

## 2.10 Searches of Detainees

### I. Purpose and Scope

This detention standard protects detainees and staff and enhances facility security and good order by detecting, controlling and properly disposing of contraband.

This detention standard applies to the following types of facilities housing ERO detainees:

- Service Processing Centers (SPCs);
- Contract Detention Facilities (CDFs); and
- State or local government facilities used by ERO through Intergovernmental Service Agreements (IGSAs) to hold detainees for more than 72 hours.

*Procedures in italics are specifically required for SPCs, CDFs, and Dedicated IGSA facilities.* Non-dedicated IGSA facilities must conform to these procedures or adopt, adapt or establish alternatives, provided they meet or exceed the intent represented by these procedures.

Various terms used in this standard may be defined in standard “7.5 Definitions.”

### II. Expected Outcomes

The expected outcomes of this detention standard are as follows (specific requirements are defined in “V. Expected Practices”).

1. Detainees shall live and work in a safe and orderly environment.
2. Contraband shall be controlled.
3. Staff of the same gender as the detainee should perform the pat or strip search of the detainee. Searches of the detainee’s property, housing unit

or other areas can be made by staff of either gender.

4. Searches of detainees, housing and work areas shall be conducted without unnecessary force and in ways that preserve the dignity of detainees.
5. When body searches are conducted, the least intrusive practicable search method shall be employed, as indicated by the type of contraband and the method of suspected introduction or concealment.
6. Pat searches of detainees and metal detector screening shall be conducted routinely to control contraband.
7. A strip search shall be conducted only when properly authorized by a supervisor and only in the event that there is reasonable suspicion that contraband may be concealed on the person, or when an officer has reasonable suspicion that a good opportunity for concealment has occurred or as may be outlined in facility procedures for post contact visits as indicated in standard “5.7 Visitation.”
8. A body cavity search shall be conducted by designated health personnel only when authorized by the facility administrator on the basis of reasonable suspicion that contraband may be concealed in or on the detainee’s person.
9. “Dry cells” shall be used for contraband detection, with proper authorization and in accordance with required procedures, only when there is reasonable suspicion of concealment.
10. Contraband that may be evidence in connection with a violation of a criminal statute shall be preserved, inventoried, controlled and stored so as to maintain and document the chain of custody.

11. Canine units (in facilities that have them) may be used for contraband detection when detainees are not present, but canine use for force, intimidation, control, or searches of detainees is prohibited.
12. The applicable content and procedures in this standard shall be communicated to the detainee in a language or manner the detainee can understand.

All written materials provided to detainees shall generally be translated into Spanish. Where practicable, provisions for written translation shall be made for other significant segments of the population with limited English proficiency.

Oral interpretation or assistance shall be provided to any detainee who speaks another language in which written material has not been translated or who is illiterate.

### III. Standards Affected

This detention standard replaces “Searches of Detainees” dated 12/2/2008.

### IV. References

American Correctional Association, *Performance-based Standards for Adult Local Detention Facilities*, 4th Edition: 4-ALDF-2C-01, 2C-02, 2C-03, 2C-04, 2C-05, 2C-06, 2A-20, 6C-19.

Notice Admission and Release—National detention standard Strip Search Policy (10/15/2007).

This detention standard incorporates the restrictions on the use of canines originally communicated via a memorandum on ICE use of canines in support of ICE detention operations dated 11/18/2004 from the Acting Director of Enforcement and Removal Operations.

ICE/ERO *Performance-based National Detention Standards 2011*:

- “2.1 Admission and Release”;
- “2.3 Contraband”;
- “2.6 Hold Rooms in Detention Facilities”;
- “2.12 Special Management Units”; and
- “5.7 Visitation.”

## V. Expected Practices

### A. Written Policy and Procedures Required

All facilities shall have written policy and procedures consistent with this standard for the following:

1. searches of detainee housing and work areas;
2. body searches, including pat searches (“pat downs”), strip searches, body cavity searches and x-rays;
3. close observation in “dry cells” to detect contraband;
4. employing the least intrusive method of search practicable, as indicated by the type of suspected contraband and the method of suspected introduction or concealment;
5. avoiding unnecessary force during searches and preserving the dignity of the detainee being searched;
6. leaving a searched housing or work area and detainee’s property in its original order, to the extent practicable;
7. handling of contraband;
8. use of canine units (in facilities that have them);
9. preservation of evidence; and
10. administration of medical treatment during “lock-downs.”

