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August 7, 2015

William N. Brownsberger, Senate Chair
John V. Fernandes, House Chair
Members of the Joint Committee in the Judiciary
Rooms 504 and 136
State House
Boston, MA 02133

Re: Testimony in qualified support of Bill H.3444:
An Act relative to searches of female inmates

Dear Chair Brownsberger, Chair Fernandes, and Members of the Joint Committee in the Judiciary:

Thank you for permitting me to testify. My name is David Milton, and I am a civil rights lawyer with the Law Offices of Howard Friedman, P.C., in Boston. I represented the plaintiffs in the federal class action lawsuit that was the impetus behind Bill H.3444, *Baggett v. Ashe*, 41 F. Supp. 3d 113 (D. Mass. 2014). Our firm has represented the plaintiffs in more than a dozen cases alleging illegal strip searches at jails and prisons throughout the Commonwealth, including five other class actions. Attorney Friedman is a nationally recognized expert in strip search law and practices.

The *Baggett* lawsuit challenged the policy of Hampden County Sheriff Michael Ashe permitting male corrections officers at the Western Massachusetts Regional Women's Correctional Center to videotape female prisoners being strip searched in non-emergency situations. The policy at the WCC was to videotape the entirety of every inmate "move" to the Segregation Unit, including the strip search that occurred at the end of each move. Women were typically moved to Segregation for one of two reasons: because they committed a disciplinary infraction or because staff believed they presented a suicide risk. In either case, and regardless of whether the prisoner was cooperative with corrections officers, the strip search was videotaped. In most cases before my firm filed suit in 2011, a male officer videotaped the strip search.

United States District Judge Michael Ponsor ruled that cross-gender videotaping of strip searches, in the absence of an emergency, violated the

Constitution. After this ruling, Sheriff Ashe and WCC superintendent Patricia Murphy settled the lawsuit and agreed to change the policy to comply with the Constitution.

While I support the goal of H.3444, I have three serious reservations about the bill in its current form and I have suggested amendments.

1. My first and most fundamental reservation about the bill is that by prohibiting only *cross-gender* videotaping of strip searches, the bill implicitly approves of same-gender videotaping of strip searches. This too should be prohibited in order to protect prisoners' basic human dignity and privacy. I suggest amending the bill to prohibit *all* videotaping of strip searches except in an emergency.

Regardless of who makes the recording, the humiliation and risks inherent in videotaping strip searches outweigh any of its supposed benefits. Women do not know where the videos go, how long they are stored, and who has access to them. And whatever the safeguards in place, the mere possibility that the videos could end up in the wrong hands causes anxiety long after the women are released from prison. Until 2010, the videotapes at the WCC were kept in an unlocked cabinet that any members of the security staff had access to. Some of the strip search videotapes—including videos made *after* better safeguards were put in place—are missing.

In connection with the *Baggett* case, Attorney Friedman and I spoke to experts in prison litigation and practices from around the country. They confirmed that videotaping strip searches is very unusual. Neither Sheriff Ashe, nor WCC superintendent Patricia Murphy, nor the expert consultant the Sheriff hired to help develop the WCC's policies when it opened, knew of anywhere else in the country where strip searches are videotaped (much less by guards of the opposite gender.) Plaintiff's expert witness, a former high-level official in the California state system, testified that strip searches are not videotaped at facilities with much higher security risks than the women's prison in Chicopee, including death row at San Quentin State Prison. If it is not necessary elsewhere, why is it necessary here?

2. If the bill continues to address only cross-gender videotaping, I am concerned that the exception permitting cross-gender videotaping in an "emergency or otherwise urgent situation" is overbroad and confusing. The bill defines these terms as "a situation in which a correction officer determines that a specific inmate presents an immediate and serious threat to the inmate's own safety or the safety of others." This definition could apply to a wide range of serious but relatively commonplace situations, such as a fight between prisoners, a prisoners' refusal to obey an order from a guard, or a prisoners' being placed on mental health watch. Indeed, the WCC took the position that every single time a prisoner was moved to the Segregation Unit – which happens hundreds of times a year – presented an immediate and urgent threat to "the inmate's own safety or the safety of others."

H.3444 should be amended to only permit cross-gender videotaping of strip-searches in the same circumstances that would permit a cross-gender strip search.

The Court in *Baggett* found this restriction to be a clearly established constitutional requirement. Under the Court-ordered settlement agreement, WCC policy now states explicitly that males may videotape strip searches of women prisoners only in situations where males may strip search them. Such situations are extremely rare.

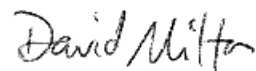
Having the same standard is also easy to apply and avoids confusion. Department of Corrections regulations state that cross-gender strip searches shall not occur “except under extraordinary or emergency situations.” 103 CMR 506.04(6)(A) (October 2014). The DOC regulations do not define these terms, because they are well-understood by corrections officers to prohibit cross-gender strip searches in all but the most dire, unforeseen situations, such as a riot.

3. My final concern about the bill is that the definition of “strip search” is too narrow. The bill states this is a search “in which an inmate is required to remove all clothing.” This could be interpreted in a way to exclude situations that ought to be covered by the bill. Courts have frequently defined a strip search as any visual inspection of the naked body. *See, e.g., Wood v. Hancock Cnty. Sheriff's Dep't*, 354 F.3d 57, 62 (1st Cir. 2003). Focusing on the inspection of naked body parts, rather than the requirement that an inmate remove all her clothing, captures a broader range of practices in which the inmate’s body is exposed. For example, an inmate may be asked to strip to her underwear, and lift her bra and/or pull down her underwear for inspection. Having a male officer nearby or videotaping this should not be permitted.

I have enclosed copies of the following materials referred to above: (1) Judge Ponsor’s opinion in *Baggett v. Ashe*, and (2) the Department of Corrections regulations concerning strip searches.

Thank you for your consideration.

Sincerely,



David Milton

Enclosures

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DEBRA BAGGETT, ET AL.,)
 Plaintiffs,)
)
 v.) C.A. No. 11-30223-MAP
)
MICHAEL J. ASHE, JR., ET AL.,)
 Defendants.)

MEMORANDUM AND ORDER REGARDING DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT AND PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT OR, IN THE ALTERNATIVE, FOR PARTIAL SUMMARY
JUDGMENT
(Dkt. Nos. 156 & 171)

August 26, 2014

PONSOR, U.S.D.J.

I. INTRODUCTION

Plaintiff Debra Baggett represents a class of 178 former and current inmates of the Western Regional Women's Correctional Center, who have brought suit under 42 U.S.C. § 1983 against Defendants Michael Ashe, Jr., Hampden County Sheriff, and Patricia Murphy, Assistant Superintendent.¹ Plaintiff claims that Defendants' policy of permitting male officers to videotape female inmates being strip-searched upon transfer to the segregation unit violated the Fourth Amendment.

¹ Though this case is a class action, the court, for simplicity's sake, refers to Plaintiff in the singular throughout this memorandum.

Defendants have moved for summary judgment, (Dkt. No. 156), and Plaintiff has cross-moved for summary judgment or, in the alternative, for partial summary judgment on the legal issue of whether any legitimate, penological interest justified assigning males officers to videotape the strip searches, (Dkt. No. 171). Plaintiff presents two theories in support of judgment in her favor. First, she contends that the policy of permitting male guards to be present to videotape the strip searches -- even if they somehow refrained from actually viewing the inmates while performing the videotaping -- violated the Constitution. The court agrees that this policy violated the class members' constitutional rights and that no legitimate, penological interest justified it. Moreover, Defendants are not entitled to the protection of qualified immunity for this violation.

Given this, it will be unnecessary for the court to address in detail Plaintiff's second contention, that the policy foreseeably resulted in male officers actually viewing strip searches of female inmates and that such viewing constituted a violation Plaintiff's constitutional rights under clearly established law. Plaintiff is correct that at the relevant time period, clear authority established that, if such viewing did

occur in a manner that was more than incidental or inadvertent, it violated the Constitution and Defendants would not be shielded by qualified immunity. If the court needed to address this second theory of recovery, however, a trial would be necessary in order to determine whether actual viewing, as opposed to videotaping without looking, occurred. It would also be necessary to determine whether Defendants were legally responsible for the actual viewing.

In sum, because Plaintiff will prevail on her predominant claim, the court will deny Defendants' motion for summary judgment and allow Plaintiff's motion on the issue of liability. Further proceedings will be necessary to determine the appropriate potential equitable relief and monetary damages.

II. FACTUAL BACKGROUND²

Plaintiff, Debra Baggett, was a prisoner at the Western Massachusetts Regional Women's Correctional Center ("WCC") from September 5, 2008, through September 12, 2008, and again from October 2, 2008, through January 28, 2010. She represents a class of

² Unless otherwise noted, the facts are drawn from Defendants' Statement of Material Facts (Dkt. No. 160), Plaintiff's Statement of Material Facts (Dkt. No. 173), Plaintiff's Counter Statement of Material Facts (Dkt. No. 174), and Defendants' Counter Statement of Material Facts (Dkt. No. 195), along with the documents referenced therein.

approximately 178 former and current inmates of the WCC who, upon transfer to the segregation unit, were subjected to a strip search videotaped by male correctional officers. As noted, Defendants are Michael J. Ashe, Jr., the Sheriff of Hampden County, and Patricia Murphy, Assistant Superintendent in charge of the WCC.

The WCC is an all-female facility that houses detainees and sentenced prisoners from the four western counties of Massachusetts. If a prisoner presented as a suicide risk, committed certain disciplinary infractions, or needed to be in protective custody, she was transferred to the segregation unit to separate her from the general population.

The WCC maintained a set of policies that governed the transfer of prisoners into that unit, specifically Policy and Procedure ("P&P") 3.1.7. A transition team headed by Defendant Murphy wrote the policies, though Defendants Ashe and Murphy discussed them while they were being drafted. There is no dispute that Ashe and Murphy were responsible for the policy. During the process, the team also relied on an expert consultant, John Milosovich. The policy was updated nearly every year, though its central tenants remained the same. (Murphy Aff. (Defs.' Ex. D), Dkt. No 164, Exs. 1-6.)

The policy adopted by Defendants required, at a minimum, four officers to move an inmate to segregation. The officers effectuated the move by cuffing the inmate's wrists, shackling her ankles, conducting a pat search, and leading her into the unit. If an inmate were not compliant, additional officers would assist. Any inmate transferred into the unit was subject to a strip and body cavity search. This required the inmate to run her fingers through her hair, remove dentures if she wore them, raise both arms, lift her breasts, lift her stomach for visual inspection if she had a large mid-section, and remove any tampon or pad if she were menstruating. She was then required to turn around, bend over, spread her buttocks, and cough.

The policy also specified the location of the strip searches. They would occur either in the individual segregation unit itself or in the segregation intake room. If the search occurred in the individual cell, at least two female officers would remain with the prisoner during the search. If the supervisor were female, she would also remain in the cell. However, if the supervisor were male, the policy dictated that he "remain[] in the cell but stand[] in the doorway." (Murphy Aff. (Defs.' Ex. D), Dkt. No 164, Ex. 1.)

Alternatively, if the search occurred in the intake room, the entire transfer team would remain in the room.

One officer was responsible for videotaping the transfer from the beginning of the move through, and including, the strip search. The filming officer was expected to stand just outside of the cell and point the camera in the direction of the inmate. From 2007 to 2010, the policy stated that if a male officer held the camera, he was to "stand[] outside the cell facing the Dayroom [away from the cell] with the camera pointing inside the cell and record[ing] the prisoner from the neck up." (Murphy Aff. (Defs.' Ex. D), Dkt. No 164, Exs. 1 & 2.) From 2010 to 2012, the policy required "the officer operating the video camera, if male, [to] stand[] outside the cell with the camera pointing inside the cell and record[ing] the prisoner." (Murphy Aff. (Defs.' Ex. D), Dkt. No 164, Exs. 3-4.) Since March 2012, the policy mandated that male officers operating the camera stand "outside the cell and position[] the camera on the prisoner from the neck up . . . then turn[] his head to the side to afford the prisoner as much privacy as possible." (Murphy Aff. (Defs.' Ex. D), Dkt. No 164, Ex. 5.)

