

**STATE OF VERMONT
AGENCY OF HUMAN SERVICES
DEPARTMENT OF CORRECTIONS**

: 409.01

Subject: Searches (409.01)

Effective Date: Date of Commissioner's
signature

Review and Re-Issue Date:

Supersedes: 01/11/99

APA Rule Number:

Recommended for approval by:
Jacqueline Kotkin, Assistant Director/
Correctional Services

Authorized by:
Richard C. Turner, Acting Commissioner

1/16/03

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Signature

Date

Signature

Date

1. Authority:

1.1. Pursuant to 28 V.S.A. chapters 1, 3, 5, 6, 7, 9, and 11, the Vermont Department of Corrections shall maintain security, safety, and order at correctional facilities and shall maintain general supervision of those persons placed on furlough, supervised community sentence, probation or parole.

2. Purpose:

2.1. This directive provides guidance for searches of persons in the custody of or under the supervision of the Vermont Department of Corrections, as well as persons who visit correctional facilities. It applies to all searches in a correctional facility and to all searches of offenders supervised in the community on furlough, supervised community sentence, probation and parole.

3. Applicability/Accessibility:

3.1. This Directive applies directly to Department of Correction's staff and the offenders under their supervision. Anyone may access a copy of this Directive.

4. Directive:

4.1. CORRECTIONAL FACILITIES:

4.1.1. Any area in a correctional facility may be visually inspected or searched on a routine or random basis. Staff may be assisted by trained dogs under the control of the assigned dog handler and/or by electronic search devices.

4.2 PHYSICAL SEARCHES OF PERSON AND PROPERTY:

4.2.1 Pre-Arrestment [Inmates](#):

4.2.1.1 Staff may pat search an inmate's outer clothing or may direct removal of items in pockets. A pat search shall be conducted by a staff member of the same gender as the inmate except when circumstances are such that delay would jeopardize the safety of the inmate or the staff member.

4.2.1.2 Strip searches shall be conducted as follows:

4.2.1.2.1 Persons arrested on felony charges shall be subjected to a complete strip search;

4.2.1.2.2 Persons arrested for misdemeanors may be strip searched only if there is reasonable suspicion to believe that the person is concealing weapons or contraband. If the admitting officer believes that "reasonable suspicion" exists, the Shift Supervisor shall be consulted. The Shift Supervisor shall decide if reasonable suspicion exists and, if so, may give permission for the strip search. The Shift Supervisor shall then file an "Incident Report" describing the facts which support the decision to conduct a strip search.

4.2.1.2.3 Persons detained pursuant to federal civil deportation proceedings shall be treated in the same manner as misdemeanants until an appearance has been made before a federal magistrate or judge.

4.2.1.3 Digital body cavity searches are only authorized after consultation with the Superintendent or higher authority.

4.2.2 Post-Arrestment Inmates:

4.2.2.1 Staff may pat search an inmate's outer clothing or may direct removal of items in pockets. A pat search shall be conducted by a staff member of the same gender as the inmate except when circumstances are such that delay would jeopardize the safety of the inmate or the staff member. When staff of the opposite sex conduct a pat search, staff shall document the reason(s) for an opposite sex pat search with an "Incident Report".

4.2.2.2 Strip searches are authorized in any of the following situations:

4.2.2.2.1 When an inmate has had a contact visit or has had contact with persons or areas outside the facility or with a person in a lower security level, e.g., inmate returns to facility from furlough status or from court; or

4.2.2.2.2 When an inmate exhibits behavior that would reasonably lead one to believe that the inmate is concealing contraband, such as difficulty walking or sitting, dilated eyes, or assaultive behavior; or

4.2.2.2.3 Before an inmate changes lodging area from a lower to a higher security level; or

4.2.2.2.4 On a random, unannounced basis; or

4.2.2.2.5 When the subject consents.

4.3.2.3. Physical contact with the inmate's body should be avoided.

4.3.2.4. As much privacy as is practical should be provided during the strip search. Correctional officers conducting or observing a strip search shall be of the same gender as the inmate subjected to the search except when circumstances are such that delay would jeopardize the safety of the inmate or the officers. Where staff of the opposite sex conduct a strip search, staff shall document the reasons for the opposite sex strip search with an "Unusual Incident Report."

4.3.2.5. Digital or simple instrument body cavity searches may only be conducted by a qualified physician when

authorized by the Superintendent or designee who has a reasonable suspicion that the inmate is concealing contraband in a body cavity.

4.3.2.5.1. Reasonable suspicion may be based on, but is not limited to, the following factors:

4.3.2.5.1.1. Observation of the presence of a foreign object during a strip search;

4.3.2.5.1.2. Information from reliable informants;

4.3.2.5.1.3. Unusual gait or posture, or discomfort in sitting;

4.3.2.5.1.4. Any combination of the above.

4.3.2.6. The search must be done by the facility physician or other qualified physician under circumstances providing as much privacy as is practical. Other staff officers of the same sex as the inmate may be present during the search, if necessary for security reasons. A digital cavity search will not be conducted if it is likely to result in physical injury to any person.

