

BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 15, 1998

GENERAL ORDER S-7

SUBJECT: STRIP SEARCHES

PURPOSE

- 1 - This Order outlines the (1) circumstances in which a strip search is allowed, and (2) requirements that must be met in conducting a strip search.

DEFINITIONS

- 2 - STRIP SEARCH is a search that requires a person to remove or arrange some or all of his or her clothing so as to permit a visual inspection of the underclothing, breasts, buttocks, or genitalia.
 - (a) As used in this Order, the term STRIP SEARCH includes a VISUAL BODY CAVITY SEARCH which is the visual inspection of the rectal area/cavity or vaginal area/cavity.
- 3 - PHYSICAL BODY CAVITY SEARCH is the physical intrusion into the stomach, rectal cavity or vagina.
- 4 - BOOKED AND BOOKING mean the completion of a Consolidated Arrest Report (CAR), fingerprinting, and photographing at the Jail.
- 5 - CRIME OF SIGNIFICANT VIOLENCE include assaults and batteries
 - (a) With weapons, and/or
 - (b) Resulting in injuries that would lead a reasonable person to seek medical attention.
- 6 - REASONABLE SUSPICION means the level of suspicion of criminal activity needed to conduct an investigatory detention known as a "Terry" stop, e.g., the totality of the circumstances indicate that the person is involved in, about to be involved in, or was recently involved in some criminal activity.

GUIDELINES and PROCEDURES

- 7 - FOUR BASIC REQUIREMENTS FOR ALL STRIP SEARCHES
 - (a) PRIVACY - There shall be no areas from which persons not involved in the strip search can observe the search.
 - (b) SAME SEX - All department personnel involved in conducting a strip search must be of the same sex as the person being strip searched.
 - (c) NO TOUCHING - Department personnel shall not touch the breasts, buttocks, or genitalia of the person being strip searched.

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- (1) If a person refuses to comply with a request for a visual body cavity search, the above "no touching" rule still applies. To require cooperation, the officer may either obtain a search warrant, not perform the search, or transfer the person to a higher security facility (Santa Rita Jail) as an uncooperative prisoner.
- (d) A VISUAL body cavity SEARCH ONLY is allowed during a strip search - No physical body cavity search is allowed without a search warrant specifically authorizing a physical body cavity search. In addition, only licensed medical personnel can administer a physical body cavity search.

8 - STRIP SEARCHES MAY BE CONDUCTED IN ONLY THE FOUR FOLLOWING CIRCUMSTANCES

Strip Search At Jail Only

- (a) ARRESTED AND BOOKED FOR CERTAIN CRIMES: Persons arrested and booked for crimes involving weapons, controlled substances (other than simple possession of marijuana), and significant violence; or
- (b) ARRESTED AND BOOKED WITH CERTAIN CIRCUMSTANCES: Persons arrested and booked for any crime, if a supervisor authorizes a strip search known as an "upgrade search" that is based on a reasonable suspicion that the arrested person is concealing a weapon or a controlled substance (other than marijuana) underneath his or her clothing (see footnote below)¹; Or

Strip Search In Field, Or If Arrested, At Jail

- (c) CERTAIN SEARCH CLAUSES - ATTENDANT CIRCUM STANCES: Persons who have a probationary or parole search clause for their person, but only when:
 - (1) The search clause arises out of a controlled substance offense; and

¹ Upgrade search requests for a strip search can be made if the officer has determined that there is a reasonable suspicion, based on specific and articulable facts, to believe that the person is concealing a weapon and/or controlled substances (other than marijuana), and a strip search is needed to discover said item. Reasonable suspicion may be based on a combination of factors such as the arrestee's conduct, the nature of the offense, and the arrestee's prior criminal record. The officer shall complete an "Upgraded Search Request" form (BPD USR-1) and submit the form to the Patrol Division Watch Commander or, in his or her absence, a Patrol Division Supervisor. If approved, the strip search may proceed at the Jail. The results of the search shall be noted on the form, and the completed form shall be filed with the numbered report as a permanent record.