In other words, male officers filming the strip search were required under the policy to conduct the filming while attempting to avoid looking at the subject being filmed and, at the same time, taking care to film the unseen inmate only from the neck up. According to Plaintiff, when this section of the policy was being drafted, Mr. Milosovich questioned the need for the videotaping at all and expressed doubts that male guards, as a practical matter, could consistently follow the very awkward procedure as it was prescribed. (Dkt. No. 175, Ex. 28 at 15 (stating "how can you be sure that [the camera] will stay from the neck up . . . Suggest someone check to make sure a strip search can be video taped at all").)

Since September 15, 2008, a male guard has held the camera during 274 strip searches. For 90% of these searches, two or more female guards were in the cell, and during 58%, three or more females were present. During that period, Defendants employed on the security staff roughly 31 female officers and 49 to 54 male officers. According to Plaintiff, several women complained to WCC staff about the cross-sex videotaping policy.

In May 2010, Plaintiff's counsel sent a letter to Defendants, informing them that he believed this policy

was unconstitutional. Around the same time, Defendants altered P&P 3.1.7 to restrict the circumstances under which male officers could operate the camera. Female officers were required to do the videotaping unless "impracticable." (Murphy Aff. ¶ 110 (Defs.' Ex. D), Dkt. No. 164, Ex. 3.) Between May 2010 and September 2011, male officers held the camera 26% of the time. Since September 2011, when this suit was filed, males have held the camera only 2.5% of the time. From January 1, 2013 to July 31, 2013, a male held the camera only one time out of 96 total transfers.

Though it is undisputed that male officers operated the cameras, the parties vigorously dispute whether males actually viewed the female inmates during the searches and, if they did, whether such viewing was more than incidental or inadvertent. Plaintiff relies on the testimony of five members of the class who discussed their experiences. They described their observations of male officers viewing them during strip searches. As Plaintiff herself testified, "Sometimes I could see their eyes and . . . sometimes the camera was obscuring the face but I almost always could see their face." (Baggett Dep. 279:13-19, Dkt. No. 175, Ex. 13 at 2.) She further said, "They were looking at me, at my direction, their faces were pointed and their

postures and everything were pointed directly at me.” (Id. 281:17-22.) Plaintiff also provides testimony from a former WCC corrections officer who claimed that male officers would simply “stand off to the side and just watch the viewfinder.” (Matlasz Dep. 53:11-15, Dkt. No. 175, Ex. 5 at 4.)

Moreover, Plaintiff points to the videos themselves, 68% of which show some or all of the women’s genitals, buttocks, or breasts, and 82% of which show some portion of the women below the neck. Based upon the steadiness of the camera and the footage of the inmates’ bodies, she believes that a male officer had to be facing the inmates (or watching through the viewfinder) to keep the camera as still as it was and trained on the correct area in the cell.

Defendants, meanwhile, provide testimony from 11 former and current officers who state that they never witnessed a camera operator actually viewing a search. More broadly, Defendants believe that Plaintiff’s evidence is insufficient to establish anything more than incidental viewing.

On September 15, 2011, Plaintiff filed this one-count complaint against Defendants alleging a violation of 42 U.S.C. § 1983. This court, on May 23, 2013, certified a class of “approximately 178 former and

current WCC inmates who were videotaped by male correctional officers during strip searches.” (Dkt. No. 86.)

On February 21, 2014, Defendants filed their Motion for Summary Judgment (Dkt. No. 156), and Plaintiff cross-filed on March 19, 2014 (Dkt. No. 171). As noted, Plaintiff also moved, in the alternative, for partial summary judgment on the issue of whether any true emergency or other legitimate, penological interest justified assigning male officers to videotape the strip searches. On April 22, 2014, the court heard argument on the motions and took the matter under advisement.

III. DISCUSSION

On summary judgment, the facts and all reasonable inferences that might be drawn from them are viewed in the light most favorable to the non-moving party. Pac. Ins. Co., Ltd. v. Eaton Vance Mgmt., 396 F.3d 584, 588 (1st Cir. 2004). When addressing cross-motions for summary judgment, “the court must consider each motion separately, drawing inferences against each movant in turn.” Reich v. John Alden Life Ins. Co., 126 F.3d 1 (1st Cir. 1997). Summary judgment is appropriate if no

genuine dispute of fact exists and a party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56.

Plaintiff only offers one count in this lawsuit -- a violation of § 1983. To succeed on this claim, "the challenged conduct must be attributable to a person acting under color of state law . . . [and] the conduct must have worked a denial of rights secured by the Constitution or by federal law." Soto v. Flores, 103 F.3d 1056, 1061-62 (1st Cir. 1997). The law also "requires the plaintiff to prove not only a deprivation of federal right, but also that the defendant's conduct was a cause in fact of the alleged deprivation." Id. at 1062.

The first element is undisputedly satisfied in this case. Defendants were acting in their official capacities when they created the challenged policy. Nor is causation in doubt; they were directly responsible for the policy's enactment. Plaintiff's claim thus turns on whether Defendants' policy violated the Constitution.

Plaintiff, as noted in the introduction, presents two theories. First, she contends that the policy of permitting cross-sex videotaping of strip searches --

irrespective of whether any viewing of the inmate actually occurred during the taping -- violated the Constitution. Alternatively, Plaintiff says, the videotaping violated the Fourth Amendment because it in fact did -- regularly and over extended periods of time -- result in male guards viewing female inmates during the strip searches. Each theory will be addressed below.

A. Was the Policy of Permitting Cross-Sex Videotaping, Regardless of Viewing, Unconstitutional?

Plaintiff's initial theory is that the searches required by the policy permitting cross-sex videotaping violated the class members' Fourth Amendment rights, even if the male officer doing the videotaping was able somehow to avert his eyes while using the camera. It must be conceded that the fact scenario posited by this theory is difficult to conjure up. Nevertheless, this (Defendants say) is what occurred, and a fair analysis of this first, broader theory of recovery must assume, in the light most favorable to Defendants, that any videotaping by male guards occurred without the male actually looking at the female inmate he was filming.

To tackle the argument, two questions must be addressed: first, did the policy generate unconstitutional searches of the class members, and

second, if it did, are Defendants entitled to the protection of qualified immunity?³

1. Was there a constitutional violation?

The Fourth Amendment broadly protects "against unreasonable searches and seizures." U.S. Const. amend. IV. In the narrow context of searches in prison facilities, two interwoven strands of cases are relevant. The first, Bell v. Wolfish, 441 U.S. 520 (1978), provides guidance for courts tasked with determining the reasonableness of a custodial search. The second, Turner v. Safley, 482 U.S. 78 (1978), balances an inmate's rights against the legitimate needs of prison facilities. Though the analyses overlap to some degree, the cases will be discussed separately for the sake of clarity.

³ Defendants believe that Plaintiff's case is a "facial" challenge to the constitutionality of the policy and, thus, Plaintiff can only succeed if she shows that the policy is unconstitutional in every conceivable application. See U.S. v. Salerno, 481 U.S. 739 (1987) (noting that a facial challenge must establish "that no set of circumstances exists under which the Act would be valid"). Though difficult to apply at times, a distinction has emerged between "facial" challenges -- which broadly attack a law or policy regardless of the way it is enacted -- and "as applied" challenges -- those that arise from a specific dispute about a particular way in which a law is implemented. See Wash. State Grange v. Wash. State Republican Party, 552 U.S. 442, 450 (2008). Plaintiff's challenge here is brought on behalf of a class of inmates who believe their rights were violated by the specific manner in which Defendants applied the policy to them. It thus arises from a concrete dispute and fits neatly into the "as applied" category.

a. Bell v. Wolfish

In Bell, the Supreme Court considered the reasonableness of strip searches conducted on pre-trial detainees in state custody. Bell, 441 U.S. at 558. The Court upheld the policy over a Fourth Amendment challenge and, in doing so, identified a number of factors to consider when assessing the reasonableness of these searches. The elements were: (1) the scope of the search; (2) the manner in which it was conducted; (3) the justification for it; and (4) the place where it was conducted. Id. at 559. To evaluate the policy here, the court must weigh the Bell factors.

The first consideration -- the actual scope of the search -- is not the subject of any substantial dispute in the circumstances of this case. The parties agree that a strip search during a transfer to a segregation unit is permissible. See Arruda v. Fair, 710 F.2d 886 (1st Cir. 1983). Moreover, the actual strip searches were completed within a reasonable period of time and were no more intrusive than other, constitutionally permissible searches. Id.

The crux of the challenge is the manner in which the searches were conducted -- that is, with male officers present during the strip searches to videotape the female inmates. In Cookish v. Powell, the First

Circuit considered whether a strip search of a male inmate "conducted within the visual vantage point of female correctional officers" violated the Fourth Amendment. 945 F.2d 441, 442 n.1 (1st Cir. 1991). The search in that case occurred in the immediate aftermath of a prison riot. Id. at 444-45. Though the court ultimately found that the defendants in Cookish were protected by qualified immunity, it described the state of the law as follows:

(1) inadvertent, occasional, casual, and/or restricted observations of an inmate's naked body by a guard of the opposite sex did not violate the Fourth Amendment and (2) if the observation was other than inadvertent, occasional, casual, and/or restricted, such observation would (in all likelihood) violate the Fourth Amendment, except in an emergency condition.

Id. at 447.

Cookish recognized that, despite their confinement, inmates have some limited expectation of privacy. That right "is violated when guards of the opposite sex regularly observe him/her engaged in personal activities, such as undressing, showering, and using the toilet." Id. at 446; see also Burns v. Loranger, 907 F.2d 233 (1st Cir. 1990); Bonitz v. Fair, 804 F.2d 164 (1st Cir. 1986), overruled on other grounds by Unwin v. Campbell, 863 F.2d 124 (1st Cir. 1988).

Since Cookish, the First Circuit has addressed a number of challenges to custodial strip searches. The Court of Appeals, when considering the reasonableness of such searches, has consistently recognized the risk of a constitutional violation posed by the presence of custodial staff of the opposite sex. For example, in Roberts v. State of Rhode Island, the First Circuit upheld a strip search policy, in part because "the policy requires the search to be conducted by officers of the same sex as the inmate." 239 F.3d 107, 112 (1st Cir. 2001). Two years later, the First Circuit again upheld a similar policy because "[i]t was done in a private area, by a single officer of the same gender, and without physical contact." Wood v. Hanock Cnty. Sheriff's Dep't, 354 F.3d 57, 69 (1st Cir. 2003).

In 2004, the court expanded its analysis by not merely referencing the gender of the individual conducting the search, but broadening the focus to include the environment of the search itself. In approving the constitutional legitimacy of the search in United States v. Cofield, the court noted that "the officers did not require [the plaintiff] to assume humiliating poses, [or to] expose himself in an unnecessarily public place or to members of the opposite sex." 391 F.3d 334, 337 (1st Cir. 2004).

Defendants' central contention is that these cases only proscribe actual viewing by a guard of the opposite sex. The Constitution, in Defendants' view, does not restrict the mere nearby presence of a male officer during a strip search of a female inmate, even if he is operating a video camera, so long as his eyes are averted.

Defendants read the First Circuit case law too narrowly. Underpinning these authorities is the understandable implication that even the nearby presence of an individual of the opposite sex during a strip search can be, in itself, a deeply humiliating experience. No inmate placed in such a vulnerable and exposed position should have to rely, or comfortably would rely, on the scrupulousness of an officer of the opposite sex turning his or her head as a safeguard to the inmate's privacy and basic dignity.

Any other conclusion would defy human nature. Even if an officer, standing a few feet away and pointing a video camera at an inmate of the opposite sex, did in fact avert his or her eyes from the scene entirely (as perhaps many, or -- as Defendants contend -- all do), the humiliating sense of exposure arising in this situation would be virtually as extreme, from the viewpoint of the inmate, as it would be if the inmate

knew the officer were actually looking. It is possible some inmates might not care, but for the vast majority of inmates the scene would reasonably be experienced as painfully degrading. To suggest otherwise is to ignore the inborn sense of privacy most human beings harbor from childhood through the end of life.

Moreover, in this case -- as Defendant Ashe himself noted -- utilizing a female officer rather than a male unquestionably would add "to the dignity and worth and privacy" of the individual inmate. (Ashe Dep. 110:20-111:4, Dkt. No. 175 at 44-45, Ex. 6.)

Admittedly, the explicit holding of Cookish is that it is a violation of the Constitution, except in very limited circumstances, when an officer of the opposite sex actually views a strip search. The case does not suggest, however, that the nearby presence of an officer of the opposite sex pointing a video camera at an inmate during a strip search, and the forced reliance of that inmate on the officer's strict compliance with a procedure requiring him or her to look away during the filming, would satisfy the Constitution. Cofield's use of the word "exposure" reveals the core value being protected, which is the inmate's privacy and basic dignity, experienced from the inmate's point of view. The constitutionality of

the search does not hinge solely on what the officer of the opposite sex happens to see but, instead, on the degradingly vulnerable position the inmate is forcibly placed in.

