

State of Washington

(name of governing body)

CORRECTIONS STANDARDS BOARD

(agency name, if applicable)

Resolution No. 84-51A

Administrative Order No.

(1) Be it resolved by the CORRECTIONS STANDARDS BOARD

acting at the Olympia Room of the Governor House; Olympia, Washington (place)

that it does adopt the annexed rules relating to:

Amendments to WAC 289-02-020, 16-100 and 16-200. Strip Search and Body Cavity Search Regulations

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. 84-21-110 filed with the code reviser on October 23, 1984. These rules shall take effect: [ ] thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2). [ ] at a later date, such date being

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

We, the Washington State Corrections Standards Board, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is:

These regulations are necessary to implement the decision of the U.S. Court of Appeals, 9th Circuit, in Giles v. Ackerman, #83-3751, November 2, 1984.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04.026 that "every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules" fill in statement (a), (b), or (c) as appropriate:

[ ] (a) This rule is promulgated pursuant to RCW 10.79.060-110 and is intended to administratively implement that statute.

[ ] (b) This rule is promulgated pursuant to RCW which directs that the

(agency)

has authority to implement the provisions of

(name of act or RCW citation)

[ ] (c) This rule is promulgated under the general rule-making authority of the

(agency)

as authorized in RCW

(4) The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

(5) This order, after being first recorded in the order register of this governing body, is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

APPROVED AND ADOPTED 12/7/84

DEC 12 1984

By Robert W. Cote

Robert W. Cote, Executive Secretary

Title

CODE REVISER'S OFFICE WSR 85-01-033

AMENDATORY SECTION (Amending Order 84-51, filed 10/12/84)

WAC 289-02-020 DEFINITIONS. The following words and phrases shall have the meaning indicated whenever used in this title unless a different meaning is specifically indicated.

(1) "Clear floor space" means floor area which is unobstructed by any permanent fixture.

(2) "Contraband" means any substance or item not specifically permitted by a jail administration.

(3) "Commission" or "state jail commission" refers to the commission established pursuant to RCW 70.48.030.

(4) "Correctional facility" means a facility operated by a governing unit primarily designed, staffed and used for housing of adult persons serving terms not exceeding one year for the purposes of punishment, correction, and rehabilitation following conviction of a criminal offense.

(5) "Day room" means a multipurpose area separate and distinct from a sleeping area, but adjacent thereto, designed primarily for prisoner leisure time activity exclusive of physical exercise activity.

(6) "Detention facility" means a facility operated by a governing unit primarily designed, staffed and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the housing of adult persons for purposes of punishment and correction after sentencing or persons serving terms not to exceed ninety days.

(7) "Dormitory" means a secured sleeping and living area occupied by more than one prisoner.

(8) "Governing unit" means the city and/or county or any combination of cities and/or counties responsible for the operation, supervision, and maintenance of a jail.

(9) "Holding facility" means a facility operated by a governing unit primarily designed, staffed and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the temporary housing of such persons during or after trial and/or sentencing, but in no instance shall the housing exceed thirty days.

(10) "Jail" means any holding, detention, or correctional facility as defined herein, or any farm, camp, or work release facility established and operated in conjunction with a jail.

(11) "Living area" includes single cells, dormitories, day room area and leisure time activity space.

(12) "Major urban" refers to a county or combination of counties which contains a city having a population greater than twenty-six thousand based on the 1978 projections of the office of financial management.

(13) "Medium urban" refers to a county or combination of counties which contains a city having a population equal to or greater than ten thousand but less than twenty-six thousand based on the 1978 projections of the office of financial management.

(14) "Public records" include any writing or recording which contains information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or returned by any state or local agency regardless of its physical form or characteristics.

(15) "Rural" refers to a county or combination of counties which does not contain a city having a population of more than ten thousand based on the 1978 projections of the office of financial management.

(16) "Single cell" means a secured sleeping area occupied by only one prisoner, and which is physically and visually separated from other prisoner sleeping areas on three of its four sides.

(17) "Communicable disease" means micro-organisms that are easily transferable from one body to another creating a condition which must be reported to the health department.

(18) "Work release program" means a program of scheduled release from the physical confines of a city or county jail, special detention

facility or work release center for the purpose of employment, seeking employment or school.