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- (2) There is a reasonable suspicion that the person is involved in a controlled substance or weapons offense, or the person is secreting a weapon or controlled substance under his or her clothes.
- (d) SEARCH WARRANTS FOR CONTROLLED SUBSTANCES: Persons who are to be searched pursuant to a search warrant for controlled substances.
- 9 - STRIP SEARCHES SHALL BE CONDUCTED IN THE JAIL, NOT IN THE FIELD, EXCEPT IN SPECIFIC CIRCUMSTANCES LISTED HERE
- (a) CONDUCT AT JAIL, UNLESS NOTED HEREIN: Strip searches shall be conducted in the Jail, not in the field, except in the circumstances listed in this Section.
- (b) SEARCH WARRANTS FOR CONTROLLED SUBSTANCES: If a person is named as an individual to be searched in a search warrant for controlled substances, the person may be strip searched in a private room in the building to be searched pursuant to the warrant.
- (c) CERTAIN SEARCH CLAUSES WITH ATTENDANT CIRCUMSTANCES: If there is no basis to arrest a person listed in Section II(c) (probationer or parolee with a search clause arising out of a controlled substance offense to be strip searched due to reasonable suspicion that person is involved in a controlled substance offense or is secreting a weapon or controlled substance under his or her clothes), do not transport said person to the police station solely for the purpose of conducting a strip search. Instead:
- (1) If the detention takes place in a building, said person may be strip searched in a private room in the building.
- (2) If the detention takes place on the street, said persons may be strip searched in the type of police vehicle that can ensure complete privacy such as the mobile substation or the prisoner transport van.
- Do NOT transport said person to the police station solely for the purpose of conducting a strip search when there is no basis for an arrest, unless the person voluntarily consents to the transport in writing.²

² The consent to transport form should read: "I understand that I am not under arrest at this time. However, I understand that I am to be strip searched pursuant to the terms of my probation or parole. I therefore request that I first be transported to the police station. I make this request to go to the police station voluntarily and without duress. I specifically choose not to be strip searched at a suitably private location near where I was detained."

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- (e) DO NOT USE A PATROL VEHICLE/USE THE MOBILE SUBSTATION OR THE PRISONER TRANSPORT VAN: When a field strip search is authorized, do not conduct it in a patrol vehicle or any other police vehicle where any aspect of the search can be potentially observed by non-participants in the search.
- (f) DO NOT STRIP SEARCH TWICE: If a strip search is conducted in the field, and the person is then brought to the Jail, e.g. due to the recovery of narcotics, a second strip search should not be conducted at the Jail, unless unusual circumstances are present indicating that the individual may have armed themselves or secreted controlled substances other than marijuana underneath his or her clothes after the initial strip search was conducted.

10 - THREE CIRCUMSTANCES THAT ALONE DO NOT JUSTIFY A STRIP SEARCH

- (a) THE FACT THAT A PERSON WILL BE PLACED IN THE GENERAL JAIL POPULATION

For example, if a person is charged with petty theft and a non-injury assault on another citizen, even if the arrestee is going to be placed in the general jail population, there is not sufficient cause to strip search the person.

- (b) THE FACT THAT THERE IS PROBABLE CAUSE TO ARREST THE PERSON FOR A CONTROLLED SUBSTANCE OFFENSE, BUT NO ARREST AND BOOKING IS CONDUCTED

For example, if an officer observes a narcotics sale, the officer has sufficient probable cause to arrest the seller. The presence of sufficient probable cause to arrest also authorizes the officer to search the seller's pockets on the scene, whether or not an arrest and booking is conducted. However, the officer shall not strip search the seller in the field, e.g. in the mobile substation, even if the officer believes the narcotics are hidden underneath the seller's clothing. Rather, the officer must first arrest and book the seller, and then conduct the strip search of the seller in the Jail during the booking process.

- (c) THE FACT THAT THE PERSON "CONSENTS" TO A STRIP SEARCH IN EXCHANGE FOR NOT BEING ARRESTED

In the above example, assume the narcotics seller does not have a probation or parole search clause arising out of a narcotics offense. In that case, the officer should not ask the seller for consent to conduct a strip search in the field, e.g. in the mobile substation, in exchange for not arresting the seller (providing no drugs are found in the strip search).

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When the alternative to giving consent is being arrested, the consent can no longer be considered voluntary.

References: Penal Code §4030