Here, the male official is present during the entire transition to segregation and the subsequent strip search. It is undisputed that the female inmate is fully aware that a male guard is videotaping her. Indeed, if she looks, she can see him holding the camera in her direct line of sight from a few feet away. The applicable procedure then requires the female inmate to strip naked and manipulate her body while in the direct presence of the male guard videotaping her. The inmate will be ordered to lift her breasts, spread her legs, bend over, and spread her buttocks. For the female inmate, the knowledge that the nearby male is obliged to look away (if, indeed, she is aware of this restriction) cannot, to any significant degree, minimize the extreme level of exposure she experiences. The fact that the male officer, while operating the video camera, may be turned to one side or have his back turned will do little, for most female inmates, to diminish the sense of embarrassment, humiliation, and vulnerability that she must inevitably feel.

Ultimately then, the constitutional violation here arises from the male video operator's close presence while the female inmate is required "not only to strip naked in front of a stranger, but also to expose the most private areas of her body." Swain v. Spinney, 117 F.3d 1, 6 (1st Cir. 1997). For the reasons stated, the conduct of these searches breached the constitutional boundary to such a degree that, even if the remaining two Bell factors did not favor Plaintiff's position, the policy would still be a violation of the Fourth Amendment.⁴ A review of these factors, however, reveals that, for the most part, they favor Plaintiff.

The next factor identified by the Supreme Court is Defendants' justification for the policy. In their initial memorandum (Dkt. No. 159), Defendants noted that 103 C.M.R. § 924.06(3)(f) authorized strip searches upon an inmate's transfer into segregation. Based on this, they argued, the policy was justified.

The problem with this initial argument is that the identified regulation only supports the policy insofar as it calls for the strip searches. No one, not even

⁴ It is well established that an emergency situation may justify a search that would otherwise be unconstitutional. As Cookish makes clear, extenuating circumstances may require a male to videotape the search. 945 F.2d at 447. Here however, with only one exception, Defendants do not contend that an emergency ever justified the male presence.

Plaintiff, disputes the propriety of strip searches during transfers to segregation, per se. As invasive as they necessarily are, these searches do not violate the Constitution and, indeed, constitute an appropriate safeguard in the custodial environment. The regulation, however, is silent as to the practice of videotaping these searches and, more importantly, as to the permissibility of an individual of the opposite sex holding the camera.

In their reply memorandum, (Dkt. No. 193), Defendants offer a number of practical justifications for the videotaping policy. Again, however, while videotaping strip searches may, to some extent, be controversial, Plaintiff does not take the position that videotaping itself violates the Constitution. The procedure undoubtedly has advantages. It provides an objective record of the transition into segregation, enhances professionalism, and deters both misconduct and false accusations of misconduct. None of these purported justifications, however, covers the use of male staff to videotape female inmates.

Only one asserted justification bears directly on the issue of the officer's gender. The ability to utilize a male officer to videotape females during strip searches, Defendants contend, provides

flexibility during potentially urgent situations. A transfer to segregation can be fraught with risk; serious problems can arise quickly and unpredictably. The possible use of a male guard to handle videotaping -- a male instructed to look away while conducting the taping -- helps to ensure the safety and security of staff and inmates.

To buttress this point, Defendants point to one event in 2013 where an immediate need arose to transfer an inmate to segregation, but no female officer was available to handle the videotaping. The flexibility of the policy permitted a male officer to hold the camera and complete the transfer promptly. This prevented a potentially dangerous situation from spinning out of control.⁵

The shortcoming in this legal argument is that Plaintiff does not dispute the constitutional legitimacy of cross-sex videotaping in a true emergency. All the case law recognizes this regrettable but necessary contingency. Moreover, as a factual matter, the record provides no support for the suggestion that, at least prior to 2013, videotaping of strip searches by male officers was limited to urgent

⁵ Defendants offer additional justifications under the Supreme Court's Turner decision, which are addressed below.

situations. In fact, the record confirms that female officers were not only available but actually present during the vast majority of strip searches. The evidence also demonstrates that Defendants employed female officers at a roughly similar rate as male officers. Critically, no evidence in this record suggests that the lack of a female officer would have required postponement of a transfer, or generated any risk, in any but the rarest of circumstances.

Moreover, if male guards were potentially needed in emergency situations to effectuate swift moves -- a situation Plaintiff concedes might require cross-sex videotaping -- this contingency still would not justify the challenged policy.⁶ The 2013 event described by Defendants, one that occurred well after Defendants altered their policy, illustrated the feasibility of a narrowly crafted exception covering a truly urgent situation. It does not, however, provide support for a carte blanche license to use male guards regularly to videotape strip searches of female inmates.

⁶ Defendants take issue with Plaintiff's narrow definition of an emergency. The court need not address this disagreement since it is undisputed that no emergency, however defined, precipitated the searches at issue in this case.

In sum, Defendants' attempt to offer justifications for their policy is flatly inadequate to provide a bandage for its constitutional deficiencies.

The final Bell factor is the location of the searches. The policy, as noted, provides two different locations where the searches can occur, the segregation unit itself and the intake area. Plaintiff contends that both areas are too public; Defendants disagree. The importance of this issue may be secondary compared to the gender issue and, in any event, the parties' disagreement raises an issue of fact. Notably, even assuming Defendants are correct, it would still not save the policy given the unreasonableness of the manner of the searches, and thus the disagreement does not implicate any material fact precluding entry of summary judgment.

To summarize, examination of the Bell factors establishes that the strip searches of class members in this case, to the extent they occurred with male officers in the immediate vicinity conducting videotaping, were unreasonable regardless of whether the officers actually viewed the inmates. Plaintiff's Fourth Amendment rights were violated by the mere presence of a male officer nearby conducting the videotaping during her strip search. Since Plaintiff's

rights were violated, the analysis shifts to the Turner case.

b. Turner v. Safley

Although the policy violates Plaintiff's Fourth Amendment rights, that finding must still survive the Turner analysis. At issue in that case was, inter alia, the permissibility of restricting an inmate's right to marry. The Court's holding, broad in nature, is relevant here.

In determining the permissibility of a prison regulation, the Court said, "[W]hen a prison regulation impinges on an inmates' constitutional rights, the regulation is valid if reasonably related to legitimate penological interests." Turner, 42 U.S. at 89. Turner provided four factors to be weighed in making that determination: (1) whether there exists a valid, rational connection between the regulation and the governmental interest; (2) whether "there are alternative means of exercising the right that remain open to prison inmates"; (3) the impact the demanded accommodation would have on the facility, staff, and inmates; and (4) the availability or absence of ready alternatives to the complained of policy. Id.

Defendants believe that each factor illuminates a reasonable relationship between their policy and a

valid, penological interest. Plaintiff, meanwhile, contends that Defendants have the weaker argument on each factor and that she is, at a minimum, entitled to partial summary judgment on the question of whether any emergency or legitimate interest justified the searches.

As to the first factor -- the connection between the policy and the goal -- Defendants reiterate their argument that videotaping the searches is justified and that male guards are a critical component to carrying out that policy. Moreover, they assert that the use of males permits flexibility in staffing and ensures that the WCC can provide equal employment opportunities.

These arguments are unpersuasive. Though videotaping itself may be appropriate, nothing supports the conclusion that male guards need to be utilized to conduct the videotaping outside of emergency situations. Indeed, since this litigation began, Defendants have essentially adopted a policy requiring only female guards to videotape the searches and have not encountered any problems.

Defendants' employment-related arguments rely solely on speculation. The record offers no examples of employees complaining about their assignments; no data evidences staffing problems. Nothing in the

record suggests that permitting males routinely to videotape strip searches enhanced employment opportunities for anyone. Therefore, Defendants have failed to establish a valid connection between the policy and their purported goals.

The second Turner factor, the existence of an alternative to exercise the identified constitutional right -- in this case, the right to be free from an unreasonable search -- favors Plaintiff. Defendants have conceded that their policy left no room for an alternative method to exercise this right. Bull v. San Francisco, 595 F.3d 964, 973 n.9 (9th Cir. 2010) (stating that the right to be free from an unreasonable search "is not a right susceptible to exercise by alternative means").

With respect to the third Turner factor -- the impact the demanded accommodation would have on the facility, staff, and inmates -- Defendants repeat their argument that, in order to avoid compromising the operation of their facility, their only feasible option was to restrict male guards from viewing female inmates during strip searches, not from videotaping them. This rule, they point out, was already in place at the time this lawsuit was filed and was sufficient. Any other accommodation, such as excluding males entirely from

videotaping strip searches (except in an emergency or otherwise urgent situation), would, Defendants argue, have reduced Defendants' flexibility and undermined security.

The flaw in this argument, as this memorandum has already noted, is that the record offers no support for Defendants' contention that utilizing female guards for videotaping strip searches decreased Defendants' ability to effectuate transfers to segregation in non-urgent situations. On the contrary, Defendants' current policy of strictly limiting the presence of males during strip searches has shown that the overwhelming majority of transfers to segregation can be managed easily within constitutional boundaries. Plaintiff's proffered alternative to the policy as it existed at the time this lawsuit was filed was clearly a feasible accommodation that minimally burdened the facility, staff, and inmates.

On the final Turner factor -- the availability and benefits of ready alternatives -- Defendants argue that no available alternative would have provided the same benefits as the challenged policy. Defendants itemize a number of options they consider inferior to videotaping: an audio recording, not utilizing a camera, using a tripod, or using a ceiling camera.

They believe that each alternative would present serious problems. An inmate could say something false on an audio recording; an emergency might arise that would need to be documented on camera; the tripod could be used as a weapon; a ceiling camera would actually be more invasive. In sum, a video camera held by a person, Defendants say, was the only option that, as a practical matter, accomplished Defendants' goals.

Defendants' contentions may all very well be true, but they miss the point. At the risk of repetition, this dispute is not about the propriety of videotaping the searches per se. It is about who should be holding the camera. Since the only real alternative is to require female guards to hold the camera except in cases of emergencies, and Defendants have failed to show why this would not be feasible -- indeed, such a policy appears to have effectively been adopted at this point -- the court must conclude that the final Turner factor manifestly favors Plaintiff.

As a final plea, Defendants suggest that deference under Turner is particularly appropriate here for a number of reasons. First, Defendants utilized an expert when drafting the regulations to ensure that they were legally permissible. Second the WCC has applied for and received accreditation from the

American Correctional Association, which did a complete review of every policy and procedure, including the policy governing videotaping. Finally, the Massachusetts Department of Corrections audited the WCC twice a year, and no issues respecting the policy were ever flagged.

None of these reasons justifies deference to the particular policy at issue. First, use of an expert, though prudent, cannot inoculate an unconstitutional policy. Here, in any event, a particular irony adheres to this argument since Defendants' expert explicitly warned that the policy presented both practical and legal problems. (Dkt. No. 175, Ex. 28 at 15.)

Defendants' other arguments essentially assert that since no one who reviewed the policy found a problem with it, no problem existed. Again, while the use of review by outside entities reflected prudence and professionalism on the part of Defendants, the fact that these entities did not condemn the videotaping policy obviously cannot, ipso facto, render it constitutional.

In sum, no legitimate penological interest justified the regular practice of using male officers to videotape female inmates while they were being strip searched, even assuming the officers respected the

policy requirement to avert their eyes while operating the camera. Moreover, nothing in the record indicates that any emergency situation ever required the use of male officers to handle videotaping. Since the policy violated the Fourth Amendment rights of the class members, and since Turner does not save Defendants, the policy as applied to class members was unconstitutional.

2. Qualified Immunity

Qualified immunity protects officials performing discretionary functions when their conduct does not violate clearly established statutory or constitutional rights of which a reasonable officer should have known. Wilson v. Layne, 526 U.S. 603, 609 (1999). Qualified immunity is not appropriate where (1) an official violated a constitutional or statutory right, and (2) the right was "clearly established" at the time the impermissible conduct occurred. Ashcroft v. al-Kidd, 131 S.Ct. 2074, 2080 (2011), citing Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).

