of drugs, instruments for administration of drugs or a weapon is found in their cell or area of confinement.
- F. Upon completion of the strip search, a systematic inspection of all clothing removed by the inmate shall be conducted by the officer. Inspect the seams, folds and pockets on all clothing. As each item is inspected relinquish the item back to the inmate.

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| Post Order No: | Bexar County Sheriff's Office Adult Detention Center System | Page 1 of 1 |
| Post Affected: Main Jail and Annex Facilities | By Order of: Roger Dovalina Chief Deputy, Jail Administrator | Date: 3-20-09 |
| | | Revised: |
| Post: All Uniform Detention Staff (Strip Search Guidelines) | | |

- I. General guidelines for all BCSO uniform detention staff regarding Strip Searches of inmates upon initial intake and subsequently in the custody of the Bexar County Adult Detention Center (BCADC) System. Strip searches at the Bexar County Adult Detention Facility will be conducted on the basis of reasonable suspicion, as defined in BC No: 900.08-02, Strip Searches.
- A. All strip searches shall be conducted by officers of the same gender in a dignified, efficient and professional manner.
1. Officers should maintain a safe distance and position themselves in order to observe all areas of the body.
 2. Verbal instructions shall be constantly given to the inmate, enabling staff to ensure the inspection is thorough and efficient without the requirement of touch.
 3. Instruct the inmate to remove all clothing on their person (outerwear and undergarments).
 4. Instruct the inmate to lower their head and run their fingers through their hair.
 5. Inspect the inside of the inmate's mouth. Ask the inmate to lift their tongue.
 6. Inspect the inside and behind the inmate's ears.
 7. Instruct the inmate to lift their arms to check their armpits and any body folds of skin.
 8. Gender specific:
 1. Strip searches for males:
 - a. Instruct the inmate to lift his testicles. Visually inspect them.
 - b. If the inmate is uncircumcised instruct him to pull back the foreskin of his penis.
 - c. Instruct the inmate to turn around not facing you and to bend at the waist and spread his buttocks with his hands. Visually inspect the anus.
 - d. Instruct the inmate to lift their feet one at a time in order to check the bottom of their feet and between their toes.
 2. Strip searches for females (generally the procedures for searching females are the same as males with the following exceptions):
 - a. Instruct the inmate to lift her breast. Visually inspect them.
 - b. Instruct the inmate to remove tampon, if present and visually inspect.
- B. Booking Intake strip searches shall be conducted by utilizing the privacy partitions provided in the clothing room areas (Main Jail and Annex). Officer(s) will direct one inmate per stall in order to perform the searches in the least offensive manner possible.
- C. When contraband is discovered on an inmate as a result of a strip search, the Section Sergeant/Supervisor and Shift Supervisor shall be immediately notified according with (BC No: 900.08-02, Strip Search) and the appropriate reports shall be prepared in accordance with (BC No: 900.22, Incident Report Processing).
- D. If contraband is suspected or found inside an inmate's body cavity the inspecting officer shall not touch the inmate in order to obtain the suspected contraband. The officer shall immediately notify the Section Sergeant/Supervisor to request a body cavity search by medical staff. (BC No: 900.08-3, Body Cavity Search)

- E. Upon completion of the strip search, a systematic inspection of all clothing removed by the inmate shall be conducted by the officer. Inspect the seams, folds and pockets on all clothing. As each item is inspected relinquish the item back to the inmate.

- F. Inmates who are not subject to be strip searched will be allowed to change clothes behind a privacy shield.