

**A Review of Operational Search Policies of Youth Residents at the
Newfoundland and Labrador Youth Centre**

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The Honourable Jerome Kennedy, Q.C., Minister of Justice and Attorney General for Newfoundland and Labrador requested a review on Operational Search Policies of Youth Residents at the Newfoundland and Labrador Youth Centre. As a result the consultants (Poirier and Brown) visited the Newfoundland and Labrador Youth Centre as well as the St. John's Youth Detention Centre.

The consultants recognize that strip searches are one of the most intrusive type of search that can occur. This is especially true in young offender facilities. However, the balance between the safety of staff and young offenders, and the dignity of young offenders must be respected. The number of strip searches of young offenders must be kept to the minimum necessary to maintain the security of the facility and the safety of both offenders and staff.

The greatest risk of introduction of contraband is during the point of admission to the facility; during non supervised absences; and during family visits without supervision. These are the occasions when strip searches are necessary to ensure contraband is not introduced. Given the intrusive nature of this search, it is absolutely necessary that policy is clear and direct to ensure the dignity of the young offender is respected as well as the safety of staff and the offender.

Review of other Jurisdictions

A review of policies and procedures of other Canadian jurisdictions was completed and provided to the consultants. (See Appendix A.) The review demonstrated that the Young Offender Facilities in Newfoundland and Labrador had very similar policies and procedures to those used in other jurisdictions. Young Offender Facilities in Prince Edward Island and Nunavut did not complete strip searches on young offenders who were returning to their facilities after being escorted by another enforcement agency. The young offender would only be strip searched if they had been left unsupervised at some point during the escort by the enforcement officers.

It is recommended that Newfoundland Young Offender Facilities adopt a similar policy to the Prince Edward Island and Nunavut jurisdictions and only strip search residents who are being escorted by police or sheriffs if the resident had been left unattended for a period of time.

Reduction in the number of Strip Searches

The Newfoundland and Labrador Youth Centre and St. John's Youth Detention Centre have taken measures to minimize the number of strip searches at both sites. These measures include the utilization of video conferencing at Newfoundland and Labrador Youth Centre which will minimize the need to transport young offenders from the facility to the courts; and the installation of windows in interview rooms which allows better staff observation during the visit. This will reduce the number of strip searches that occur at both facilities. Full utilization of the St. John's Detention Centre for its intended purpose will also result in a reduction of strip searches.

It is recommended that the St. John's Detention Centre be fully utilized as a holding area for young offenders who are attending court; being assessed by the psychiatrist; meeting with lawyers or other professionals. The full utilization of this facility would reduce the number of strip searches

Changes to Policy

The staff of NLYC is presently drafting new policy and procedures in respect to the searching of young offenders. These drafts have been reviewed by the consultants and some options and suggestions are provided as follows:

- The draft policy is silent on the policy of strip searches based on "reasonable grounds" when the offender is suspected of hiding contraband.

It is recommended that clear direction and policy be developed on the need for reasonable grounds being present prior to a non-routine strip search.

- The policy is silent on the strip search of young female offenders who may be using sanitary napkins or tampons.

It is recommended that clear direction be developed to ensure the dignity of the young female offender is respected if she is using sanitary products.

- The present policy calls for at least two officers to conduct the strip search. One officer performs the strip search while another witnesses the search. In situations where the witnessing officer is not of the same sex of the resident, that officer positions him/her self so that they witness the searching officer and not the resident. Allegations have been made that during some strip searches only one officer is present. In reviewing the documentation the consultants found no evidence of this, but believe the present policy of the witnessing officer being located in a position so that they can not see the resident may lead to the perception that only one officer is present. By only viewing the searching officer the witnessing officer does not actually witness “the search”.

It is recommended that both officers performing the search be of the same sex as the resident being searched except in exceptional circumstances when sufficient same gender staff are not available.

It is recommended when a strip search occurs both the searching officer and the witnessing officer should view the young offenders being searched.