(19) "Work release facility" means any building or designated portion of a building primarily designed, staffed, and used for the housing of persons participating in a work release program.

(20) "Leisure time activity space" means day room area, program area and exercise area.

(21) "Special detention facility" means a minimum security facility operated by a governing unit primarily designed, staffed, and used for the housing of special populations of sentenced persons who do not require the level of security normally provided in detention and correctional facilities including, but not necessarily limited to, persons convicted of offenses under RCW 46.61.502 or 46.61.504.

(22) "Substantially remodeled" means significant alterations made to the physical plant of a jail to conform with the physical plant standards.

(23) "Strip search" means having a person remove or arrange some or all of his or her clothing so as to permit an inspection of the genitals, buttocks, anus or undergarments of a person or breasts of a female person.

AMENDATORY SECTION (Amending Order 13, filed 3/24/81)

WAC 289-16-100 ADMISSIONS. (HOLDING FACILITIES.) (1) Authorized confinement. No prisoner shall be confined without proper legal authority.

(2) Telephone. Each prisoner, within a reasonable period of time after completion of booking, shall be advised of his right to, and be allowed to complete, at least two local or collect calls to persons of his choice who may be able to come to his assistance. If the prisoner chooses not to place the calls allowed, this information shall be noted on the booking form: PROVIDED, That appropriate protection of access to an attorney shall be maintained for prisoners without funds.

(3) Language problems. Reasonable provisions for communication with non-English speaking, handicapped and illiterate prisoners shall be provided.

(4) Booking process. The booking process shall be completed promptly unless extenuating circumstances necessitate delay.

(5) Search/examination, when allowed.

(a) The department of corrections or chief law enforcement officer shall establish and maintain written policies and procedures regarding pat searches, strip searches, and body cavity searches, which shall be consistent with this section.

(b) Each prisoner shall be searched for contraband in ((such)) a manner consistent with this subsection and written policies and procedures established thereunder, as ((staff-determine-is)) necessary to protect the safety of prisoners, staff, and institutional security. ((Such--search--shall--be--conducted--in--a--professional--manner--which--protects--the--prisoner's--dignity--to--the--extent--possible--))

(c) No strip search shall be conducted except pursuant to the written policies and procedures required by (a) of this subsection.

(d) No strip search shall be conducted prior to the prisoner's first court appearance unless there is reasonable suspicion that the person has on his or her person evidence of a crime, contraband, fruits of a crime, things otherwise criminally possessed, a weapon, or other things by means of which a crime has been or reasonably appears about to be committed. Reasonable suspicion shall be deemed to be present when a prisoner has been arrested for:

(i) A violent offense as defined in RCW 9A.030(17) or any successor statute;

(ii) An offense involving escape, burglary, or the use of a deadly weapon; or

(iii) An offense involving possession of a drug or controlled substance under chapter 69.50 RCW or any successor statute.

No strip search shall be authorized or conducted in these cases unless a thorough pat-down search, a thorough electronic metal-detector search, and a thorough clothing search, where appropriate, do not satisfy the safety, security or evidentiary concerns of the jail.

(e) A written record or records of any strip search shall be maintained in the individual file of each person strip searched, which record(s) shall contain the following information:

(i) The name and serial number of the officer conducting the strip search and of all others present or observing any part of the strip search;

(ii) The time, date, and place of the strip search; and

(iii) Any weapons, criminal evidence, other contraband, or health condition discovered as a result of the strip search.

Except where reasonable suspicion is deemed present because of the nature of the arrest offense, this report or these reports shall also contain:

(iv) The name of the supervisor authorizing the strip search; and

(v) The specific facts constituting reasonable suspicion to believe the strip search was necessary.

(f) No body cavity search shall be conducted except pursuant to a valid search warrant. No search warrant for a body cavity search shall be sought without prior authorization of the ranking shift supervisor, pursuant to the written policies and procedures required

by (a) of this subsection. Before any body cavity search is authorized or conducted, a thorough pat-down search, a thorough electronic metal-detector search, and a thorough clothing search, where appropriate, must be used to search for and seize any evidence of a crime, contraband, fruits of crime, things otherwise criminally possessed, weapons, or other things by means of which a crime has been committed or reasonably appears about to be committed. No body cavity search shall be authorized or conducted unless these other methods do not satisfy the safety, security, or evidentiary concerns of the law enforcement agency.