Defendants contend that qualified immunity is appropriate here for two reasons. First, the legal question at the heart of this case is obscure, and no

clearly established law existed at the time of the violation. If anything, Defendants say, the law supported their approach since courts have consistently upheld the use of video cameras to record searches. See, e.g., Powell v. Cusimano, 326 F. Supp. 2d 322, 335 (D. Conn. 2004). Second, Defendants say, they strived to ensure that the policy complied with the Constitution -- for example, they hired an expert and had the procedures audited -- and therefore acted reasonably in concluding that it was permissible.

Though Defendants' argument has some traction, it is ultimately unpersuasive. They essentially concede that, at the relevant time period, the Constitution clearly prohibited males from conducting strip searches of female inmates, or from viewing the strip searches, except where such viewing was inadvertent or in emergency situations. These cases, they argue, were insufficient to put them on notice that the practice of having a male officer videotape a strip search of a female inmate without looking at the inmate violated the inmate's rights.

On the question of when a constitutional right is clearly established, the Supreme Court has emphasized that "a case directly on point" is not required. Ashcroft, 131 S.Ct. at 2083. Instead, the inquiry is whether the law "placed the statutory or constitutional question beyond debate."

At the time of this constitutional violation, clearly established law prohibited a male officer from viewing a female inmate during a strip search. Cookish, 945 F.2d at 447. It was also plainly unconstitutional to require a female inmate to expose herself, particularly to the extreme degree required during a strip search, in the presence of a male officer. Cofield, 391 F.3d at 337. Given these cases, any reasonable official would have recognized the unreasonableness of requiring a female inmate to strip in the presence of a male officer holding a video camera and pointing it at her. The unconstitutionality of such a policy was, quite simply, "a foregone conclusion." Bonitz, 804 F.2d at 173 n.10. Given the clarity of the law at the time the policy was put in place, a reasonable official would have been properly

on notice that the policy would inevitably result in an unconstitutional search.

Moreover, even if the state of the law were ambiguous -- which it was not -- this policy was so clearly "antithetical to human dignity" that qualified immunity would still be inappropriate. Hope v. Pelzer, 536 U.S. 730, 741 (2002). Any reasonable official viewing the policy would have concluded that it had the potential to humiliate and demean the female inmates. However sincere Defendants' attempts to comply with the law may have been, it was unreasonable for them to neglect the obvious ramifications of their policy.

Ultimately, a reasonable individual in Defendants' position could not have concluded that permitting male officers to videotape female inmates during strip searches -- even if the officers looked away -- was constitutional. Therefore, Defendants are not entitled to the protections of qualified immunity, and Plaintiff is entitled to judgment as a matter of law.

B. Was the Policy Unconstitutional Because It Foreseeably Led to Cross-Sex Viewing of Strip Searches?

The court's ruling on Plaintiff's first theory makes extended discussion of her second theory unnecessary. Plaintiff asserts that the videotaping policy was also unconstitutional because it in fact inevitably led to male officers actually viewing, in a manner that was not merely incidental or inadvertent, strip searches of female inmates in non-emergency situations.

As a legal matter, if Plaintiff's assertions were shown to be true -- i.e., male officers regularly viewed female inmates during strip searches -- she would be entitled to judgment in her favor. Cookish and its progeny, as discussed, undisputedly hold that in non-emergency situations cross-sex viewing that is more than incidental or inadvertent violates the Constitution. Cookish, 945 F.2d at 447. Qualified immunity would certainly not protect Defendants given this case law.

Summary judgment, however, would not be available on this alternate theory on the current record of this case, based on two disputed issues of fact: did the policy result in actual viewing that was more than

incidental or inadvertent, and, if so, were these specific Defendants legally responsible for the viewing? Plaintiff relies on the testimony of five class members, the videos themselves, and testimony by a former WCC officer to support her position.

Defendants, in turn, provide testimony from eleven officers to the effect that male guards handling videotaping did not routinely view female inmates during searches. Moreover, Defendants argue, any viewing that did occur was incidental and therefore insufficient to create a pattern or practice of unconstitutional conduct for which these Defendants would be liable.

On Plaintiff's second theory, if this case went to trial, Defendants might have their work cut out for them. The notion that a male officer could successfully perform the job of videotaping a female inmate's strip search (and keep the camera focused on the neck up as the policy required) without actually observing the search seems, to put it mildly, dubious. The practical demands of the task, keeping the camera steady and trained on the correct location in the cell,

would make this argument a hard sell to a jury. Of course, as the court has already noted, the degrading exposure of the female inmate placed in this position should have made the constitutional violation inherent in this practice manifest to Defendants. Nevertheless, to the extent that Plaintiff offers actual viewing as a basis for her claim of a violation of § 1983, the record contains sufficiently documented disputed issues of fact to render summary judgment inappropriate on this alternate theory.

IV. CONCLUSION

Managing a correctional facility is a uniquely difficult task, and Defendant Sheriff Michael J. Ashe Jr., has a well deserved reputation not only for highly competent administration but for sensitivity to the rights and the welfare of the inmates he is responsible for. The hallmark of his long tenure as Sheriff has been scrupulous attention to the dignity of every inmate, consistent with the operational requirements of the particular facility.

Unfortunately, in this case a misjudgment occurred resulting in a policy that clearly transgressed the

Constitution and injured the plaintiff class. For this reason, Defendants' Motion for Summary Judgment (Dkt. No. 156) is hereby DENIED, and Plaintiffs' Motion for Summary Judgment (Dkt. No. 171) is hereby ALLOWED on the issue of liability.

By September 9, 2014, Plaintiff shall submit a proposed schedule to address the questions of potential equitable relief and monetary damages. If Plaintiff's proposal is not assented to, Defendants may submit their counter-proposal by September 23, 2014.

It is So Ordered.

/s/ Michael A. Ponsor
MICHAEL A. PONSOR
U. S. District Judge

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF CORRECTION

103 DOC 506

SEARCH POLICY

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| MASSACHUSETTS DEPARTMENT OF CORRECTION | POLICY DEVELOPMENT AND COMPLIANCE UNIT |
| SEARCH POLICY | 103 DOC 506 |

PURPOSE: The purpose of this policy is to establish internal Departmental Procedures for searching person(s) and/area(s) within the legal boundaries of each institution. Searches are conducted to detect and prevent the introduction of contraband, recover missing or stolen property, to prevent escapes and other disturbances.

REFERENCES: M.G.L. Chapter 124, Section 1 (a), (b) and (q)
DPH Drug Destruction Protocol

APPLICABILITY: Staff/Inmates **PUBLIC ACCESS:** Yes

LOCATION: DOC Central Policy File
Institution/Superintendent Central Policy File

RESPONSIBLE STAFF FOR IMPLEMENTATION AND MONITORING OF POLICY:

- Director of the Policy Development and Compliance Unit
- Superintendents

EFFECTIVE DATE: 05/17/2014

CANCELLATION: This policy cancels all previous department policy statements, bulletins, directives, orders, notices, rules and regulations regarding planning which are inconsistent with this policy.

SEVERABILITY CLAUSE: If any part of this policy is for any reason held to be in excess of the authority of the commissioner, such decision will not affect any other part of this policy.

506.01 SUPERINTENDENT'S SEARCH AUTHORITY

The superintendent or his/her designee may order the search of any person entering or confined in an institution, in or on state property, including parking areas, in order to ensure the security and safety of that institution, its inmates, employees, and visitors.

Staff, inmates and visitors shall be notified in writing (e.g., handbooks, posting, etc.) of the general institution policy regarding searches and items considered to be contraband.

506.02 DEFINITIONS

Reasonable Suspicion - Reasonable suspicion exists if the facts and circumstances known to a staff member warrant rational inferences by a person with correctional experience that a person is engaged in, attempting, or about to engage in criminal or other prohibited activities, including possession of prohibited objects. Reasonable suspicion may be based on:

- i Observations by staff;
- i Reliable information, even if confidential;
- i A positive reading by a metal detector or other electronic device;
- i Finding contraband or indication of contraband during the search of a staff member's belongings.

Anonymous information cannot be the basis for reasonable suspicion without reliable corroboration. "Hunches," "gut feelings," or "mere suspicion" do not meet the reasonable suspicion standard.

Staff - For purposes of this policy, the term "staff" includes DOC employees, vendors and volunteers.

Strip Search - A search in which a person removes all clothes. A strip search may include a visual inspection of a person's oral, anal, or vaginal cavity. This also includes a thorough search of all of the individual's clothing while it is not being worn.

Pat Search - A clothed search of an individual limited to the pressing of palms of the hand against the outer surface of an individual's clothing, and examination of all pockets, shoes, caps and hairpieces. It does not include the removal of any of the person's clothing except removable outer garments (e.g. cardigan sweaters, blazers, suit jackets, coats).

506.03 INSTITUTION SEARCH PLAN

1. Each superintendent shall develop and annually update an institution search plan which will include frequent unannounced searches of inmates, inmate quarters and every other area of the facility as often as necessary to ensure the safety and security of the facility. Searches are conducted for the following reasons:
 - A. To prevent the unauthorized introduction of contraband to include weapons, electronic devices and other dangerous items into an institution.
 - B. To detect the manufacture of weapons, escape devices, etc. to prevent against escape or other disturbances.
 - C. To discover and suppress trafficking between inmates as well as between employees and inmates, and inmates and visitors.
 - D. To discourage theft and trafficking in institution stores and property.
 - E. To check malicious waste or destruction of state property.
 - F. To discover hazards to health and safety that may go unnoticed during a more routine inspection.
 - G. To recover missing or stolen property.
 - H. To discover suicide and homicide attempts or potential suicide and homicide attempts by detecting excess items such as shoelaces, metal, plastic bags, medications, etc., within an inmate's cell/room. When searching an inmate's cell/room his/her mental status should be considered.
2. Institution search plans shall include the following:
 - A. Medium and Maximum Security Facilities:
 - I. Frequency of Searches

Housing Units- All cells/bed areas shall be searched at a minimum of once per month.

Non Housing/common areas (inmate access) - All non-housing/common areas that have routine access by inmates shall be searched at a minimum of once per month, i.e., library, gym, work areas, etc.

Non housing areas - All non-housing areas that are not routinely accessible to inmates may be searched at a minimum of once per quarter.

B. Minimum and Pre-release Facilities:

I. Frequency of Searches:

Housing Units - All inmate rooms/bed areas shall be searched at a minimum of once per quarter.

Non Housing/common areas - All non housing/common areas shall be searched at a minimum of once per month.

Inmates - All inmates shall be strip searched and pat searched at a minimum of once per quarter. These searches are above and beyond those searches that occur on a routine basis.

C. All facilities:

I. Departmental Property List

This list shall be attached to the institution search plan. All items not listed shall be considered contraband.

II. Reporting

The superintendent must also establish standard reporting periods for cyclical searches.

III. Metal Detector Guidelines

Each superintendent shall develop institutional procedures respecting the use of hand-held and walk-through metal detectors in order to safeguard against the risk posed to individuals with automatic implantable cardioverter defibrillator and/or pacemakers.

At a minimum, the following sign shall be posted permanently in any institutional area where such searches are commonly done:

"Use of hand-held and walk-through metal detectors may interfere with the operation of an automatic implantable cardioverter defibrillator and/or pacemaker. Notify staff if you have such a device and an alternative search procedure will be used."

3. A tracking system to allow staff review of what searches have been conducted to date and to plan for the assignment of future searches, of areas or inmates, in advance, as appropriate.
 - A. The Schedule Cell Searches screen should be utilized to schedule specific cell or bed searches, to schedule cells that are still outstanding for the month (or quarter for Minimum and Pre-release facilities), or to use IMS to randomly schedule a selected number of cells to be searched. The Schedule Cell Searches (Auto) screen should be utilized to automatically schedule cells or beds to be searched for a specified time period and frequency by shift.
 - B. Common area searches shall be scheduled utilizing the Schedule Common Area Searches screen.
 - C. Inmate searches for Minimum and Pre-release facilities shall be scheduled utilizing the Schedule Inmate Searches screen.
 - D. The tracking system shall ensure that no particular area of the facility is either ignored or over saturated with searches.
4. A system by which search results are entered into the IMS database.
 - A. The results of all prescheduled searches shall be documented in the Cell Search Results, Common Area Search Results, or Scheduled Inmate Results screens, as applicable.

NOTE: All fields must be completed within the IMS Search Results screens (the only exceptions being the search comments and items confiscated areas if the search results were negative).