- The policy on searching should include the need to consider cultural diversity. As the population of Newfoundland and Labrador continues to grow and becomes more diverse, this will be an important issue in the future.

It is recommended that a policy be developed to address different cultural sensitivities. This should include issues relating to aboriginal people such as searching of sacred bundles.

Strip Searches Involving Non-compliant, Self-Mutilating Young Offenders

The consultants suggest the policy for the strip searching of non-compliant young offenders who have items that could cause self-harm be revisited.

- The draft policy states that senior management should be notified; however policy would be more precise if the position title of the specific manager be specified. The policy is silent as to the necessity

of staff wearing protective clothing during strip searches of young offenders with self-mutilating behaviour.

It is recommended that a policy be developed to address the wearing of protective clothing.

- The draft policy suggests that the first step is negotiation with the young offender. The consultants are in full agreement with this. When all attempts at negotiation have failed and the only recourse is to proceed with a strip search the consultants would suggest that once initiated the strip search be fully completed. Present draft policy directs that staff is to initiate the strip search by removing one piece of clothing and then withdrawing from the area to search that piece of clothing. If nothing is found and the behaviour continues staff are to re-enter the cell to continue with the next phase of the strip search which would be to remove the next article of clothing. This continues until the contraband has finally been retrieved. The intent is to minimize the psychological impact on the young offender by only completing the strip search to the point of retrieval of the contraband. The consultants would argue that there would be less psychological impact by continuing the strip search, once initiated to the conclusion. This would also ensure that the offender is not left in a cell to continue self-mutilation if the contraband is not found in the first piece of clothing.

It is recommended that a review of the policy surrounding non-compliant and self-mutilating young offenders be conducted.

Body Cavity Searches

Policy states that body cavity searches can be considered if there is reasonable and probable suspicion that the offender is concealing contraband in a body of cavity. The consultants recommend the word suspicion be changed to reasonable grounds to believe. As this is the most intrusive type of search the consideration of such should be based on a higher rationale than mere suspicion. Another option would be the use of an x-ray however this may not be practical given the location of the Newfoundland and Labrador Youth Centre.

Body Cavity searches are not frequently utilized however it is recommended that policy reflect that they must be based on reason to believe, and not mere suspicion, that an offender has possession of contraband.

Frisk Searches of Female Offenders

During the site visit at Newfoundland and Labrador Youth Centre the consultants observed the frisk search of a female young offender in the presence of two male offenders. The female young offender was obviously uncomfortable by having this procedure conducted in the presence of the young male offenders. Newfoundland and Labrador Youth Centre has confirmed to us that this procedure has been changed, however during a meeting with the John Howard Society two weeks later one of the JHS staff members stated she had witnessed the same issue the day prior to our meeting with the John Howard Society.

It is strongly recommended that frisk searches of young female offenders not be completed in the presence of male young offenders and that policy be followed.

Environment

The consultants found the environment at the Newfoundland and Labrador Youth Centre to be very restrictive. As an example, it was noted that young offenders were allowed few, if any, personal effects in their cells after lock up for the night. Personal effects were placed in a plastic tub which had to be placed outside the cell. This procedure was put in place several years ago after a suicide. The consultants, although realizing the need to reduce suicidal attempts, find that this policy is over restrictive for young offenders who do not have suicidal tendencies.

It is recommended that the policy on personal effects be reviewed with the aim that it becomes less restrictive.

Audit of Past Practices for Compliance with Operational Policies and Procedures

A review of documentation between the period of September 1st, 2007 and April 30th, 2008 was conducted. These documents included the following types of searches: strip searches, visual checks and frisk searches.

A total of 304 searches were conducted on the male young offenders and a total of 56 searches were conducted on the female young offenders. These searches were either at admission or release for various reasons.