(6) (~~Strip search.--Only an authorized person of the same sex as that of the prisoner shall conduct a strip search.--Such search shall be conducted in a private area.~~) Search procedures, general. The following provisions shall apply to all strip searches and body cavity searches:

(a) Strip searches and body cavity searches shall be conducted in a professional manner which protects the prisoner's dignity to the extent possible.

(b) A strip search or body cavity search, as well as presearch undressing or postsearch dressing shall occur at a location made private from the observation of persons not physically conducting the search. A strip search or body cavity search shall be performed or observed only by persons of the same sex as the person being searched, except for licensed medical professionals as required by subsection (7) (a) of this section, as permitted by subsection (7) (c) of this section or when necessary to assure the safety of the prisoner or any person conducting the search.

(c) No person may be present or observe during a strip search or body cavity search unless the person is necessary to conduct the search or to ensure the safety of those persons conducting the search except as provided in subsection (7) (c) of this section.

(d) When a strip search or a body cavity search of a prisoner is conducted, it should include a thorough visual check for birthmarks, wounds, sores, cuts, bruises, scars, and injuries; "health tags"; and body vermin. Less complete searches should include the same checks to the extent possible. WAC 289-16-100 (6) (d) ADVISORY.

(e) Persons conducting a strip search or body cavity search shall not touch the person being searched except as reasonably necessary to effectuate the search of the person.

(7) Body cavity searches. The following additional provisions shall apply to body cavity searches:

(a) A body cavity search may be conducted only pursuant to subsection (5) (e) of this section. Any body cavity search shall be performed under sanitary conditions and conducted by a physician, registered nurse, or registered physician's assistant, licensed to practice in this state, who is trained in the proper medical process and the potential health problems associated with a body cavity search.

(b) When a body cavity search is conducted by a licensed medical professional of the opposite sex, an observer of the same sex as the prisoner should be present. WAC 289-16-100 (7) (b) ADVISORY.

(c) Nothing in this section prohibits a person upon whom a body cavity search is to be performed from having a readily available person of his or her choosing present at the time the search is conducted. However, the person chosen shall not be a person being held in custody by a law enforcement agency.

(d) The officer requesting the body cavity search shall prepare and sign a report, which shall include:

(i) A copy of the warrant and any supporting documents required;

(ii) The name and sex of all persons conducting or observing the search;

(iii) The time, date, place, and description of the search; and

(iv) A statement of the results of the search and a list of any items removed from the person as a result of the search.

The report shall be retained as part of the agency's records.

(8) All physical markings and "health tag" identification should be recorded and made available to the appropriate jail employees and

medical professionals responsible for care of prisoner. WAC 289-16-100(8) ADVISORY.

(9) Particularly when force has been used during arrest, all visible injuries should be photographed. WAC 289-16-100(9) ADVISORY.

~~((7))~~ (10) Body vermin. Any person with body vermin shall be treated appropriately.

~~((8))~~ (11) Medical complaints. Complaints of illness or injury expressed or detected during booking shall be acted upon promptly by the staff person on duty and the prisoner shall be provided medical treatment as necessary.

~~((9))~~ (12) Communicable diseases. Prisoners suspected of having a communicable disease detrimental to the health of the other prisoners shall be segregated.

~~((10))~~ (13) Prisoner property. At the time of booking, if the prisoner's personal property is taken from him, the authorized jail staff shall record and store such items, and issue the prisoner a receipt.

~~((11))~~ (14) Bedding and personal care items. At a reasonable time after completion of booking, each prisoner shall be issued clean bedding, as well as such personal care items as required under WAC 289-20-180.

~~((12))~~ (15) Writing paper. Upon prisoner request, a reasonable supply of writing material shall be furnished.

AMENDATORY SECTION (Amending Order 10, filed 3/18/81)

WAC 289-16-200 ADMISSIONS. (DETENTION AND CORRECTIONAL FACILITIES.) (1) General.