B. The results of unscheduled inmate searches shall be documented as follows:

I. Routine random inmate searches (i.e. searches of random inmates after a meal period, searches of inmates returning from outside work crews, etc.) need not be normally documented. However, if during the course of a routine random search contraband is discovered, the information shall be documented in the Unscheduled Inmate Search Results screen.

II. Unscheduled inmate strip searches of Minimum and Pre-release inmates conducted in addition to those required by 103 DOC 506.02 (B) shall be documented in the Unscheduled Inmate Search Results screen.

NOTE: The routine random search type (pat search or strip search) of the group must be entered in the "Unscheduled Searches" section of the screen. If the search type for the group is identified as a pat search and a particular inmate is subsequently strip searched, the 'strip' flag shall be checked in the "Inmates Searched" section of the screen.

III. Unscheduled searches of common areas (i.e. searches of the visiting room before and after visits, yard area searches prior to opening the yard, etc.) shall be documented in the appropriate IMS Activity Log.

C. Searches of staff members and visitors (i.e. search of the day, etc.) shall be documented in the appropriate IMS Activity Log or logbook.

5. Posts for routine searches shall be identified in the facilities procedures and will include areas that require the searching of inmates, visitors, and staff. The plan should also cite the strategic advantages and purpose for

such post assignments duties, including the type of search technique generally employed.

506.04 STRIP SEARCHES

1. Strip Searches of Inmates -

Strip searches should be employed, when necessary, for the close scrutiny of an inmate's person in determining if that inmate is carrying an item(s) considered to be contraband. Searches are to be conducted in a professional and respectful manner and in the least intrusive manner possible, consistent with security needs.

Strip searches shall be employed for routine security checks or when there is a specific suspicious incident that would indicate that an inmate is perhaps carrying contraband.

Searches or physically examining a transgender or intersex inmate for the sole purpose of determining the inmate's genital status shall not be permitted. If the inmate's genital status is unknown, it may be determined during conversations with the inmate, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.

Inmates identified as having gender identity disorder shall be identified as the gender of the facility in which they are housed. All searches shall be conducted accordingly.

Cross-gender strip searches or cross-gender visual body cavity searches shall not be conducted except in exigent circumstances or when performed by medical practitioners. Should such a situation arise, permission from the superintendent must be obtained prior to the search. The search must be documented in writing through a confidential incident report.

Specific situations in which strip searches may be employed, include but are not limited to:

- a. entrance or exit from a secure perimeter and area;
- b. before and after court, medical trips, or visits;

- c. after the detection of an alleged disciplinary infraction; when custodial staff have reason to believe a person may possess contraband;
- d. after an escape or attempted escape;
- e. prior to placement in segregation from the general population;
- f. routine searches of housing or work areas;
- g. transfer to/arrival at a new institution.

Note: When strip searching an inmate, make notes on observations of tattoos with sketches if possible and send information to your institution's inner perimeter security unit. Pictures of the tattoos shall be obtained and the Marks, Scars, Tattoo screen in IMS shall be completed, if not previously documented on the screen.

2. Authorization for Strip Searches of Staff -

- A. The Officer in Charge must be able to describe the subject's specific behavior(s) and other information supporting the inference of reasonable suspicion. The Officer in Charge should immediately consult with the superintendent of the facility when considering whether a strip search is justified based on reasonable suspicion. The Officer in Charge shall review the information and circumstances with the superintendent. If a superintendent believes that there is reasonable suspicion for a strip search of a staff member (i.e., a DOC employee, vendor or volunteer) to occur, s/he shall notify the Assistant Deputy Commissioner of the Northern or Southern Sector, as appropriate. The subject should remain under direct observation until the strip search occurs.
- B. A comprehensive review by the Assistant Deputy Commissioner of the Northern or Southern Sector, depending on the facility, and the Office of Investigative Services and/or the Office of Internal Affairs, depending on the case, verifying reasonable suspicion, will result in a request to the Deputy Commissioner of Prisons for approval of the actual strip search on grounds of reasonable suspicion.
- C. The Deputy Commissioner of Prisons, or his/her designee, must then make a determination of reasonable suspicion, based upon a review of the specific facts

in each situation and rational inferences drawn from the facts. The Deputy Commissioner of Prisons shall brief the Commissioner prior to the strip search of the staff member based on a determination of reasonable suspicion, or as soon thereafter as reasonably possible.

D. Body cavity searches of staff members are prohibited.

3. Procedure for Strip Searches of Staff Members When Reasonable Suspicion Exists

A. Strip searches of staff members may only be conducted when authorized by the Deputy Commissioner of Prisons or his/her designee, after a determination of reasonable suspicion that the staff member is engaging, or attempting to engage, in, prohibited activities, including possession of prohibited objects.

B. Each Superintendent shall develop a confidential report containing the documentation of sources/evidence relied upon to determine reasonable suspicion.

C. The staff member shall be offered union representation prior to the strip search. The staff member may request that a same sex union representative remain present during the strip search.

D. The staff member may not return to the parking lot prior to being searched.

E. The entire situation shall be recorded using audio recording. Date, time, place of search, all names and titles of individuals involved and role in search; circumstances justifying the search; and search results shall be stated, and the OIS/IAU officer supervising the search shall give verbal instructions and dictate the progress of the search.

F. Staff members must sign a Consent/Refusal form to be searched and audio-recorded.

G. If the staff member refuses to comply with the search or refuses to sign the Consent/Refusal form, said

staff member will be immediately escorted from DOC property and not allowed on any DOC property, pending the results of the investigation. The staff member should receive notice that the consequences of refusal may result in immediate disciplinary action.

- H. Strip searches by members of the opposite sex shall not be permitted. If a ranking female supervisor is not available, the Deputy Commissioner of Prisons shall designate a female employee (trained in strip search procedure and holding a higher grade than the staff member being searched) from another facility or division to conduct the search. Strip searches must be supervised only by an Office of Investigative Services supervisor or Internal Affairs Unit supervisor, from another work site. All employees conducting strip searches must have received training in the Department's strip search policy from the Training Academy.
- I. No more than two employees, from OIS/IAU, trained in the Department's strip search policy may be present as part of the strip search team, in addition to the union representative of the staff member being searched. The presence of additional strip search team members must be approved by the Deputy Commissioner of Prisons.

4. Refusal by Staff to a Strip Search

Upon learning that a staff member refuses to submit to or comply with an authorized search procedure, the supervisor from OIS/IAU must inform the staff member of the potential consequences of refusal. The strip search team may not use force to require staff members to submit to searches unless there is evidence of an imminent threat of serious personal injury, or other result that imminently jeopardizes the safety, security, or orderly operation of the facility, or threatens public safety (e.g. a concealed firearm or other weapon). If the staff member refuses to comply with/consent to such search, said staff member shall be immediately escorted from DOC property and not allowed on any DOC property, pending the results of the investigation. Refusal may result in immediate disciplinary action.

5. Role of Office of Investigative Services ("OIS")/Internal Affairs Unit ("IAU") in Strip Searches of Staff Members

OIS/IAU shall develop an action plan for each site to include:

- i Location of search (to be conducted in a private area);
- i Time of search;
- i OIS/IAU staff trained/approved to conduct strip searches on staff members;
- i Males shall search males and females shall search females;
- i There shall always be two same sex strip search team employees present during searches;
- i Staff members must sign a consent log before the strip search and audio-recording begins;
- i OIS/IAU shall maintain the consent log of staff member strip searches.

6. Recommended Strip Search Techniques for Inmates

- A. Strip searches of individual inmates should be conducted in relative privacy usually by two security personnel. Strip searches by members of the opposite sex shall not be permitted, except under extraordinary or emergency situations.
- B. In conducting a strip search, the following procedures should be followed: the inmate should remove his/her clothing, place each article in one location and then move at least five feet from that location.
- C. The custodial staff member should conduct a visual examination of the nude inmate rendering as much dignity to the situation as possible. During said search the staff member should verbally instruct the inmate through the strip search procedure to include, but not be limited to: hair (inmates shall be directed to remove hair accessories, hair extensions/weaves/wigs, curlers, barrettes, hats, etc.) ears, nose, hands, fingers, under the tongue, armpits, navel, pubic region, rectum, vaginal area, inner portion of the legs, between the legs, between the toes, and soles of feet. Inmates will also be instructed to lift excess skin or body parts (i.e., breasts, penis, scrotum, etc.) for visual inspection. The inmate should not be instructed to touch or penetrate the anal or vaginal areas. Female inmates

shall be instructed to remove any sanitary napkins or tampons. A replacement shall be given to the inmate at the conclusion of the strip search. Make note of any tattoos, puncture marks, or bruises. If band-aids are detected, have the inmate remove them. As part of the strip search, the inmate shall be instructed to turn around in the standing position, and spread their legs in such a way as to allow for visual inspection of the anal and vaginal area. The inmate shall be instructed to bend forward at the waist and spread their buttocks.

If there is suspicion that the inmate is concealing contraband, in addition to the above-noted procedures, the officer shall instruct then inmate to squat down and cough forcibly.

Any casts, bandages, or artificial limbs shall be scanned by a non-intrusive device.

- D. The inmate should be given verbal instruction, on removing the false teeth so item(s) and mouth area can be visually inspected, or on any other articles to be removed to expedite the situation.
- E. An examination of the inmate's clothing should follow, including: turning clothing inside out, checking linings, cuffs, waistbands, seams, patches, collars, and shoe heels, soles and interior. Eyeglass cases, watches and any other item found on the inmate's person shall be checked for contraband.

7. Intrusive body cavity search procedure:

- A. There will be no intrusive body cavity searches; manual or instrumental, for security reasons unless all of the following have occurred.
 - 1. Probable cause has been determined through reasonable belief that the inmate is carrying contraband or other prohibited material.
 - 2. Authorization has been given by the superintendent.
 - 3. Search warrant has been obtained.

Note: The inspection shall be done by medically trained health care personnel.

8. Rectal exams performed for medical reasons will be performed for medical cause, in private, by medical personnel, with consent and with the standard medical privacy and confidentiality in effect.
9. Fecal search procedure: The following procedure is to eliminate or minimize the employees' exposure to all body substances while carrying out his tour of duty.
 - A. The following equipment shall be supplied to conduct the fecal search:
 1. Disposal latex gloves.
 2. Disposable resistant surface barrier.
 3. Plastic or wooden utensils.
 4. Puncture proof fluid resistant container with biohazard label.
 5. Red plastic bag for garbage.
 6. Antimicrobial soap.
 7. High level disinfectant for cleaning work surface.

PROCEDURE:

1. Cover work surface with protective padding.
2. Glove or double glove if preferred.
3. Using utensils cut or mash excreta as needed.
4. If evidence is found, it is placed in fluid resistant container with biohazard label.
5. When done, roll up protective padding with all contents inside and dispose infectious waste.
6. Take gloves off and wash hands with an antimicrobial soap.
7. Spray surface with high-level disinfectant, wipe it down and spray again to leave a residue on surface.

506.05 FULLY CLOTHED SEARCHES (PAT SEARCH)

1. Pat Searches of Inmates-

General - Fully clothed searches (pat search) should be employed for the relatively quick scrutiny of an inmate's person. Searches are to be conducted in a professional and

respectful manner and in the least intrusive manner possible, consistent with security needs. Situations where fully clothed searches may be employed include, but are not limited to: egress and ingress to housing units, work sites, dining areas and recreation areas. Cross-gender pat searches of female inmates shall not be permitted absent exigent circumstances. Inmates identified as having gender identity disorder shall be identified as the gender of the facility in which they are housed. All searches shall be conducted accordingly.

2. Recommended Fully Clothed Search Techniques

- A. When searching a group of inmates, keep searched and unsearched inmates separate. Prior to the actual search, the inmate shall be instructed to remove outer garments such as jacket, sweater, hat, gloves, etc. Then with arms extended to the side at a right angle to the inmate's torso and feet apart shoulder width, the search should commence.
- B. Approaching the inmate from the rear, the custodial staff member shall remove all contents from the inmate's pockets, then custodial staff member will start at the bottom of the head, using both hands, touch or pat a direct course across the bottom of the arms to the armpits and then proceed to the bottom of the shoulders.
- C. Returning hands to the original starting position, pat the shoulders and then down the back and sides to the belt line. Search the belt line, all pockets and then up to the top of the chest area.
- D. At the back of the waistline, proceed down the back and sides of the legs to the shoe tops. Check the shoe tips, cuffs and socks and then the front and inside of the legs to the shoe tops. Check the shoe tips, cuffs and socks and then the front and inside of the legs up to the groin area.
- E. Observation should be made of the hair, ears, mouth, as well as any article carried or worn by the inmate.
- F. Special care should be exercised in the examination of necklaces and jewelry.