### B. Staff Training

All staff who conduct searches of housing, work areas or of a detainee’s body shall receive initial training regarding search procedures prior to entering on duty, and shall receive annual training in authorized and effective techniques thereafter.

### **C. Search of Detainee Housing and Work Areas**

Staff may search a detainee’s housing and work area, and personal items contained within those areas, without notice to, or approval from, the detainee and in the detainee’s absence.

Each facility shall establish procedures to ensure all housing units and work areas are searched routinely, but irregularly, as such inspections are primarily intended to:

1. detect and deter the introduction of contraband;
2. prevent escapes;
3. maintain sanitary standards; and
4. eliminate fire and safety hazards.

Staff shall maintain written documentation of each housing-unit search within the individual housing unit. Work areas shall be searched each workday by shop supervisors, and these inspections shall be supplemented with periodic searches by designated search teams. When property is taken during a housing search, a receipt shall be given to the detainee. The Chief of Security shall maintain documentation of search-team inspections.

Facilities shall have written procedures to provide for basic detention services (e.g., delivery of food services, toilet access, medication delivery) during lockdowns.

### **D. Body Searches of Detainees**

#### **1. Pat Search**

##### **a. Description**

A pat search (or “pat down”) is a physical

inspection of a detainee in which the officer or inspector uses his/her sense of touch when patting or running the hands over the detainee’s clothed body.

A pat search does not require the detainee to remove clothing, although the inspection includes a search of the detainee’s clothing and personal effects.

A hand-held and/or stationary metal detector, when available, may be used in conjunction with a pat search.

Staff shall conduct a pat search of a detainee on a routine or random basis to control contraband without a threshold level of suspicion.

##### **b. Gender of Officer**

Pat searches should be conducted by staff of the same gender as the detainee unless staff of the same gender are not present at the facility at the time the pat search is required.

#### **2. Strip search**

##### **a. Description**

A strip search is a visual inspection of all body surfaces and body cavities. Staff shall not routinely require a detainee to remove clothing or require a detainee to expose private parts of his/her body to search for contraband. To the extent reasonably possible, the inspector shall refrain from touching the skin surface of the detainee; however, the inspector may request that the detainee move parts of the body to permit visual inspection. A strip search is considered more intrusive than a pat search, and shall be conducted in a manner designed to ensure as much privacy to the detainee as practicable

A strip search requires the removal or rearrangement of some or all of the detainee’s clothing to examine the clothing and/or to permit the inspection of exterior skin surfaces of the

body, including breasts and exterior anal and genital areas, as well as inside of the nose, ears and mouth. If items are discovered that protrude from a body cavity, the removal of those items is governed by the procedures applicable to body-cavity searches, addressed below.

Except in cases where strip searches are performed in accordance with a facility's post contact visitation procedure, whenever a strip search is conducted, the articulable facts supporting the conclusion that reasonable suspicion exists shall be documented on Form G-1025 (Record of Search) or the equivalent.

Unless there is specific and articulable suspicion that contraband has been transferred to a detainee, detainees shall not be subjected to a strip search after a visit by a consular representative, an attorney, a legal assistant working under the supervision of an attorney, or an accredited representative. Policy regarding post contact visitation searches can be found in "V. Expected Practices" of standard "5.7 Visitation."

**b. Reasonable Suspicion**

Officers must obtain supervisory approval before conducting strip searches. Staff may conduct a strip search where there is reasonable suspicion that contraband may be concealed on the person. "Reasonable suspicion" means suspicion based on specific and articulable facts that would lead a reasonable officer to believe that a specific detainee is in possession of contraband. It is a more permissive (lower) standard than probable cause, but it is more than a mere hunch. It must be based on specific and articulable facts—along with reasonable inferences that may be drawn from those facts—that the officer shall document in Form G-1025 or equivalent.

