
JAIL BULLETIN

NUMBER 14

FEBRUARY, 1986

The Jail Bulletin is a monthly feature of the Crime Commission Update. The Bulletin may be used as a supplement to your jail inservice training program if officers study the material and complete the attached "open book" quiz. The Bulletin and quiz may be reproduced for use by your staff. We welcome any jail training material you would like to contribute to the Bulletin.

INMATE SEARCHES: RECENT CASE LAW

At its last two meetings, the Jail Standards Board discussed the evolving case law pertaining to inmate searches in jails and lock-ups. The numerous court decisions coming down on this issue indicate that searches are a primary area of litigation for jails and correctional facilities. Court rulings have shaped requirements which may affect Nebraska's current standards and your jail's policy and procedures. The Jail Standards Board is currently studying possible changes in the Jail Standards to bring them into line with recent court rulings and will present a draft of proposed changes for jail administrators review and comment before they are finalized.

This issue of the Jail Bulletin contains the same information that was recently sent to all jail administrators in Nebraska. Although most jails in Nebraska do not routinely strip search new admissions, the information should be of interest to all jail officers because it may affect their jail procedures and require changes in the Jail Standards.

STRIP SEARCHES

Primarily at issue in recent court rulings are jail policies which require strip searches of inmates as part of a routine procedure in the booking process. The rationale behind such a policy is, of course, based on the need to maintain security by keeping contraband out of the jail. It is generally perceived that less intrusive methods, such as pat searches, are not as effective in discovering weapons or other contraband. Additionally, the strip search permits thorough inspection of the prisoner's body for vermin, injuries, or other medical problems which may present a threat to the inmate population, staff or the prisoner himself.

The courts, however, have ruled that the safety and security needs of the jail must be balanced against the prisoner's right to privacy. A recent Nebraska case (Jones v. City of North Platte), as well as many others, look to the two-prong test established by the U.S. Supreme Court in Bell v. Wolfish, 44 U.S. 520 (1979) in determining whether strip search policies are reasonable under the 4th amendment. According to Bell, the policies must:

1. Justify the need for the search. Jail officials must have some "reasonable suspicion" that the prisoner may be concealing weapons or other contraband. "Blanket" strip search policies are not allowable. Jail policies must set forth clearly established conditions under which strip searches are permitted of incoming prisoners. Prisoners may be strip searched when there is "reasonable suspicion" based on:

- nature of the charge/offense (violent, drug, etc.)
- demeanor of the prisoner (behavior)
- prior record

Jail officials should also attempt less intrusive methods first (pat search) before conducting the strip search.

Strip searches may also be appropriate when the prisoner has had an opportunity to secure contraband (e.g. after contact visits, court appearances, transports, etc.). It is not clear whether strip searches are permissible for prisoners if they are to be mixed with the general population. There are several conflicting rulings on this issue. We will have to do further research to determine if there is precedent established for our area.

2. Minimize the scope of the invasion of personal rights. The scope of the search, the manner in which it is conducted, and the place in which it is conducted are all factors the courts have considered in determining reasonableness. More intrusive searches require greater certainty that contraband is likely to be found. Therefore, it appears important for jail officials to only go as far as necessary to accomplish security objectives and to go about the search in a manner which minimizes the invasion of the inmate's right to privacy. Additionally, strip searches must be conducted by staff of the same sex as the prisoner and they must be conducted in an area made private from the observation of persons not involved in the search. It should also go without saying that searches should be conducted without unnecessary force and harassment.

BODY CAVITY SEARCHES.

Body cavity searches are considered more intrusive than strip searches and, therefore, greater certainty must exist that contraband will be found. Some cases require probable cause before such a search may be conducted. The following principles should guide the development of body cavity search policies:

- clear cut conditions under which body cavity searches are permitted must be established,
- should be conducted by staff of the same sex or, preferably, qualified medical personnel,
- should be conducted in private;
- should be conducted under appropriate sanitary conditions;
- should be conducted without harassment or unnecessary force;
- should be approved by a higher level authority than jail officer (possibly a search warrant).

PAT SEARCHES

The pat search is considered the least intrusive method of searching prisoners and is generally allowable. Current litigation in this area focuses on whether male prisoners may be pat searched by female jailers. While case law on this issue is still in the formative stage, it appears this may be allowable, with certain restrictions, unless the prisoner requests the search be conducted by a male jailer instead.

DOCUMENTATION

Since decisions to conduct a strip search or body cavity search should be on a case by case basis, rather than as a blanket policy, documentation of each search conducted should be maintained. Items to consider including in the written record are:

- time, date, place of the search;
- person(s) conducting the search;
- statement of facts constituting reasonable suspicion that the search was necessary;
- description of any weapons or other contraband discovered during the search.

Nebraska Jail Standards require that jail staff receive eighteen (18) hours of inservice training each year. The Jail Bulletin may be used to supplement inservice training if an officer studies the bulletin, completes the quiz, and this process is documented by the jail administrator for review during annual jail inspections.

SUBJECT: INMATE SEARCH: RECENT CASE LAW NAME _____

SUBJECT _____

1.) The courts have ruled that the safety and security needs of the jail must be balanced against the prisoner's _____

2.) According to the U. S. Supreme Court decision, Bell v. Wolfish, strip search policies should do what two things?

A. _____

B. _____

3.) What type of documentation should be maintained if a strip search or body cavity search is performed?

4.) Current case law appears to allow female officers to pat search male inmates.

A. True

B. False

C. True, unless the prisoner requests a male officer perform the search.

D. True only in California

CREDIT: 1/2 HOUR CREDIT FOR JAIL INSERVICE TRAINING REQUIREMENT

QUIZ

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SUBJECT: INMATE SEARCH: RECENT CASE LAW NAME _____
SUBJECT _____

The courts have ruled that the safety and security needs of the jail must be balanced against the prisoner's _____

RIGHT TO PRIVACY

According to the U. S. Supreme Court decision, Bell v. Wolfish, strip search policies should do what two things?

- A. JUSTIFY THE NEED FOR THE SEARCH
- B. MINIMIZE THE SCOPE OF THE INVASION OF PERSONAL RIGHTS

What type of documentation should be maintained if a strip search or body cavity search is performed?

TIME, DATE, PLACE OF SEARCH

PERSON(S) CONDUCTING SEARCH

REASONABLE SUSPICION THAT MADE SEARCH NECESSARY

DESCRIPTION OF WEAPONS OR CONTRABAND DISCOVERED

4.) Current case law appears to allow female officers to pat search male inmates.

- A. True
- B. False
- C. True, unless the prisoner requests a male officer perform the search.
- D. True only in California

CREDIT: 1/2 HOUR CREDIT FOR JAIL INSERVICE TRAINING REQUIREMENT

ANSWER SHEET SHOULD BE RETAINED BY JAIL ADMINISTRATOR OR TRAINING OFFICER