4.3.2.6.1. The reasons(s) for the digital or simple instrument body cavity search, the procedures used, and the necessity for the presence of staff officers shall be documented in an "Incident Report."

4.3.2.7. Close observation or dry cell status may be authorized by the Superintendent or designee if s/he has a reasonable suspicion that an inmate has ingested contraband or has concealed contraband in a body cavity and the methods of search specified above are inappropriate or likely to result in physical injury to the inmate. The inmate may remain under close observation until s/he has voided the contraband or until sufficient time has elapsed to preclude the possibility that the inmate is concealing contraband. The length of close observation status will be determined on an individual basis by the Superintendent or Security and Operations Supervisor in consultation with qualified health personnel. -

4.3.2.8. The use of a fluoroscope, major instrument (including anoscope or vaginal speculum), or surgical intrusion is allowed only if a physician authorized such use for medical reasons and the inmate consents.

4.3.2.9. An inmate may be x-rayed only if:

4.3.2.9.1. A Physician authorized the use of an x-ray for medical reasons and the inmate consents; or

4.3.2.9.2. An x-ray is determined necessary for the security, good order or discipline of the institution, and there exists no reasonable alternative. Such determination shall be made by the Superintendent who, upon the approval of the Director of Security and Supervision, may authorize a physician to order a non-repetitive x-ray examination for the purpose of determining if contraband is concealed in or on the inmate (for example, in a cast or body cavity). The manner and authorization of an x-ray shall be documented in an "Incident Report." The x-ray examination may not be performed if it is determined by the physician that it is likely to result in serious or lasting medical injury or harm to the inmate (theoretical harm which might result from a single x-ray exposure does not constitute a situation likely to result in serious or lasting medical injury or harm to the inmate). Medical staff shall place documentation of the examination and the reasons for the examination in the inmate's medical file.

4.3.3. Incapacitated Persons:

4.3.3.3. Inmates lodged pursuant to 18 V.S.A. §9144 may be subject to the following searches:

4.3.3.3.1. Staff may pat search an inmate's outer clothing or may direct removal of items in pockets. A pat search shall be conducted by a staff member of the same gender as the inmate except when circumstances are such that delay would jeopardize the safety of the inmate or the staff member.

4.3.3.3.2. Strip searches are authorized if reasonable suspicion exists. If the admitting officer believes that reasonable suspicion exists, the Shift Supervisor shall be notified. The Shift Supervisor shall decide if reasonable suspicion exists and, if so, may give permission for the strip search. The Shift Supervisor shall then file an "Unusual Incident Report" to document the facts which support the decision to conduct a strip search.

4.3.3.3.3. Digital or simple instrument body cavity searches are not authorized.

4.3.4. Persons Held by Civil Contempt Order

Persons lodged by court order for civil contempt shall be treated for purposes of this directive as post-arraignment inmates.

4.3.5 Visitors:

4.3.5.1 Visitors to correctional facilities may be subjected to search by trained dogs or may be required to submit to metal detection devices. Visitors shall not under any circumstances be subject to any physical search of their person. This includes pat searches and strip searches. The personal property of visitors brought into a facility is subject to search at any time. Visitors may be required to empty packages at any time at the request of staff.

Staff may be assisted by trained dogs under the control of the assigned dog handler and/or by electronic search devices.

4.3.6. Furloughees:

4.3.6.1. The following applies to searches of the property, residences, and persons of inmates who are being supervised in the community when on furlough:

4.3.6.1.1. Where a furloughee lives shall dictate when his/her property and residence may be searched:

4.3.6.1.2 For furloughees residing in housing owned or leased by the Department of Corrections: Any area of the residence may be searched or inspected on a routine or random basis; and the personal property of the furloughee may be searched if there is reasonable suspicion to believe that the furloughee has violated a condition of his/her furlough and that a search will lead to specific evidence of the violation;

4.3.6.1.3 For furloughees residing in housing that is not owned or leased by the Department of Corrections: If there is a household member agreement, the residence may be searched on a routine or random basis if the household member who signed the agreement consents; if the furloughee lives on his/her own, the residence may be searched on a routine or random basis if the furloughee consents; if there is reasonable suspicion to search a residence, a corrections employee shall get consent from either a signatory of the household member agreement or from the furloughee if s/he lives alone before conducting the search; the personal property of the furloughee may be searched if reasonable suspicion exists.