The breakdown is as follows:

	Number of Searches	Strip Searches @ Admission	Strip Searches when incarcerated	Strip Searches when leaving	Searches as per policy	Visual Checks @ admission	Visual Checks @ release
Male Young offenders	304	111	29	0	114	2	48
Female Young offenders	56	29	0	8	15	0	4

Analysis:

Strip Searches:

(a) All young offenders, male or female are being strip searched upon admission, as well as from court and any unsupervised visit or appointment. If the resident is always in the youth counsellors' visual during any escort, he will not be stripped searched unless there is reasonable and probable grounds warranting the search.

The policy document "Operational Search" Section 1 Sub-Section 1.9 Item 4. On page 4 clearly indicates that "A strip search, with the approval of the Manager of Services and Operations (MOSO), **MAY** be completed on any resident who has an unsupervised visit or appointment." None of the documents provided "Secure Custody/Remand Incident Report" indicate if prior approval for a search after an unsupervised visit or appointment was given by the MOSO, therefore the consultants cannot determine if the policy is adhered to.

(b) As well, some of the strip searches are occurring for all the young offenders in a unit at the site as part of a facility wide search for contraband or general unit searches. There is no documentation indicating why such strip searches were warranted. One can only assume that if the unit is searched, then all the inmates are subjected to a strip search.

It is recommended that a detailed explanation be provided to warrant the strip searches including information received that would provide reasonable and probable grounds that the security of the facility, staff or young offenders would be jeopardized if not conducted.

(c) It is important to note that only female young offenders are being stripped searched when leaving the facility. In these cases it was to attend court. Again no details as to the rationale for such an intrusive search were found on the documentation provided. Upon discussion with the former Manager of Security Operations (MOSO), he indicated that these types of searches do not occur. However, the documentation completed is specific and indicates clearly “strip-search”.

It is recommended that the strip search of female young offenders who are being released for court cease immediately unless there are reasonable and probable grounds to warrant this strip search.

Searches as per policy

Of the 129 searches reviewed, for both male and female young offenders, documentation indicated only “searched as per policy” for rationale. This could be on admissions and releases for whatever reason. There is no reference to the section of the policy under which the search was completed. It was impossible for the consultants to determine if these searches were strip searches, frisk searches, visual checks, etc. Obviously if these were, in fact, strip searches the number of strip searches is significant for a six month period.

It is recommended that the document “Secure Custody/Remand Incident Report” reflects the policy section and details the reasons for the search.

Visual Checks At Admission and Release

Only 2 documented cases were reported during admission. In the two cases provided, both inmates refused to be strip searched, therefore, a visual was completed at the entry and the strip search conducted later.

A total of 52 male and female young offenders were subjected to “Visual checks” upon departure from the facility. Present policy does not cover this type of search. It appears that this practice was started several years ago when there was an allegation that staff had “roughed-up” a resident even though the resident was not at the facility at the time. This was implemented to provide proof that the injuries did not occur at the facility. The practice includes having young offenders strip down to their undergarments and a visual inspection is completed to determine if there are bruises, marks, etc on the body.

The consultants do not believe this type of search is required or relevant in the present context. It implies that staff of the Newfoundland and Labrador Youth Centre do not consider their criminal justice partners as professionals. Similar to the issue of cell contents previously discussed this is another example of the over reaction to an event that happened in the past number of years.

It is strongly recommended that the visual check presently in place be discontinued and if not discontinued it be covered by policy.