(a) The receiving officer shall determine that the arrest and confinement of each prisoner is being accomplished by a duly authorized officer, and a copy of all documents that purport to legally authorize the confinement shall become part of the prisoner's jail record.

(b) If only one jail facility officer is on duty, the delivery officer shall remain until the prisoner is locked into the confinement area.

(c) The information required by the commission shall be recorded for each prisoner booked into the facility.

(d) Each prisoner, after completion of booking, shall be advised of his right to, and be allowed to complete, at least two local or collect calls to persons of his choice who may be able to come to his assistance. If the prisoner chooses not to place the calls allowed, this information shall be noted on the booking form.

(e) Reasonable provisions for communicating with non-English speaking, handicapped and illiterate prisoners shall be provided concerning the booking process, rules of the facility, privileges and other information pertinent to his rights and well-being while confined.

(f) The booking process shall be completed promptly unless the physical or mental condition of the prisoner necessitates delay.

(2) Search/examination, when allowed.

(a) The department of corrections or chief law enforcement officer shall establish and maintain written policies and procedures regarding pat searches, strip searches and body cavity searches, which shall be consistent with this section.

(b) Each prisoner shall be searched for contraband in such a manner consistent with this subsection and written policies and procedures established thereunder, as ((responsible-staff-determine)) is necessary to protect the safety of prisoners, staff, and institutional security. ((Such-search-should-be-conducted-in-a-private-area-and--in-a--professional--manner--which--protects-the-prisoner's-dignity-to-the-extent-possible.

~~(b) When a strip search is conducted, it shall be performed by a staff person of the same sex as the prisoner.)~~

~~(c) No strip search shall be conducted except pursuant to the written policies and procedures required by (a) of this subsection.~~

~~(d) No strip search shall be conducted prior to the prisoner's first court appearance unless there is reasonable suspicion that the person has on his or her person evidence of a crime, contraband, fruits of a crime, things otherwise criminally possessed, a weapon, or other things by means of which a crime has been or reasonably appears about to be committed. Reasonable suspicion shall be deemed to be present when a prisoner has been arrested for:~~

~~(i) A violent offense as defined in RCW 9.94A.030(17) or any successor statute;~~

~~(ii) An offense involving escape, burglary, or the use of a deadly weapon; or~~

~~(iii) An offense involving possession of a drug or controlled substance under chapter 69.50 RCW or any successor statute.~~

~~No strip search shall be authorized or conducted in these cases unless a thorough pat-down search, a thorough electronic metal-detector search, and a thorough clothing search, where appropriate, do not satisfy the safety, security or evidentiary concerns of the jail.~~

~~(e) A written record or records of any strip search shall be maintained in the individual file of each person strip searched, which record(s) shall contain the following information:~~

~~(i) The name and serial number of the officer conducting the strip search and of all others present or observing any part of the strip search;~~

~~(ii) The time, date, and place of the strip search; and~~

~~(iii) Any weapons, criminal evidence, other contraband, or health condition discovered as a result of the strip search.~~

~~Except where reasonable suspicion is deemed present because of the nature of the arrest offense, this report or these reports shall also contain:~~

~~(iv) The name of the supervisor authorizing the strip search; and~~

~~(v) The specific facts constituting reasonable suspicion to believe the strip search was necessary.~~

~~(f) No body cavity search shall be conducted except pursuant to a valid search warrant. No search warrant for a body cavity search shall be sought without prior authorization of the ranking shift supervisor, pursuant to the written policies and procedures required by (a) of this subsection. Before any body cavity search is authorized or conducted, a thorough pat-down search, a thorough electronic metal-detector search, and a thorough clothing search, where appropriate, must be used to search for and seize any evidence of a crime, contraband, fruits of crime, things otherwise criminally possessed, weapons, or other things by means of which a crime has been committed or reasonably appears about to be committed. No body cavity search shall be authorized or conducted unless these other methods do not satisfy the safety, security, or evidentiary concerns of the law enforcement agency.~~

~~(3) Search procedures, general. The following provisions shall apply to all strip searches and body cavity searches:~~

~~(a) Strip searches and body cavity searches shall be conducted in a professional manner which protects the prisoner's dignity to the extent possible.~~

~~(b) A strip search or body cavity search, as well as presearch undressing or postsearch dressing shall occur at a location made private from the observation of persons not physically conducting the search. A strip search or body cavity search shall be performed or observed only by persons of the same sex as the person being searched, except for licensed medical professionals as required by subsection (4)(a) of this section, as permitted by subsection (4)(c) of this section or when necessary to assure the safety of the prisoner or any person conducting the search.~~

~~(c) No person may be present or observe during a strip search or body cavity search unless the person is necessary to conduct the~~

search or to ensure the safety of those persons conducting the search except as provided in subsection (4) (c) of this section.