- 4.3.6.1.4 If a household member or a furlougee refuses to consent to a search, furlough status may be revoked.
- 4.3.6.1.5 For all furlougees, reasonable suspicion may be based on, but is not limited to, the following factors:
- 4.3.6.1.5.1 Observation of furlougees' unusual behavior;
 - 4.3.6.1.5.2 Suspicious or criminal activity of the people with whom the furlougee is associating;
 - 4.3.6.1.5.3 Recent reports from credible informants of a furlougee's violation;
 - 4.3.6.1.5.4 The furlougees' history of criminal behavior.
- 4.3.6.1.6 A pat search of a furlougee for weapons or other objects that may present a danger during a visit to the furlougee's residence or during transport may be conducted by Department of Corrections' staff. Pat searches are also authorized if reasonable suspicion exists. A pat search shall be conducted by a staff member of the same gender as the inmate except when circumstances are such that delay would jeopardize the safety of the inmate or the staff member.
- 4.3.6.7 Strip searches of furlougees in the community are not authorized.
- 4.3.6.8 No other types of searches are authorized while an inmate is being supervised in the community.
- 4.3.6.9. Housing owned or leased by the Department of Corrections:
- 4.3.6.9.1. Any area in housing owned or leased by the Department of Corrections may be visually inspected on a routine or random basis for cleanliness and maintenance issues.
- 4.3.7. [Offenders](#) on Supervised Community Sentence:
- 4.3.7.1. The following applies to searches of the property, residences, and persons of offenders who are being supervised in the community on a supervised community sentence:
- 4.3.7.1.1. Searches of the property, residences, and persons of offenders on supervised community sentence are authorized when the offender's sentence plan includes a search condition or when the offender consents to the search upon request. The search provided for by a condition may be conducted only if [reasonable suspicion](#) exists or the condition specifically allows a search without reasonable suspicion. Staff may be assisted by trained dogs under the control of the assigned dog handler or by electronic search devices.
 - 4.3.7.1.2 For SCS offenders residing in housing owned or leased by the Department of Corrections, the housing may be inspected on a routine basis for cleanliness and/or maintenance issues;
 - 4.3.7.1.3 For SCS offenders residing in housing that is not owned or leased by the Department of Corrections, the housing shall not be inspected for cleanliness or maintenance issues unless the offender's sentence plan allows for such inspections. For all authorized searches: if there is a household member agreement, the residence may be searched if the person who signed the agreement consents; if the offender lives on his/her own, the residents may be searched if the offender consents; in either housing arrangement if consent is withheld, failure to consent to a search may be considered a violation of conditions and revocation proceedings may be commenced.
 - 4.3.7.1.4 A pat search of an offender for weapons or other objects that may present a danger during transport may be conducted if staff arrests the offender. A pat search shall be conducted by a staff member of the same gender as the inmate except when circumstances are such that delay would jeopardize the safety of the inmate or of the staff

member.

4.3.7.1.5 No strip searches of offenders on supervised community sentence are authorized unless they are included as a condition in the supervised community sentence plan approved by the court or Parole Board and there is reasonable suspicion.

4.3.7.2. Offenders who are arrested for violating the conditions of their sentence shall, upon lodging at a correctional facility, be treated like post-arraignment inmates for purposed of this directive.

4.3.8. Probationer/Parolees:

4.3.8.1. The following applies to searches of the property, residences, and persons of probationers/parolees who are under supervision in the community:

4.3.8.1.1. Searches of the personal property and residences of probationers and parolees may be conducted only when a court or the Parole Board has expressly created a search condition or when the offender consents to the search upon request. The search provided for by a condition may be conducted only if reasonable suspicion exists or if the condition specifically allows for a search without reasonable suspicion. Staff may be assisted by trained dogs under the control of the assigned dog handler and/or by electronic search devices.

4.3.8.1.2. A pat search of the probationer/parolee for weapons or other objects that may present a danger to staff during transport may be conducted upon arrest for violation of any condition (s) of probation/parole. A pat search shall be conducted by a staff member of the same gender as the inmate except when circumstances are such that delay would jeopardize the safety of the inmate or the staff member.

4.3.8.1.3. Strip searches are not authorized.

4.3.8.2. Probationer/parolees who are arrested for violating the conditions of their probation/parole shall, upon lodging at a correctional facility, be treated like post-arraignment inmates for purposes of this directive.

4.3.9. Law enforcement:

4.3.9.1. Law enforcement officers may not accompany corrections employees on searches of offenders' residences, property, or persons unless law enforcement's presence is necessary for the personal safety of the corrections' employee, or law enforcement has a search or arrest warrant or has probable cause to search.

1. Training Method:

1.1. The Director of Security & Supervision has the responsibility and authority to develop and deliver training connect with the performance of the duties outlined in the 409 Policy series.

2. Quality Assurance Processes:

2.1. Work site managers will develop local procedures that comply with the requirements set forth in this Directive

3. Financial Impact:

7.1 The duties associated with this Directive are carried out almost exclusively by security staff. These duties are performed on a regular basis as well as on an as needed basis. Costs associated with this Directive are factored into each work site's budget.

4. Responsible Director and Draft Participants:

8.1 The Directors of Security & Supervision, the Director of Reparative Services and the Assistant Director of Correctional Services are responsible for this Directive.

This Directive was written by John B. Murphy, Hearings Administrator after consideration of feedback solicited from the field as well as review and guidance from the Executive Management Team (EMT).