3. Authorization for Non-Emergency Pat Searches of Staff beyond the search of the day -
 - A. The Officer in Charge must be able to describe the subject's specific behavior(s) and other information supporting the inference of reasonable suspicion. The Officer in Charge should immediately consult with the superintendent of the facility when considering whether a pat search is justified based on reasonable suspicion. The Officer in Charge shall review the information and circumstances with the superintendent. If a superintendent believes that there is reasonable suspicion for a search of a staff member (i.e., a DOC employee, vendor or volunteer) to occur, authorization may be given. The subject should remain under direct observation until the pat search occurs.
 - B. The staff member shall be offered union representation.
 - C. The staff member may not return to the parking lot prior to being searched.
 - D. If the staff member refuses to comply with the search, said staff member will be immediately escorted from DOC property and not allowed on any DOC property, pending the results of the investigation. The staff member should receive notice that the consequences of refusal may result in immediate disciplinary action.
 - E. Pat searches of any staff shall be witnessed by a Shift Commander.
 - F. Pat searches shall be conducted by staff holding a higher grade than the staff member being searched and are to be conducted in a professional and respectful manner and in the least intrusive manner possible, consistent with security needs.
 - G. Cross gender pat searches of staff shall not be permitted.
 - H. All searches will be appropriately documented in a confidential report.

506.06 INMATE HOUSING AREA SEARCHES

1. General - In conducting searches of housing areas as with other types of searches two basic objectives are sought: identification of contraband and the detection of future escape attempts. As a result, efforts should be made to be thorough in conducting searches of these areas. Care should be taken not to damage an inmate's property or unnecessarily disarrange same. Facilities shall document

all housing area searches in the IMS Cell Search Results and Common Area Search Results screens. Mechanisms shall be established for tracking all types of searches by the designated supervisor, e.g., utilization of the IMS search reports, Morning Report, etc.

2. Searching cells is a time consuming operation, so it is important to proceed systematically. Searches of cells having up to three bunks shall entail the search of the entire room, including all bunk areas each time the room is searched. For multiple bunk and dormitory areas consisting of four or more bunks, facility procedures shall detail the approach to be taken, i.e., the number of bunks and which areas will be searched at one time and should consider the manageability of the task. The following is recommended techniques for searching housing areas.
 - A. Staff should search cells the same way each time until it becomes automatic; this will promote efficiency and thoroughness.
 - B. Remove the inmate from the cell/area, strip search and escort him or her to another secure area.
 - C. Before entering the cell, secure the cell door in the open position to avoid being accidentally locked in the cell.
 - D. Before searching the cell, look at the items that are about to be searched. See if anything is out of the ordinary. If so examine that item carefully.
 - E. Start the search with the bed and use it as a workbench when finished searching it. Remove the mattress and other bedding and examine above and below the bunk and in any crevices between the bunk frame and the wall. Look under the bed and check for items suspended from springs or fastened to the bed frame. With the mattress removed, examine the upper side of the bed frame and springs. Examine the bed frame supports to ensure that they have not been partially sawed through for easy removal.
 - F. Examine the mattress and pillows by rolling them lengthwise. Check the sides and ends for cuts and tears in the covering. Any indication of re-sewn seams calls for a more careful examination, including

opening the seams for extensive probing. A hand held metal detector is very effective in finding metallic contraband in these items.

- G. Examine the remaining bedding. Pay special attention to any seams or double thickness of cloth.
- H. Search the foot/wall locker next, one shelf at a time, and return all items to their original positions. Examine all surfaces of the locker. Contraband may be taped to the underside of shelves or concealed in shelf ledges, supports, legs, or false sides or backs of the shelves. Also, examine any paper used to line shelves.
- I. Check all clothing (including dirty laundry) piece by piece. Pay special attention to seams, double thickness of material, and pockets.
- J. Open and check every item (letters, books, magazines, toilet articles, and so forth)
- K. Examine coat hangers; certain types of plastic hangers are excellent places to conceal contraband.
- L. Check all footwear, including linings, soles, and heels: feel inside shoes all the way to the toe and remove inner soles and any removable arch supports.
- M. Shake talcum powder containers and squeeze toothpaste tubes. Remove a small contents of commonplace items to check for illegal substitutions. Check to see that cakes of soap have not been hollowed out.
- N. Look in, under, and behind the wash basin and in the drain, overflow, and gooseneck water seal (if accessible). Contraband may be suspended in the pipes or hollows on wires or threads, or stuck on with glue or tape.
- O. Examine the toilet carefully, inside and out. Check under the base of the toilet, behind the toilet where it connects to the wall, and the toilet drain.
- P. Examine the toilet paper holder and all rolls of toilet paper to make certain that currency or other contraband is not rolled up within the roll.

- Q. If there are electrical outlets or other similar access panels in the room, remove them and inspect the cavities.
- R. If there are appliances, examine them carefully. Remove backs if applicable, check battery wells, examine electrical cords, and confiscate items with tampered property seals or appear to have been altered so the insides can be searched by designated individuals prior to return to the inmate.
- S. Carefully remove any pictures from frames and examine the frame and backing material. Remove all wall coverings to see if there are any cuts in walls.
- T. Carefully scrutinize the walls, ceiling and floor for indications of sawing, digging, cutting, defacing or other possible signs of an escape attempt.
- U. Look for indications that mortar has been removed and replaced with a substitute. If the concrete is of poor quality, it is easy for the inmate to gouge out holes as hiding places for contraband.
- V. Check heat or ventilation duct openings for indications of tampering or concealed contraband. Look for strings, thread, or wire holding something suspended in the duct.
- W. Look around interior and exterior window frames and the outside window ledge. If ledges have a covering of any sort, be sure that nothing is concealed beneath them.
- X. Examine window bars for evidence of tampering. Be alert for any wires, strings, or thread fastened to the bars and suspended outside the window.
- Y. Carefully examine the cell door or grille, and the wall in which it is set. Pay particular attention to the areas above eye level. Examine the bars and cell door locking device for signs of tampering, and check the area with the door in both the open and closed positions.

506.07 NON-HOUSING, SHOP, PROGRAM AND ACTIVITY AREA SEARCHES

The following is recommended search techniques for these areas of a correctional facility:

- A. Common-areas of the institution (including areas in housing units, shops, and program areas) should be inspected at a minimum of monthly.
- B. When performed by security staff, searches in other areas of the institution ideally should be conducted in the company of the department head or manager of that section. This facilitates access to otherwise secured areas and assists in advising the staff conducting the search on questionable items.
- C. Visiting areas (including trash, furniture, shakedown areas, and toilet areas) should be thoroughly searched before and after visits. Trash removal should be completed by staff only.
- D. An element of the daily perimeter checks should include searching for items hidden next to or under fences etc.
- E. Yard areas should be inspected daily prior to opening. An element of the search plan should include that all yards on a monthly basis are scanned by a metal detection device to locate buried weapons or other contraband. Yards adjacent to roadways should be carefully searched for items thrown over the wall/fence.
- F. All institutional buildings when searched should be checked for evidence of tunnels.
- G. The vicinity of all visitor traffic points should be searched daily to discover items that are hidden or thrown by visitors that are intended for inmates. Visitor holding areas and gates should be scrutinized carefully.
- H. The ductwork and plenums (air chambers) that carry air to and from the building and into individual rooms, should be searched, not only for breaches in security, but for signs that they are being used as places of concealment for contraband.

- I. Tunnels, utility corridors, and plumbing chases should be searched.
- J. Areas outside the secure perimeter should be searched for contraband to help stem the flow of contraband into the facility.
- K. Shops, vocational training and industrial areas have a wide range of possible contraband hiding places; vents, block and brick walls, workbenches, machinery, bins, toolboxes, covered openings, elevator shafts, outbuildings, lockers and staff only areas.

506.08 VEHICLE AND SUPPLY SEARCHES

- 1. All vehicles and supplies entering and exiting an institution within a secure perimeter shall be thoroughly searched in accordance with 103 DOC 501, Vehicle Trap.
- 2. Vehicle Searches (outside the secure perimeter):
 - A. It is recognized there may be instances when it is necessary to conduct searches of all vehicles on or entering institution property outside the secured facility. For the purpose of these searches the following guidelines must be adhered to.
 - B. All vehicle entrances to institutional property must be clearly marked with signs posted in both English and Spanish, stating that all vehicles entering upon correctional institutional property are subject to a search (use of K-9 patrols, etc).

Note: All visitors refusing to comply with the search will be denied visiting privileges for that day. (Should be adapted to the institutional visiting rules and procedures).

- C. For the authorization to search vehicles not owned by the department of correction, on institutional property, one of the following requirements must be met:

The owner/operator of the vehicle to be searched, must consent and sign to the provisions according to Permission to Search Waiver. (See Attachment A)

In cases where the owner/operator refuses to submit to the search, the following actions maybe taken:

- D. If the search requested, is without probable cause, the owner/operator may refuse the vehicle search and shall be permitted to leave the property.
- E. If the search requested, is based upon probable cause, the following actions will be taken:
 - 1. Consultations with the district attorney's office or attorney general's office is recommended.
 - 2. If the vehicle to be searched cannot be secured, and if the suspected items would be considered to be hazardous in nature, or the immediate seizure is required to preserve evidence that might otherwise be destroyed, a search warrant would not be needed. Once the seizure of a vehicle has been authorized the department of correction seizure inspection report and vehicle inventory sheet be completed. A copy of the D.O.C. seizure inspection report must be maintained at the institution and one copy shall be given to the owner of the vehicle. (See Attachments B and C).
 - 3. If the vehicle to be searched can be secured, and the evidence can be preserved a search warrant must be attained. Only officers appointed as Special State Police Officers under the provisions of M.G.L. c. 127, § 127, shall complete the affidavit required to apply for a search warrant. Once this search warrant has been approved and when the seizure of a vehicle has been authorized the department of correction seizure inspection report, vehicle inventory sheet must be completed.

A copy of the D.O.C. seizure inspection report must be maintained at the institution and one copy shall be given to the owner of the vehicle (see Attachments B and C).

Note: This affidavit shall be made readily available at the institutions. In the event that the affidavit is not available the local state police can provide you with the affidavit, application and search warrant form to be filed

under the general laws chapter 276, §§ 1-7. When applying for a search warrant, the warrant must be based on probable cause, the application must provide in detail: reasons for warrant, including property and places to be searched and the person/persons to be searched.

3. Parking Lot Areas:

The use of K-9's and patrol officers to conduct random searches of vehicles in institutional parking areas is permitted. These searches are to insure that vehicles are locked and no valuables are left in the open according to D.O.C. visiting policy. In the event, a certified drug K-9 unit reacts to a vehicle, or through the officer observation, may provide probable cause. The owner/operator will be requested to submit to a search of his/her vehicle(s). If the request of the search refused, the following procedures shall be followed is 506.08 #2, (D) (E).

506.09 CELL PHONE AND CONTRABAND INTERDICTION SEARCH PLAN

Superintendents of Minimum/Pre-Release facilities shall conduct at least quarterly searches of random areas of the facility to include housing unit(s) and non-housing areas such as program space and inmate work areas. Results shall be entered into the IMS search results.

Superintendents of Minimum/Pre-Release facilities shall request canine from Special Operations to assist in at least quarterly searches for the detection of contraband. These searches will be random and based on a schedule established by Special Operations Division. An incident report via the IMS system shall be generated to document the at least quarterly search.

Superintendents of minimum and pre-release facilities shall ensure parking areas that are used by inmate visitors are searched after all visiting periods and documented in the IMS system search results.

All CWC vans, equipment, containers and other items that may conceal contraband, shall be thoroughly searched on a daily basis.

The Superintendent of all facilities shall ensure that any area that facility work crews have access without direct supervision

is searched bi-weekly and documented in the IMS system search results.

Superintendents shall ensure that all cell phone finds are posted on the intranet.