Recommendations

- 1) It is recommended that Newfoundland Young Offender Facilities adopt a similar policy to the Prince Edward Island and Nunavut jurisdictions and only strip search young offenders who are being escorted by police or sheriffs if the resident had been left unattended for a period of time.**
- 2) It is recommended that the St. John's Detention facility be fully utilized as a holding area for young offenders who are attending court; being assessed by the psychiatrist; meeting with lawyers or other professionals. The full utilization of this facility would reduce the number of strip searches**
- 3) It is recommended that clear direction and policy on the need for reasonable grounds being present prior to a non-routine strip search.**
- 4) It is recommended that clear direction be developed to ensure the dignity of the young female offender is respected if she is using sanitary products.**
- 5) It is recommended that both officers performing the search be of the same sex as the resident being searched except in exceptional circumstances when sufficient same gender staff are not available.**
- 6) It is recommended when a strip search occurs both the searching officer and the witnessing officer should view the young offenders being searched.**
- 7) It is recommended that a policy be developed to address different cultural sensitivities. This should include issues relating to aboriginal people such as searching of sacred bundles.**
- 8) It is recommended that a policy be developed to address the wearing of protective clothing.**
- 9) It is recommended that a review of the policy surrounding non-compliant and self-mutilating young offenders be conducted.**

10) Body Cavity searches are not frequently utilized however it is recommended that policy should reflect they must be based on reason to believe, and not mere suspicion, that an offender has possession of contraband.

11) It is strongly recommended that frisk searches of young female offenders not be completed in the presence of male young offenders and that policy be followed.

12) It is recommended that the policy on personal effects be reviewed with the aim that it becomes less restrictive.

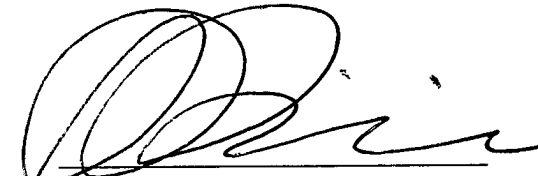
13) It is recommended that a detailed explanation be provided to warrant the strip searches including information received that would provide reasonable and probable grounds that security of the facility, staff or young offenders would be jeopardized if not conducted.

14) It is recommended that the strip search of female young offenders who are being released for court cease immediately unless there are reasonable and probable grounds to warrant this strip search.

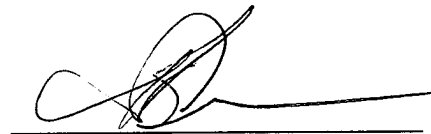
15) It is recommended that the document “Secure Custody/Remand Incident Report” reflects the policy section and details the reasons for the search.

16) It is strongly recommended that the visual check presently in place be discontinued and if not discontinued it be covered by policy.

The consultants wish to thank the staff of both Youth Offender facilities for their cooperation and assistance during this review.



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Appendix A
STRIP SEARCH POLICY

	NB	PEI	ONT	MAN	SASK	AB	BC	NL	NWT
on admision	yes	yes	yes	yes	yes	yes	yes	yes	yes
reasonable grounds	yes	yes	yes	yes	yes	yes	unk	yes	yes
supervised absence from facility	unk	unk	unk	yes**	yes**	yes	yes	no	unk
unsupervised absence	unk	yes	unk	yes	yes	yes	yes	yes	unk
return from court/other agencies	yes	yes***	unk	yes	yes	yes	yes	yes	unk
after visits with non professional	yes	unk	yes	unk	unk	yes	unk	yes	unk
on release	unk	unk	unk	unk	unk	unk	unk	no	unk
officers required	2	2	2	2	2	2	2	2	2
privacy barrier, etc	priv area	priv area	priv area	priv area	priv area	unk	priv area	priv area	unk
video - hand held	unk		unk	unk	unk	unk	unk	no	unk
video - range or room	unk	yes	unk	unk	unk	no	unk	yes	unk
searcher -same gender	yes	yes	yes	yes	yes	yes	yes	yes	unk
witness gender	same	yes	m or f	when poss	same	m or f	not clear	same	unk
search repoit	yes	yes	not admin	yes	yes	yes	yes	yes	unk
written policy	yes D-15	yes	yes	03-990	CH6Sec5	yes	unk	yes	unk

AB policy - d) group searches involving the search of the young offender living areas and the strip-searching of offenders shall occur once in a six-day shift rotation;

** if observation has been broken

*** not from Open Custody to appear in court - escorted by sheriff