(d) When a strip search or a body cavity search of a prisoner is conducted, it should include a thorough visual check for birthmarks, wounds, sores, cuts, bruises, scars and injuries; "health tags;" and body vermin. Less complete searches should include the same checks to the extent possible. WAC 289-16-200 ((f2)-(e)) (3) (d) ADVISORY.

(e) Persons conducting a strip search or body cavity search shall not touch the person being searched except as reasonably necessary to effectuate the search of the person.

(4) Body cavity searches. The following additional provisions shall apply to body cavity searches:

(a) A body cavity search may be conducted only pursuant to subsection (2) (e) of this section. Any body cavity search shall be performed under sanitary conditions and conducted by a physician, registered nurse, or registered physician's assistant, licensed to practice in this state, who is trained in the proper medical process and the potential health problems associated with a body cavity search.

(b) When a body cavity search is conducted by a licensed medical professional of the opposite sex, an observer of the same sex as the prisoner should be present. WAC 289-16-200 (4) (b) ADVISORY.

(c) Nothing in this section prohibits a person upon whom a body cavity search is to be performed from having a readily available person of his or her choosing present at the time the search is conducted. However, the person chosen shall not be a person being held in custody by a law enforcement agency.

(d) The officer requesting the body cavity search shall prepare and sign a report, which shall include:

(i) A copy of the warrant and any supporting documents required;

(ii) The name and sex of all persons conducting or observing the search;

(iii) The time, date, place, and description of the search; and

(iv) A statement of the results of the search and a list of any items removed from the person as a result of the search.

The report shall be retained as part of the agency's records.

((f4)) (5) All physical markings and "health tag" identifications shall be recorded and made available to the appropriate jail employees and the medical professionals responsible for care of the prisoner under chapter 289-20 WAC.

((fe)) (6) Particularly when force has been used during arrest, all visible injuries should be photographed. WAC 289-16-200 ((f2)-(e)) (6) ADVISORY.

((ff)) (7) Body vermin. Any person with body vermin shall be treated appropriately in accordance with chapter 289-20 WAC.

((fg)) (8) Medical complaints. Complaints of illness or injury expressed or observed during booking shall be checked promptly in accordance with the medical procedure established under WAC 289-20-220.

((fh)) (9) Communicable diseases. A prisoner suspected of having a communicable disease as defined in WAC 289-02-020(17) shall be isolated without delay. Arrangements shall be made for his immediate transfer to a facility equipped to handle the suspected disease, unless the admitting facility can safely and effectively segregate and maintain the medically prescribed treatment.

((fj)) (10) Personal property. The admitting officer shall record and store the prisoner's personal property and issue the prisoner a witnessed receipt.

((fk)) (11) Prisoner weight. Each prisoner's weight should be measured and recorded upon admission. WAC 289-16-200 ((f4)) (11) ADVISORY.

((fl)) (12) Photographs and fingerprints.

(a) Front and side-view identification photographs of each prisoner should stipulate the arresting agency or the booking agency and the date of arrest or the date of the photograph. WAC 289-16-200 ((f5)) (12) (a) ADVISORY.



(b) Copies of fingerprints shall be forwarded to the proper state and federal authorities.

~~((6))~~ (13) Issuances.

(a) Each jail should establish its own policy on prisoners' use of personal clothing or jail uniforms. WAC 289-16-200 ~~((6))~~ (13) (a) ADVISORY.

(b) At a reasonable time after the completion of booking, each prisoner shall be issued clean bedding, as well as such personal care items as required under WAC 289-20-280.

(c) Upon prisoner request, a reasonable supply of writing material shall be furnished.