506.10 SEIZURE OF CONTRABAND/EVIDENCE

A. When searches result in the seizure of contraband/evidence to be used for the purpose of evidence in either disciplinary proceeding or prosecution the following procedure must be followed:

1. The officer who seized the evidence must seal the evidence in an evidence bag with an evidence custody form (Attachment D) attached to the bag.
2. Once the evidence has been tagged the evidence should be turned over to the custody of the assigned evidence officer to be logged and placed in the designated evidence locker. If the evidence was seized during times where the evidence officer is unavailable it will be placed in a secured area designed for the purpose of storing evidence until custody has been turned over to the evidence officer.
3. A disciplinary report or incident report shall be turned in to the shift commander prior to the end of that tour of duty by the officer in charge of the search. (see 103 CMR 430, Disciplinary Actions)
4. If the evidence / contraband is of a perishable nature (food, suspected home brew etc.) and needs to be disposed of, pictures shall be taken to serve as documentary evidence and shall be stored / filed along with the evidence custody form.
5. Any monetary evidence discovered / seized shall be forwarded to the institution treasurer who will provide a receipt of the money which will serve as documentary evidence and shall be stored / filed along with the evidence custody form.

506.11 STORAGE OF CONTRABAND/EVIDENCE

The following guidelines shall be utilized to ensure secure storage and accountability of evidence and seized controlled substances.

- A. The superintendent shall designate one staff person to be the evidence officer and another staff person to be the assistant evidence officer.
- B. All evidence including common area finds shall be stored in a locked cabinet within a secure room with access to the room being limited. Access to the cabinet shall be limited to only the evidence officer and the assistant evidence officer.
 1. The institution shall take precautions to ensure that all evidence is safely stored from water and fire damage.
- C. Evidence/contraband considered a controlled substance and or associated paraphernalia shall be stored in a locked cabinet within a secure room with access to the room being limited. Access to the cabinet shall be limited to only the evidence officer and the assistant evidence officer. The cabinet shall have two separate locks on it. The evidence officer maintains the key to one lock and the assistant evidence officer maintains the key to the other lock. These keys shall not be given to any other persons or interchanged between the evidence officers. This method insures that two persons are present each time the cabinet is opened.
 1. Suspected controlled substances found when the evidence and assistant evidence officer are not available shall be placed into a fixed steel drop box, which is secured by two locks. Access to the locks shall be restricted. The evidence officer shall be issued the key to access one lock and the assistant evidence officer shall be issued the key to access the other lock. When both officers are present the substance shall be removed and placed into the evidence locker.
 2. All drops made into the box and items removed shall be documented with the staff name(s), date and time.

3. A bound log shall be maintained in a secured location on ALL evidence including common area finds as well as controlled substances. Each item shall be logged and each entry should include:
 - Suspects name;
 - date of recovery;
 - location of recovery;
 - arresting and/or finding officers name;
 - detailed description of item;
 - case number;
 - inventory number;
 - storage location;
 - chain of custody;
 - disposition; and
 - logging officer's name.
4. Controlled substances shall be duplicated in a separate in/out log. This log shall be maintained on all controlled substance evidence and is to be stored inside the controlled substance cabinet. Any evidence that leaves the controlled substance cabinet for any reason (i.e., state police lab) shall be logged in and out in this log book.
5. Evidence submitted to the Crime Laboratory for analysis by the Drug Unit must meet the criteria set forth in Attachment I - Massachusetts State Police Drug Unit Submission Guidelines.
6. With each piece of evidence a separate "evidence custody form" (Attachment D) shall be filled out and kept with the piece of evidence.
7. Evidence shall be stored chronologically by year and evidence number to ensure easy accountability and access.

506.12 DISPOSAL OF EVIDENCE/CONTRABAND

1. Evidence not associated with any disciplinary or legal matter shall be maintained at the institution where it was recovered no longer than six months.
2. Final disposition of all evidence shall be approved in writing by the director of security. Final disposition of evidence relating solely to a disciplinary or civil matter and not involving any possible criminal prosecution shall be approved in writing by the department's general counsel. All evidence related to a disciplinary matter shall be held for three years from the initial sanction date to ensure that no civil action has been brought against the department. Thus, evidence relating to a disciplinary matter that is less than three years from the initial disciplinary sanction date, shall not be submitted to the department's general counsel for approval. After the three year period has lapsed, then approval to destroy evidence through the general counsel shall be obtained. Final disposition of evidence relating to a criminal matter must be approved in writing by the district attorneys office. Once the DA's approval is obtained, the evidence shall be reviewed and approved by the general counsel to ensure no civil or potential civil litigation can be brought against the department.
3. Once approved, the evidence officer will return evidence to its rightful owner.
4. Evidence that is considered a controlled substance will be transported to a regional site for disposal with all accompanying documentation. All control substance evidence transported to the regional site must be accompanied with the required disposal forms filled out as required by the Department of Public Health's drug destruction protocol.
5. Disposal of evidence will be conducted regionally. Each region will have one facility designated as the regional evidence site. There are three regions which are as follows:

| REGION 1 | REGION 2 | REGION 3 |
|----------|----------|----------------|
| MCI-CJ | OCCC | MCI-S |
| MCI-CJ | OCCC | SHIRLEYMED/MIN |
| MCI-N | BSH | NCCI |
| BSCC | MTC | MCI-C |
| PCC | MASAC | NECC |
| MCI-F | PLYMOUTH | SBCC |
| SMCC | | |
| LSH | | |
| BPRC | | |

6. The evidence officer at the regional site will be responsible for the final disposal of evidence (for their institution as well as for the institutions within their region). Disposal of controlled substance evidence will be arranged through the Massachusetts Food and Drug Administration. All efforts should be taken to dispose of any evidence transferred to the regional sites within six months of transfer. If held longer than six months, evidence of disposal requests shall be maintained on file.
7. The evidence officer at the regional site, after being contacted by a disposing facility, shall accept all evidence approved for disposal and shall sign a receipt acknowledging the change of custody. This receipt will then be maintained on file at the sending institution. The evidence officer of the sending institution shall be responsible for all appropriate documents including log entries.
8. The regional evidence officer shall be responsible for maintaining documentation on all evidence received and all evidence disposed. The regional evidence officer shall also submit an annual report to their respective assistant deputy commissioner detailing all evidence received and disposed.
9. The regional evidence officer shall ensure proper log notations are made on evidence disposal and the evidence custody documents shall be complete and kept on a permanent file.
10. Quarterly audits/inventories shall be conducted by a supervisory staff person, along with the evidence officers, of the entire evidence process to include all evidence

storage, disposal, logbooks, chain of custody forms, emergency drop box locations and accountability of all evidence at the facility. These audits shall occur at all facilities during the months of January, April, July and October and shall be documented accordingly in each logbook inspected.

506.13 CRIME SCENE SEARCH AND INVESTIGATION

1. When an incident occurs that may possibly result in criminal prosecution, the superintendent or his/her designee should be notified immediately after the incident has been contained or neutralized. Each superintendent shall ensure that the following procedures are adhered to as described in attachment E. Crime scene search and investigation should be conducted in such a manner so as to ensure the legal protection of the rights of the inmate(s) and the preservation of evidence for the commonwealth.

MASSACHUSETTS DEPARTMENT OF CORRECTION

PERMISSION TO SEARCH VEHICLE WAIVER

I, _____ have been informed by _____ and _____ who made proper identification as (an) authorized law enforcement officer(s) of the _____ of my CONSTITUTIONAL RIGHT not to have a search made of the vehicle(s) owned by me and/or under my care, custody and control, without a search warrant.

Knowing of my lawful right to refuse to consent to such a search, I willingly give my permission to the above named officer(s) to conduct a complete search of the vehicle(s) located at _____.

The above said officer(s) further have my permission to take from my vehicle, any letters, papers, materials or any other property or things which they desire for criminal prosecution in the case or cases under investigation.

This written permission to search without a search warrant is given by me to the above officer(s) voluntarily and without any reservations on the day of _____ 20_____, at _____.

Signed _____

Witness _____ Witness _____

Address _____ Address _____

Phone (H) _____ Phone (H) _____

Phone (B) _____ Phone (B) _____

MASSACHUSETTS DEPARTMENT OF CORRECTION
 VEHICLE INVENTORY SHEET

Institution _____
 O.I.C. _____
 Date _____ Time _____
 Location _____

OPERATOR'S NAME _____ D.O.B. _____
 OPERATOR'S ADDRESS _____ LIC. # _____
 REASON FOR INVENTORY _____
 OWNER'S NAME _____ ADDRESS _____
 VEH. MAKE _____ MODEL _____ YEAR _____
 REG. # _____ VIN # _____ COLOR _____

—
 PURSUANT TO DEPARTMENTAL POLICY, THE ABOVE MOTOR VEHICLES' CONTENTS WERE INVENTORIED AND BELOW IS AN INVENTORY OF ITEMS FOUND AND WHERE LOCATED.

TOP OF DASHBOARD _____ ABOVE VISOR _____
 GLOVE BOX OR CONSOLE _____
 FRONT FLOOR DRIVERS SIDE _____
 FRONT FLOOR PASSENGER SIDE _____
 FRONT SEAT DRIVERS SIDE _____
 FRONT SEAT PASSENGER SIDE _____
 BETWEEN SEATS _____
 REAR FLOOR DRIVERS SIDE _____
 REAR FLOOR PASSENGERS SIDE _____
 BEHIND REAR SEAT _____ TRUNK _____
 STATION WAGON CARGO AREA _____
 VAN CARGO AREA _____
 DAMAGE/OTHER _____

Driver's Acknowledgement: I have reviewed this report, received one copy, and acknowledge that it is a true and complete description of the auto's physical condition, inventory of items, and accessory items. I hold no one legally responsible for any missing items.

Signature _____ Date _____

DEPARTMENT OF CORRECTION
SEIZURE INSPECTION REPORT

NAME OF INSTITUTION: _____ Date of Inspection: _____

Time: _____ Number of Photos: _____

Insured's Owner's Manual: _____

Insured's Address: _____ Home Telephone: _____

Inspector's Name: _____ Site of

Inspection: _____ Plate No.: _____

Interior Color: _____ Year: _____ Make: _____

Model: _____ Color: _____

Vehicle Identification No.: _____

Odometer Reading: _____

ACCESSORIES AND OPTIONAL EQUIPMENT

AIR CONDITIONER _____ HIGH MOUNTED BRAKE LIGHT _____ AM/FM AM RADIO _____

- _____

CRUISE CONTROL _____ TRAILER HITCH _____ BUILT STEREO NO

YES IN

POWER BRAKES _____ VINYL TOP/ROOF _____ TAPE PLAYER _____

BRAND _____

POWER STEERING _____ SPECIAL MIRRORS - TYPE _____ BUILT IN

YES NO

POWER WINDOWS _____ AUTOMATIC TRANS. OVERDRIVE _____ C.D. PLAYER _____

BRAND _____

POWER LOCKS _____ MANUAL TRANS. 3 SPD 4 SPD 5 SPD

BUILT IN YES NO

POWER ANTENNA _____ SPECIAL ROOF _____ STEREO AMPLIFIER-

BRAND _____

TILT WHEEL _____ FACTORY INSTALLED YES NO YES BUILT IN

NO

TINTED GLASS _____ SPECIAL INSTRUMENTATION-TYPE _____ C.B.RADIO-

BRAND _____

REAR DEFROSTER _____ BUILT IN YES NO

REAR WIPER _____ RADAR DETECTOR-BRAND _____

OTHER SPECIAL OPTIONS OR ADDITIONS _____

ROOF RACK _____ CAR ALARM-

BRAND _____

BUCKET SEATS _____ ANTI-THEFT DEVICE-

TYPE _____

SPARE TIRE (OUTSIDE MOUNT) _____ AUTO RECOVERY SYSTEM-

TYPE _____

SPECIAL WHEELS _____ CAR PHONE _____

ANTENNA _____

SPECIAL HUB CAPS _____ CAR PHONE TRANSMITTER _____

SPECIAL TIRES-TYPE _____ CAR PHONE-BRAND _____

BUILT IN YES NO

MISCELLANEOUS PROPERTY FOUND IN VEHICLE

MISCELLANEOUS PROPERTY FOUND IN VEHICLE

CHECK DAMAGE, POOR CONDITION, AND MISSING PARTS BELOW

DAMAGED _____ RUSTED _____ DAMAGED _____ RUSTED _____ DAMAGED _____

| | | |
|--|-----------------------------|---------------|
| 01 FRONT BUMPER COVERS 15 | 08 DOOR RIGHT REAR | WHEEL |
| 02 REAR BUMPER WINDSHIELD | QUARTER PANEL LEFT REAR 09 | 16 |
| 03 FENDER LEFT FRONT SIDE GLASS LEFT FRONT | QUARTER PANEL RIGHT REAR 10 | 17 |
| 04 FENDER RIGHT FRONT SIDE GLASS RIGHT FRONT | HOOD PANEL 11 | 18 |
| 05 DOOR RIGHT FRONT LEFT REAR | ROOF PANEL 12 | SIDE GLASS 19 |
| 06 DOOR LEFT FRONT RIGHT REAR | TRUNK LID 13 | SIDE GLASS 20 |
| 07 DOOR LEFT REAR WINDOW 21 | GRILL 14 | REAR |
| WORN OR SOILED INTERIOR 22 DESCRIBE DAMAGE | | |

| | |
|---|--|
| <p>This above is a true statement of any existing damage, rust or missing parts as of this date. The undersigned certifies that this inspection report is true and complete and that I have seen and photographed the vehicle stated above.</p> <p>X..... Inspector's Signature</p> | <p>NO EXISTING DAMAGE, RUST OR MISSING PARTS.</p> |
|---|--|

DRIVER'S ACKNOWLEDGMENT: I have reviewed this report, received one copy, and acknowledge that it is a true and complete description of the auto's physical condition and accessory items, and I hold no one legally responsible for any missing items.