Reasonable suspicion is determined under the

totality of the circumstances. There is no simple, exact, or mathematical formula for reasonable suspicion. It may be based on one, or a combination, of the following factors:

- 1) observation of unusual, surreptitious, or suspicious appearance or behavior;
- 2) evasive or inconsistent responses to questions by law enforcement officers;
- 3) discovery of a weapon or other contraband during a pat search, metal detector scan, or other non-intrusive search;
- 4) the detainee's criminal history, particularly prior felony or misdemeanor for convictions of crimes involving violence, weapons, contraband, or illegal substances (convictions for minor or non-violent offenses shall not be the only basis for reasonable suspicion);
- 5) whether the detainee was detained concurrently with an arrest for a crime of violence; or whether the detainee was arrested in possession of a weapon, or in possession of contraband such as illegal drugs;
- 6) information from law enforcement databases or from other reliable sources suggesting that the detainee has affiliations with terrorist organizations, criminal gangs, or organized crime; or
- 7) the detainee's history during confinement, particularly of violence, or of possession of contraband.

The lack of identity documents alone does not ordinarily constitute reasonable suspicion.

Before strip-searching a detainee to search for contraband, an officer shall first attempt to resolve his/her suspicions through less intrusive means, such as a thorough examination of reasonably available ICE, CBP and other law

enforcement records; a pat-down search; a detainee interview; or (where available) the use of a magnetometer or Boss chair. The officer shall document the results of those other, less intrusive, search methods on Form G-1025 or equivalent.

In accordance with standard “5.7 Visitation,” facilities may not adopt policies permitting strip searches after contact visits in the absence of reasonable suspicion unless detainees are provided the right to choose non-contact visitation instead of contact visitation and are fully informed of such right. Consistent with standard “5.7 Visitation,” any such policies must be communicated to detainees in a language or manner that they understand.

c. Gender of Officer

An officer of the same gender as the detainee shall perform the search. Special care should be taken to ensure that transgender detainees are searched in private.

In the case of an emergency, a staff member of the same gender as the detainee shall be present to observe a strip search performed by an officer of the opposite gender.

When an officer of the opposite gender conducts a strip search which is observed by a staff member of the same gender as the detainee, staff shall document the reasons for the opposite-gender search in any logs used to record searches and in the detainee’s detention file.

### 3. Body-cavity Searches

A body-cavity search is an inspection for contraband or any other foreign item, in a body cavity of a detainee, by use of fingers or simple instruments, such as an otoscope, tongue blade, short nasal speculum and simple forceps. A body-cavity search is considered the most intrusive type

of search. A body cavity search must be performed by a medical professional and take place in an area that affords privacy from other detainees and from facility staff who are not involved in the search.

Before proceeding in cases of drawing blood for toxicology studies and DNA testing, written, informed consent must be granted by the detainee and recorded in the detainee’s medical records before the blood sample is drawn (see also standard “4.3 Medical Care”). Requests for forensic studies shall be referred to the medical facility health services administrator (HSA) who is authorized to facilitate arrangement for these services off-site.

- a. A body-cavity search may only be conducted by authorized medical personnel, upon approval of the facility administrator or acting facility administrator, and only if that person has reasonable suspicion that contraband may be concealed in or on the detainee’s person.
- b. The articulable facts supporting the conclusion that reasonable suspicion exists shall be documented.
- c. A body-cavity search may be advisable to protect the health and safety of a detainee.
- d. Only designated qualified health personnel (for example, physicians, physician assistants and nurses) may conduct a digital or simple instrument search in a licensed medical setting.
- e. The detainee’s health and welfare shall be considered prior to performance of any digital or simple instrument search.
- f. Although a detainee’s written consent should be obtained prior to conducting a digital or simple instrument search, such written consent is not required.
- g. Whenever possible, transgender detainees shall be permitted to choose the gender of the staff

member conducting a body-cavity search.

- h. Staff, other than the designated qualified health personnel, of the opposite gender from the detainee may not observe the digital or simple instrument search.
- i. If located, the contraband or foreign item may be removed immediately by medical staff, if such removal can easily be effected by use of fingers or simple medical instruments.
- j. IHSC staff is not authorized to collect or participate in the collection of specimens or other information that shall be used for forensic purposes, except for toxicology studies, rape kits and DNA testing.

