

**RULES
OF
THE TENNESSEE DEPARTMENT OF MENTAL HEALTH
AND MENTAL RETARDATION
ADMINISTRATIVE SERVICES DIVISION**

**CHAPTER 0940—2—4
ADMINISTRATIVE INSPECTIONS AND SEARCHES**

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0940—2—4—.01 PURPOSE. The Department of Mental Health and Mental Retardation has a duty to protect the safety of persons at its facilities and to preserve and protect the property of those persons and of the State of Tennessee. In order to fulfill this responsibility the use of administrative inspections and searches is necessary. This rule is intended to standardize practices and provide guidelines for proper conduct of administrative inspections and searches of persons and property at department facilities.

Authority: T.C.A. §§ 33—1—203, 33—1—204 and 33—1—205. *Administrative History:* Original rule filed October 2, 1986; effective November 16, 1986.

0940—2—4—.02 SCOPE. This chapter is applicable to administrative inspections and searches conducted by department employees at any facility operated by the department. This chapter does not apply to any facility that elects not to conduct any searches or administrative inspections.

Authority: T.C.A. §§ 33—1—203, 33—1—204 and 33—1—205. *Administrative History:* Original rule filed October 2, 1986; effective November 16, 1986.

0940—2—4—.03 DEFINITIONS. As used in this chapter, unless the context requires otherwise, terms shall have the following meanings:

- (1) Administrative inspection — a principally visual inspection of a cursory and limited nature to permit the viewing of the contents of packages, containers, and the passenger and trunk area of motor vehicles.
- (2) Consent — clear, unequivocal and entirely voluntary permission to conduct an administrative inspection or search given by the subject thereof or the controller of property subject thereto.
- (3) Contraband — any item expressly prohibited or limited in its use, possession or presence on facility grounds by law or by departmental or facility rules, policy or procedures.
- (4) Department — the department of mental health and mental retardation.
- (5) Employees — all workers on the staff of any division, facility or office of the department.
- (6) Exigent circumstances — situations in which facts indicate that immediate action is necessary to prevent danger or to prevent loss or destruction of evidence during the delay required to obtain a warrant.
- (7) Patients — persons under evaluation, care or treatment in a facility operated by the department for the mentally ill.
- (8) Probable cause — a factual ground for belief sufficient to cause a reasonably prudent person to conclude that a crime has been or is being committed, or that contraband or evidence of a crime will likely be found in a particular place or area.
- (9) Residents — persons under evaluation, care, training or treatment in a facility operated by the department for the mentally retarded.

- (10) Search — Any physical examination of a person or a person's clothing, or a thorough examination of a package, container, or vehicle.
- (a) Frisk search — a search in which a person being searched is not required to remove his or her clothing.
 - (b) Strip search — a search in which a person being searched is required to remove or rearrange some or all of his or her clothing.
 - (c) Visual body cavity search — the visual inspection of a person's body cavities made without touching the person being searched physically or with instruments.
 - (d) Manual body cavity search — an inspection of mouth, ear, nose, anal or vaginal body cavities performed only by authorized medical or nursing staff utilizing the fingers or appropriate instruments.
- (11) Visitors — persons other than department employees who enter facility grounds.

Authority: T.C.A. §§ 33—1—203, 33—1—204 and 33—1—205. *Administrative History:* Original rule filed October 2, 1986; effective November 16, 1986.

0940—2—4—.04 POLICY.

