



MENTAL RETARDATION BULLETIN

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SUBJECT

Search of Visitors and Residents at State Centers and Mental Retardation Units

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SCOPE

Mental Retardation Regional Commissioners
Superintendents - State Centers
Mental Retardation Unit Directors
DPW Headquarters Program and Administration Deputies

PURPOSE

To elaborate upon the Secretary's Directive (AP-81-12, issued July 29, 1981).

BACKGROUND

The Department operates a variety of residential facilities including State Mental Hospitals, Mental Retardation Centers/Units, State General Hospitals, Restoration Centers and Youth Development/Forestry Centers. These facilities are all accessible to the general public which includes visitors.

From time to time, it has been necessary to search individuals who are suspected of having contraband such as weapons or illegal narcotics or drugs, etc. The Secretary's Directive sets forth a uniform policy for search procedures of visitors or clients.

Although the need to conduct searches in State Centers and MR Units is extremely rare, the purpose of this Bulletin is to set forth procedures assigning authority, accountability and lines of communications in the unlikely event that a search is necessary.

GENERAL POLICY/PROCEDURE

The following policy/procedure shall apply when reasonable cause or reasonable suspicion exists as defined in this Bulletin:

1. Pursuant to the Secretary's Directive, searches of visitors and residents will not be routinely conducted.
2. If there is reasonable cause to suspect contraband and a search may be warranted pursuant to the Secretary's Directive, the

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

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Superintendent will determine if the search is to be conducted. In the absence or the unavailability of the Superintendent, the designated in-charge person will determine if a search is to be conducted. The Superintendent will notify the Regional Commissioner of the circumstances immediately.

3. Since visitors generally go directly to a living area, it will be the responsibility of the living area manager (unit manager, building supervisor, etc.) to contact the Superintendent/Designee when there is reasonable cause or reasonable suspicion with respect to a visitor who may have contraband. It will also be the responsibility of the living area manager to notify facility security staff immediately.
4. The security officer will go to the visitor's location immediately to maintain the safety of the facility until a decision regarding a search is made by the Superintendent/Designee.
5. If the Superintendent/Designee determines that a search is warranted, it shall be the responsibility of the Superintendent/Designee to select and assign appropriate staff to conduct the search in accordance with the Secretary's Directive.
6. If contraband is found as a result of a search, it will be the responsibility of the Superintendent/Designee to call the State Police who will assume responsibility for the contraband and follow-up actions.

DEFINITIONS

The terms "reasonable cause" and "reasonable suspicion" are used in the Secretary's Directive. For purposes of clarification, the Office of Legal Counsel has established the following working guidelines for applying these terms:

1. "Reasonable Cause" is generally considered equivalent to "probable cause." La Fave, 2 Search and Seizure 222-223 (1978). It is an "exceedingly difficult concept to objectify," La Fave, 1 Search and Seizure 449 (1978), but is usually means at least a 50-50 chance.
2. "Reasonable Suspicion" is a lower standard. "Reasonable Suspicion" may exist where "reasonable cause" does not. See, e.g., Com. v. Lumb, ___ Pa. Super. ___, No. 1297 Oct. Term 1979, June 12, 1981. It is impossible to quantify with any degree of precision, however. An example of a circumstance in which reasonable suspicion exists, but reasonable cause might not: A resident at a facility shows signs of being "high" on illicit drugs shortly after being visited by family members. He/she has never appeared "high" before. Reasonable suspicion would certainly exist that a family member passed illicit drugs to him/her. These circumstances alone would not be sufficient, however, to create "reasonable cause" to believe a family member passed illicit drugs. If the resident repeatedly appeared "high" after visits by his/her family, there would be "reasonable cause."

REPORTING

The need to conduct a search at a State Center or Unit certainly constitutes an unusual incident. Therefore, the reporting of searches should follow the established Department of Public Welfare/Office of Mental Retardation requirements.