Staff shall document all digital and simple instrument searches, the authorizations and the reasons for the searches in any logs used to record searches and in the detainee's detention file.

## E. Close Observation in a "Dry Cell"

### 1. Description and Authorization

When an officer has reasonable suspicion to believe that a detainee may have ingested contraband or concealed contraband in a body cavity, and the methods of search specified above are inappropriate or likely to result in physical injury to the detainee, the facility administrator or designee may authorize that the detainee be placed in a room or cell to be closely observed by staff until the detainee has voided or passed the contraband or until sufficient time has elapsed to preclude the possibility that the detainee is concealing contraband.

Such placement is commonly referred to as "dry cell" status, which may be approved:

- a. during regular duty hours by the facility administrator or designee, or
- b. at other times by the shift supervisor.

### 2. Requirements for "Dry Cells"

It is recommended that one or more rooms or cells be identified as dry cells; such rooms must meet the following requirements:

- a. The room shall be free of hiding places and be equipped with only a bed.
- b. Doors shall have proper observation panels to protect staff and to allow unobstructed observation.
- c. Windows in the dry cell shall have a security screen to prevent loss of contraband.
- d. If the designated area is equipped with a toilet and/or sink, the water to the cell shall be shut off for the duration of the dry cell process and the toilet and sink removed prior to the detainee being allowed into the room.
- e. Prior to a detainee's placement in dry cell status, the room to be used shall be completely searched and determined to be free of contraband. Potential hiding places, if any, for contraband shall be noted

### 3. Advising the Detainee

The supervisor responsible for initiating the close observation watch shall advise the detainee of the conditions and what is expected, and shall document the notification on an Administrative Segregation Order. The detainee shall be advised of the reasons he/she is being placed in a dry cell, the purpose of this placement, the conditions he/she can expect and the means by which he/she can request items and services including, but not limited to, food and water, medical care, hygiene products and bedpans.

### 4. Conditions of "Dry Cell" Status

- a. For the detainee's safety, he/she shall be required to provide a urine sample within two hours of placement under close observation. A second

urine sample shall be required prior to releasing the detainee from close observation.

- b. The light shall be kept on at all times.
- c. The detainee shall have regular access to potable water.
- d. The detainee shall be provided telephone access.
- e. The detainee may not be allowed to come in contact with another detainee.
- f. Ordinarily, the detainee may not be allowed personal property, except legal and personal mail and a reasonable amount of legal materials.
- g. Personal hygiene items shall be controlled by staff. When the detainee requests to shave, brush teeth, or perform other toiletry tasks, a wash pan and container of water shall be provided for use in the cell.
- h. When the detainee is lying on a bed, the detainee shall be required to lie on top of the mattress in full view, weather and room temperature permitting. When necessary for the detainee to use cover, hands must remain visible at all times so that staff can observe any attempt to move contraband.
- i. Because a detainee might attempt to remove and/or insert contraband from or into a body cavity, staff must observe the detainee's hands at all times.
- j. The detainee shall not be permitted to leave the cell or room, except in case of extreme emergency.
- k. The detainee shall be served the same meals as the general population, unless medically advised. All meals are to be inspected for contraband prior to delivery to the detainee, and any food remaining after the meal, as well as the utensils and tray, are to be thoroughly inspected before their return to food service.

- l. Only medications prescribed and administered directly to the detainee by medical personnel may be given the detainee. No laxatives may be given, except natural ones (e.g., coffee, prune juice).
- m. When the detainee needs to urinate and/or defecate, he/she shall be furnished an empty hospital bedpan, which shall afterward be closely inspected to ascertain whether any contraband is present.
- n. Since the detainee is in administrative segregation status even if not actually housed in the Special Management Unit (SMU), the requirements for medical and supervisory and staff visits in standard "2.12 Special Management Units" apply.
- o. Dry cells must be cleaned in accordance with standard "1.2 Environmental Health and Safety."

## 5. Post Orders

The Chief of Security shall have post orders for closely observing a detainee in dry cell status. A video camera shall be used whenever possible and as appropriate.

