



LAW ENFORCEMENT NEWSLETTER

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THE CONTINUED RISK OF STRIP SEARCH CLAIMS REQUIRES STRATEGIC MANAGEMENT OF JAIL INTAKE PROCEDURES

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In the wake of highly publicized class action lawsuits and settlements during the past five years, the need to monitor the procedures jails use to process detainees and new inmates remains critical. Many jails across the state have implemented risk management strategies designed to avoid class action litigation challenging their policies and practices. However, in light of the continuous effort to respond to inmate safety risks, the remaining unresolved legal issues, and the incentives for Plaintiff attorneys to pursue this type of litigation (on an individual or class-wide basis), the risk of civil rights claims based on pre-admission strip searches will remain for years to come.

By now, most members of the corrections community in New York have become familiar with the reasonable suspicion standard that must be met before a jail detainee or new inmate may be subject to a lawful strip search. By now, many of you can probably offer a workable definition of reasonable suspicion. While cases interpreting this area of the law are

constantly evolving, there remain very few bright line rules that can be used by corrections officers who are in the field trying to balance the competing interests of jail safety versus the need to avoid liability resulting from unreasonable searches. Moreover, when it comes to the development of written policies and the development of procedures, there is no model that suits all facilities or is appropriate for all inmate populations.

Among the numerous risk management measures that have been employed are: the use of BOSS chairs or other technologies designed to identify certain types of contraband without a visual search of the inmate's body; the implementation of partial privacy measures designed to strike a more defensible balance between inmate privacy and jail security; video monitoring of intake and booking areas; and the use of written forms to document searches where reasonable suspicion is thought to exist. A number of jail facilities have adopted and used written consent forms or checklists which are designed to document the reasonable

Continued on page 2..

Inside:

Cover Story:

Risk of Strip Search Claims

Risk of Strip Search Claims.....2

Auto Vehicle Collision Cost Reduction.....3

Fun Facts.....3

Sample Inmate Search Form.....4

THE CONTINUED RISK OF STRIP SEARCH CLAIMS REQUIRES STRATEGIC MANAGEMENT OF JAIL INTAKE PROCEDURES *CONTINUED...*



suspicion analysis undertaken by jail staff at the time such analysis takes place. The value of such written forms include: prompting critical thinking about the contraband risks presented by each individual inmate; documenting and preserving each of the factors that jail staff believe, in good faith, give rise to reasonable suspicion; documenting each search that takes place; and promoting accountability and supervision by requiring the signatures of corrections staff and their supervisor. This sample form is included in this newsletter (see page 4) and will be available on NYMIR's Website under the Law Enforcement Tab in the Policies Section (Revised Inmate Search Form).

Properly documented inmate searches are likely to put jail staff in a better position in the event of litigation, including the availability of the qualified immunity defense which is vital to protecting public officials. On the other hand, consent forms and search checklist forms are merely tools which, like all tools, must be used properly. Here are some suggestions to avoid misuse of such tools, which can be problematic.

- Keep in mind that reasonable suspicion generally arises from multiple factors, and is rarely met by a single factor. While there are some factors that, standing alone, may give rise to reasonable suspicion (e.g. discovery of a metallic object detected during a routine pat search, or an inmate boasting that he has contraband secreted on his person), many factors may not withstand judicial scrutiny in and of themselves. For example, the fact that an inmate is wearing loose fitting or baggy clothing may not be sufficient to give rise to reasonable suspicion. However, an inmate wearing baggy clothes who has a history of secreting contraband and resists a pat search, may give rise to a reasonable suspicion search. If the inmate was admitted on a narcotics possession charge, the suspicion that the inmate may be concealing contraband may be even more reasonable. Accordingly, corrections staff should make an effort to document as many legitimate suspicion factors that apply to the specific inmate as possible.

- Officers should not use a strip search checklist as a formality by simply checking one box and proceeding to conduct a strip search. Strip search checklists are designed to be a guide in helping corrections staff memorialize each of the suspicions they have independently arrived at based upon their experience, training and an individual assessment of the inmate.
- The scope of the personal search still needs to relate to the contraband risk presented. For example, if you suspect the inmate possesses a quantity of alcohol, a full-blown body cavity inspection of body parts that could not conceivably contain an alcohol container may not be justified.
- A prior criminal charge standing alone is rarely sufficient to give rise to a reasonable suspicion search. While the nature of the admitting charge maybe a relevant factor to the reasonable suspicion inquiry, detailing all of the factors that support reasonable suspicion (e.g., arrest information indicating that the inmate concealed unlawful items on his person, the fact that no prior personal search was conducted) is recommended.
- Consider the context of the information that you believe gives rise to reasonable suspicion at the time of admission. For example, the fact that the inmate recently attempted suicide using a shoelace is far more significant than an inmate referencing suicidal ideation five years earlier during a booking interview.
- Most critically, make sure that each Officer who performs intakes is trained on how to effectively utilize your form or checklist and continually monitor its proper use.

The goal is to promote legitimate personal searches of inmates in order to maintain facility safety for staff and inmates. In the current litigation climate, achieving this goal requires strategic use of personnel and other resources, including the thoughtful use of search forms and checklists which can be extremely important in your defense.