Person Returning Vehicle _____ Date _____
Witness _____ Date _____

Owner's Name _____ Owner's Address _____

Signature _____



Commonwealth of Massachusetts
Department of Correction
Evidence Custody Form

103 DOC 506 – Attachment D

| | | | | | |
|--------------------------------|--|--------------------|-----------------------------|---------------|--|
| Institution | | | | | |
| Suspects Name / No. | | Inventory # | | Case # | |
| Date / Time of recovery | | | Location of recovery | | |
| Recovered by | | | Logging Officer | | |
| Reason obtained | | | Storage Location | | |
| Evidence Description | | | | | |
| | | | | | |

| Chain of Custody | | | |
|-------------------------|--|--|-----------------|
| Date | Released by: (name / title) | Received by: (name / title) | Purpose: |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Final Disposition Authorization

The item(s) listed on this document are no longer required as evidence and may be disposed of.
 The disposal action shall be: _____

| | | |
|----------------------|-----------|------|
| Name / Title (print) | Signature | Date |
|----------------------|-----------|------|

Witness to Disposal

The item(s) listed on this document (was) (were) destroyed by the evidence officer by means of:
 _____ in my presence.

| | | |
|----------------------|-----------|------|
| Name / Title (print) | Signature | Date |
|----------------------|-----------|------|

Protection of the Crime Scene:

1. **Preservation of Life is the First Priority:**

- a. Radio for assistance.
- b. Ensure your own safety.
- c. Assume the assailant is still in the vicinity.
- d. Survey the area to ensure no further injury will occur, to inmates or staff responders.
- e. If there is any question of life, remove the victim(s) to medical care or have medical care brought to him/her.
- f. If a victims injuries are life threatening the shift commander shall ensure that an escorting officer is advised of the elements of a dying declaration and that one is sought (see attachment F).
- g. Life saving measures shall be started and continued even if the victim appears dead.
- h. Life saving measures need not be started if the victim is completely decapitated.
- i. In cases where preservation of life is not an issue Secure the Scene.

2. **Securing the Scene:**

- a. Isolate and contain the crime scene area.
- b. Make the crime scene as large as possible (you can always decrease but never increase)
- c. If warranted ensure the securement of any secondary crime scene.
- d. Remove all inmates from the immediate area inmates should be searched (check hands and body for blood or bruising).
- e. Keep them segregated from the other inmates. (Keep them apart from each other if practical)
- f. Assign one officer to identify each inmate and make a list of names or collect IDs.
- g. Do not allow **ANYONE** in until the investigators arrive or authorization has been approved by the shift commander.

3. Do not touch anything:

- a. This rule is the most often violated by responding personnel.
- b. Make notes of everything you saw when you arrived.
 - i. Lights in room or area - on or off ?
 - ii. Door to room - open or closed ?
 - iii. Signs of struggle ?
 - iv. Look over entire area and note - TV, radio, etc. - on or off ?
 - v. Odors - any strange smells ?
 - vi. Look up - most people have a habit of looking only at eye level.

4. Crime Scene Search:

- a. **DO NOT DO IT !!!!!!**
- b. Leave the search for the investigative unit.
- c. Keep accurate records of people arriving and leaving the scene.

5. Notes:

- a. Make as many notes as you think necessary and then, make plenty more!
- b. Remember the five "W's".
 - i. Who told you about it?
 - ii. When were you told?
 - iii. Where were you when you were told?
 - iv. What exactly were you told?
 - v. Why did you feel you had to respond?

6. Types of Crime Scenes:

I. Allegations of a sexual assault:

- a. If an inmate reports being victimized by a sexual assault staff will respond in accordance with 103 DOC 519 Sexually Abusive Behavior Prevention and Intervention Policy.
- b. The area where the assault occurred, the alleged victim's body, and the alleged perpetrator (s) body shall be considered the crime scene and preserved as such.
- c. Request that the alleged victim not take any actions that could destroy physical evidence,

including as appropriate, washing, brushing teeth, urinating, defecating or eating. If it is necessary for the inmate to use the restroom, the inmate should wipe before going and the wipe shall be placed into evidence.

- d. Both the alleged victim and alleged perpetrator (s) (if known) clothing (i.e. underwear, socks, shoes) is considered evidence and shall be processed in accordance with 103 DOC 506.10.
- e. The inmates should be required to stand on a clean sheet and remove all clothing including underwear, socks, and shoes.
- f. The sheet should then be folded around the clothes in such a way as to maintain any forensic evidence (semen, pubic hairs etc).
- g. The clothing and sheet should then be processed in accordance with 103 DOC 519 Sexually Abusive Behavior Prevention and Intervention Policy.
- h. To maintain its integrity (IE paper bag and refrigeration if it is to be maintained in excess of twenty-four hours).

II. Strangulation and Hangings:

- a. All victims must be removed from suspension, as soon as possible, with every effort used to preserve life.
- b. The knot is a very important piece of evidence (**cut the noose above the knot**).
- c. If the noose can not be cut, the body must be lifted to relieve pressure from the neck. If absolutely necessary, untie the knot.
- d. Should the noose be cut, label the loose ends. The ends may be tied back together with a string or tape.
- e. It is important to note which end of the noose was anchored.
- f. The noose should be deemed evidence and processed in accordance with 103 DOC 506.10 Seizure of Contraband/Evidence and 103 DOC 506.11 Storage of Contraband/Evidence.

III. Unattended Death:

- a. Although not every unattended inmate death is a crime (i.e. anticipated death from terminal illness), the scene shall be treated as a crime

to uphold the integrity of the investigation until such time as it is determined that a crime did not take place.

- b. The crime scene is to be maintained in a manner that will not compromise any criminal prosecution.

7. Notifications:

- a. Notifications shall be made pursuant to 103 DOC 105, Departmental Duty Officer and Institution procedures.
- b. Ensure that all appropriate notifications are complete and in accordance with applicable policies i.e. 103 DOC 622 Death Procedures, 103 DOC 519 Sexually Abusive Behavior Prevention and Intervention Policy.

Non investigative staff should refrain from interviewing an inmate who has allegedly committed an act covered by criminal law. Any information or confessions could be deemed inadmissible in a court of law if not obtained under requirements set forth by the Commonwealth of Massachusetts.

DYING
DECLARATION

1. INJURY RECEIVED BY THE VICTIM HAS TO BE LIFE THREATNING
2. THE VICTIM HAS TO BELIEVE THAT THEIR INJURY IS LIFE THREATENING
3. WHATEVER THE VICTIM TELLS YOU HAS TO BE DIRECTLY RELATED TO THE INJURY RECEIVED.
4. THE VICTIM HAS TO DIE.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION
STANDARD OPERATING PROCEDURES
ATTACHMENT TO 103 DOC 506, SEARCH POLICY
BODY ORIFICE SECURITY SCANNER (BOSS CHAIR)
Not On Intranet

Protocol for Searching Medicine Bag

When an officer searches a medicine bag for purposes of ensuring the safety and security of the institution, its inmates, employees and visitors, the following procedure will be adhered to:

1. The inmate shall be given a direct order to open his/her medicine bag and display the contents for inspection.
2. If the inmate refuses to comply with the officer's order, the medicine bag shall be confiscated (unopened) and the inmate will be detained until a supervisor arrives on the scene.
3. Once the supervisor arrives, he/she will assess and confirm the inmate's refusal to comply with the officer's directive.
4. The officer will then search the medicine bag in the presence of the inmate and supervisor.
5. The officer will open the medicine bag in a manner which is respectful, ensuring that none of the items from the medicine bag fall onto the floor.
6. Both the officer and supervisor will document the incident in an incident report and appropriate disciplinary action will be taken as a result of the inmate's refusal to follow a direct order; i.e., a disciplinary report will issue and the inmate will be removed from population.

Attachment I

Massachusetts State Police Drug Unit Submission Guidelines

Evidence submitted to the Crime Laboratory for analysis by the Drug Unit must meet certain guidelines. When submitted, all drug evidence must be:

- inventoried on the Massachusetts State Police Form SP-295 Narcotics Custody Form
- sealed in a suitable container

Submittal Procedure for the Delivering Officer

The SP-295 Narcotics Custody Form chain of custody must include the name of the officer delivering the evidence to the laboratory. It is imperative that the delivering officer makes all entries clearly and legibly, and that the inventory of evidence is accurate. The procedure for the delivering officer will be to:

1. Advise the Evidence Technician (ET) of the number of incoming cases he or she has to submit,
2. Seal the evidence in an envelope/bag (if not already sealed),
3. Complete the SP 295 Narcotic Custody Form,
4. will, be given three (3) labels by the ET, apply two (2) of the Laboratory Information Management System (LIMS) bar-code labels to the SP-295 (white and gold copies), and one (1) bar-code label to the corresponding evidence, and
5. Deliver the evidence to the evidence technician (ET) or duty chemist.

Rush Requests for Analysis

Occasionally, the submitting officer will request a rush analysis for the evidence that is dropped off. In order to do so, a Rush Analysis Request Form is completed. The form is maintained by the Evidence Control Unit and is provided to submitting officer upon request.

Procedure for Handling Drug Evidence Containing Hypodermic Syringes

Hypodermic syringes or needles will not be analyzed if submitted for cases involving possession of a controlled substance.

The health risks associated with the handling of these items far outweigh any evidentiary value gained from the analysis of their contents or surface residue. These items will only be considered for analysis only after all other investigative avenues have been exhausted and if they meet any of the following criteria:

- homicide
- suicide
- unattended death
- with approval from a Crime Laboratory Supervisor (the Supervisor will initial and date the CL-1 Form or SP 295 Form)

Reusable sharps that are contaminated with blood or potentially infectious materials must not be stored or processed in a manner that requires Laboratory personnel to reach by-hand into the container where the sharps have been placed. If syringes or needles are submitted to the laboratory they must be submitted in a hypodermic safety container.

Packaging of Syringes, Needles and other sharp items

All syringes, needles and sharps must be submitted in a hypodermic safety container puncture-proof container. A supply of containers should be maintained in each station's contraband storage room. Syringes or needles should only be transported to the Crime Laboratory in hypodermic safety containers. The Evidence Control Unit has the names of suppliers (vendors) of the containers and single containers may be pick-up at the laboratory. The Evidence Technician will not package syringes or needles for the submitting agency.

The container should be:

- constructed of clear plastic material
- leak-proof on the sides, bottom and top
- puncture resistant
- labeled as to its contents

Packaging Knives and "Sharps" that Accompany Drug Evidence

Knives and other sharp instruments should be packaged in specialty boxes when possible. If no special packaging is available, all cutting edges/points will be covered by cardboard or layers of heavy paper, e.g., a folded paper bag. The SP-295 Form, as well as the item packaging, should be identified conspicuously with the word: "SHARP INSTRUMENT" or "KNIFE".

Narcotics Return Procedure

When an agency representative submits narcotics to the laboratory they will be required to pick-up any completed cases for their agency. Agencies are allowed to call the Evidence Unit to schedule an appointment for pick-up only. The procedure for the delivering officer will be to:

1. Agency representative must provide identification with a LIMS barcode (the laboratory will issue the LIMS barcode on your first visit)
2. Sign the SP 295 Form
3. Remove the white and yellow copies of the SP 295 Form along with the evidence (Notarized Certificate of Analysis will be attached to the evidence).