## 6. Requirements for Close Observation

The detainee shall be constantly observed and supervised by a staff member of the same gender.

It is the observer's responsibility to ensure the detainee does not dispose of any concealed item, and to prevent activity which would allow the detainee access to it, thereby jeopardizing the security and good order of the facility, staff and detainees. Any questions, emergency, or other situation that arises shall immediately be brought to the attention of the shift supervisor.

Under no circumstances shall the detainee be allowed freedom to move around unsupervised, or be given an opportunity to dispose of any objects

he/she may be concealing.

- a. The observing staff member shall be issued a portable radio or telephone and flashlight, so that he/she does not have to interrupt constant observation to communicate with other staff (such as for watch calls).
- b. Detainees shall be monitored by medical staff for changes in medical and mental health status.
- c. A daily log and SMU record shall be maintained on each detainee in dry cell status.
- d. The shift supervisor shall ensure observers have reviewed the post orders.
- e. The shift supervisor shall provide periodic staff relief to the observer and at any other time the observer must leave the area. The detainee must not be left unattended.
- f. Trash may not be allowed to accumulate, and each item shall be thoroughly searched before final disposal.
- g. Periodic searches shall be conducted as follows:
  - 1) a strip search of the detainee when he/she is placed in the dry cell after which the detainee shall be issued a jump suit (or other suitable loose-fitting clothing);
  - 2) a strip search of the detainee at least once each shift, if necessary; and
  - 3) a search of the dry cell at least once each shift.

Searches shall be conducted so as not to reveal to the detainee a predictable pattern. Prior to each search, the shift supervisor must be notified and a second staff member provided to ensure continual close observation and supervision of the detainee. Each search must be documented on Form G-1025 or equivalent.

- h. Staff shall notify the shift supervisor when

contraband is found, secure the contraband in a properly documented evidence bag, and maintain the chain of evidence.

## 7. Length of Observation

The length of close-observation status must be determined on an individual basis. Ordinarily, the Chief of Security during regular work hours or the shift supervisor, at other times, in consultation with qualified health personnel, shall determine when termination is appropriate.

- a. Three Days

The status of a detainee under close observation for as long as three days must be reviewed by medical staff and the administrative segregation review official in accordance with standard “2.12 Special Management Units” (irrespective of whether the observation actually occurs in the SMU).

- b. Seven Days

Since it is unlikely that the objective of dry cell status will not be achieved within seven days, maintaining a detainee under close observation beyond seven days requires prior approval of the facility administrator and medical staff.

## F. X-Ray

### 1. Medical

The facility physician may authorize use of an x-ray for medical reasons and only with the consent of the detainee.

### 2. Security

Only the facility administrator, upon approval by the respective Field Office Director (or persons officially acting in that capacity) may authorize the facility physician to order a non-repetitive x-ray examination for the purpose of determining whether contraband is concealed in or on the detainee (for example: in a cast or body cavity).



Such approval and authorization shall be based on the facility administrator and physician's determination that:

- a. An x-ray examination is necessary for the security, safety, good order, or discipline of the facility;
- b. No reasonable alternative exists; and
- c. The examination is not likely to result in serious or lasting medical injury or harm to the detainee, based on the determination of qualified medical staff.

Staff shall place documentation of the examination, the authorizations and the reasons for the examination in the detainee's detention file and medical file.

An x-ray examination may not be performed on a detainee without the detainee's consent. Staff shall solicit the detainee's consent and cooperation prior to the x-ray examination. Force may not be used to gain consent and cooperation. If the detainee does not provide consent and fails to cooperate, x-ray

examination should not be performed

### **3. Objects**

The facility administrator may direct x-rays of inanimate objects where the detainee is not exposed.

### **G. Major Instrument, Fluoroscope, or Surgical Intrusion**

Only a physician may authorize use of a fluoroscope, major instrument (including anoscope or vaginal speculum), or surgical intrusion for medical reasons only and only with the detainee's consent.

### **H. Preservation of Evidence**

Contraband that may be evidence in connection with a violation of a criminal statute shall be preserved, inventoried, controlled and stored so as to maintain and document the chain of custody, and shall be reported to the appropriate law enforcement authority for action and possible seizure and prosecution.