AUTO VEHICLE COLLISION COST REDUCTION

Decreasing Animal Collision Losses

For police agencies patrolling agricultural and rural areas, animal vehicle collisions are a leading Auto Property Damage Loss Area. This was no different for the Genesee County Sheriff's Office who patrol the County's agricultural and rural areas. Genesee County has the highest percentage of classified farmland in the state and three of the top 100 vegetable farms in the country. The fertile muck soil in Elba has made Genesee one of the principal counties in the nation for growing beets and onions. Dairy farming is still the leading commodity in the county and Genesee County is fourth overall in agriculture sales within New York State.

Several years ago, the Genesee County Sheriff's Office started researching devices that would provide additional protection to their patrol cars from these collisions. Sheriff Gary Maha's staff found Rhino Guard Bumpers and they began installing these on their patrol vehicles. Since their installation, average animal vehicle collision costs decreased from "over \$3,000 per incident to less than \$400 per incident" according to Sheriff Maha. These devices cost approximately \$400 and the Genesee County Sheriff's Office installs them on all patrol vehicles.

SO YOU THINK YOU KNOW EVERYTHING?

"Stewardesses" is the longest word typed with only the left hand and "lollipop" with your right.

Maine is the only state whose name is just one syllable.

No word in the English language rhymes with month, orange, silver, or purple.

"Dreamt" is the only English word that ends in the letters "MT".

Our eyes are always the same size from birth, but our nose and ears never stop growing.

There are only four words in the English language which end in "dous": tremendous, horrendous, stupendous, and hazardous.

There are two words in the English language that have all five vowels in order: "abstemious" and "facetious."

TYPEWRITER is the longest word that can be made using the letters only on one row of the keyboard.

All 50 states are listed across the top of the Lincoln Memorial on the back of the \$5 bill.

A dime has 118 ridges around the edge.

A cat has 32 muscles in each ear.

A goldfish has a memory span of three seconds.

(Some days that's about what my memory span is).

A "jiffy" is an actual unit of time for 1/100th of a second.

A shark is the only fish that can blink with both eyes.

Almonds are a member of the peach family.

An ostrich's eye is bigger than its brain.

February 1865 is the only month in recorded history not to have a full moon.

If you are an average American, in your whole life, you will spend an average of 6 months waiting at red lights.

On a Canadian two dollar bill, the flag flying over the Parliament building is an American flag.

The average person's left hand does 56% of the typing.

The microwave was invented after a researcher walked by a radar tube and a chocolate bar melted in his pocket. (Good thing he did that)

The winter of 1932 was so cold that Niagara Falls froze completely solid.

..... **Now you know everything!**

SAMPLE INMATE SEARCH FORM

Inmate Name _____ Inmate No.: _____
Date: _____ Time: _____

VOLUNTARY Inmate Search Authorization

I do hereby voluntarily consent to allow the [_____] Jail staff to search my person, which may include a search of my clothing, shoes, mouth, hair, buttocks, anus, genitals, feet, or other part of my body/body cavity.

Inmate Signature Date

If inmate signs above, proceed to the Corrections Officer and Supervising Officer signature section

INVOLUNTARY Inmate Search Checklist

I, _____, as a Corrections Officer for the [_____] Jail, considered the following factors, which provided reasonable suspicion that the above-named inmate may be secreting contraband and/or a weapon. Accordingly, the inmate will be subject to a comprehensive personal search of the above named inmate's body.

Part A. Check ALL applicable factors which give rise to reasonable suspicion that the inmate is secreting contraband and/or a weapon.

- Criminal history check; Arrest information from current offense; Information from corrections file:
- Information or documents received from the Court, arresting agency or transporting agency indicating a particular contraband risk:
- Information provided during the booking process (i.e., inmate volunteers information regarding contraband; inmate sets off electronic detection device/BOSS chair; inmate alerts drug sniffing dog):
- Inmate has a history of escape or attempted escape:
- Inmate is suicidal or has a recent history of suicide attempts:
- Inmate has a history of serious/dangerous contraband possession in the correctional setting:
- Current charges against inmate involve possession of drugs and/or weapons:
- Information regarding contraband received from an informant:
- Information derived from a minimally invasive search (e.g. "pat search") or property inventory:
- Inmate appears to be under the influence of, or is actively using drugs:
- Observation of the inmate's unusual behavior, (e.g. particularly nervous, fidgety, sweaty, uncooperative, disturbed or aggressive/assaultive):
- Inmate gives evasive or contradictory answers to questions:
- Current gang affiliation:
- Inmate wearing loose fitting, baggy or bulky clothing which precludes an effective pat search and/or indicates concealed contraband:
- Inmate recently had personal contact with other inmates, friends or relatives who gave inmate access and opportunity to access contraband:

Part B. Provide a brief statement in the following spaces describing each circumstance you noted above. _____

Part C. Once ALL appropriate bases for your suspicion are recorded, sign here and have your Supervisor sign below your signature.

Signature of Corrections Officer

Badge Number

Date

Signature of Supervising Officer

Badge Number

Date