- (1) Administrative inspections and searches shall be conducted only by properly authorized department staff and only in accordance with the procedures specified herein.
- (2) Administrative inspections and searches shall be conducted only as necessary to achieve the following purposes:
 - (a) to prevent introduction of prohibited or dangerous instrumentalities into the facility, and especially into the patient or resident population therein,
 - (b) to prevent theft of property, belonging to patients, residents, employees or visitors at the facility.
 - (c) to prevent theft and unauthorized use of state property, or
 - (d) to discover hazards to health and safety that might otherwise go unnoticed.
- (3) Administrative inspections and searches shall be conducted in a manner which will avoid embarrassment or indignity to those whose persons or property are being inspected or searched.
- (4) Notice of this policy and these procedures shall be given to all those potentially affected thereby.
- (5) Employees and visitors subject to administrative inspection shall be provided with the opportunity to leave personal belongings and vehicles at designated areas: personal belongings and vehicles left at said designated areas will not be subject to administrative inspection.
- (6) Employees may be permitted to keep some personal belongings in property (examples: desks, file cabinets) owned by the state that is assigned or issued to employees for use in their jobs. However, the contents of such state property may be inspected at any time by supervisory personnel, without notice to or the permission of the employee to whom the property is assigned.
- (7) The head of each facility shall issue instructions consistent with this policy and these procedures assigning Authority and responsibility for the implementation of this policy and these procedures at the respective facilities. Use of administrative inspection procedures is not required at any facility so long as the head of a facility determines that theft and safety problems can be resolved in a less obtrusive manner.
- (8) The department shall provide an on-going program of training for personnel responsible for the implementation of this policy.

Authority: T.C.A. §§ 33—1—203, 33—1—204 and 33—1—205. *Administrative History:* Original rule filed October 2, 1986; effective November 16, 1986.

0940—2—4—.05 NOTICE PROCEDURES.

- (1) Signs shall be posted in highly conspicuous areas on facility grounds, and particularly at facility entrances, to give notice to visitors and employees when persons and property on facility grounds are subject to administrative inspection. Signs should include information that bringing alcohol, drugs or weapons onto facility grounds is not permitted, and that such items are subject to confiscation.
- (2) Present employees, patients and residents shall be appropriately informed of this policy and these procedures prior to its implementation.
- (3) Upon admission, patients and residents shall be given information about this policy and these procedures by means of including such information in the statement and explanation of patients' or residents' rights provided at admission.
- (4) Whenever practicable, prospective patients or residents, and their families and friends should be given information about this policy and these procedures prior to the time of admission.
- (5) Applicants for employment should be given information about this policy and these procedures.
- (6) Generally, notice should be given in a manner and at a time reasonably calculated to allow a person to make decisions and arrangements to protect legitimate privacy interests.

Authority: T.C.A. §§ 33—1—203, 33—1—204 and 33—1—205. *Administrative History:* Original rule filed October 2, 1986; effective November 16, 1986.

0940—2—4—.06 ADMINISTRATIVE INSPECTION PROCEDURES.

- (1) Personnel designated by the commissioner of the department to exercise the Authority of security guards may request any employee or other person on facility grounds to submit to an administrative inspection or to present appropriate identification. This Authority is to be exercised only by employees specifically authorized by the head of a facility to conduct administrative inspections.
- (2) Any employee not complying with a request to submit to administrative inspection or to present identification shall be subject to disciplinary procedures and other appropriate legal action.
- (3) Any visitor not complying with a request to submit to administrative inspection or to present identification shall be subject to being escorted from facility grounds and other appropriate legal action.
- (4) Any patient or resident not complying with a request to submit to administrative inspection shall be subject to being escorted to his or her housing unit, and the refusal shall be reported to designated professional staff for a determination of any necessary further action.

Authority: T.C.A. §§ 33—1—203, 33—1—204 and 33—1—205. *Administrative History:* Original rule filed October 2, 1986; effective November 16, 1986.

0940—2—4—.07 SEARCH PROCEDURES: ALL SEARCHES.

- (1) All searches shall be conducted for a specific purpose consistent with the policy stated herein.
- (2) All personnel whose duties include any role in conducting or authorizing searches shall receive special training in the procedures outlined herein, and in the principles of the law of search and seizure and of privacy rights.

Authority: T.C.A. §§ 33—1—203, 33—1—204 and 33—1—205. *Administrative History:* Original rule filed October 2, 1986; effective November 16, 1986.

0940—2—4—.08 PROCEDURES FOR SEARCHES OF EMPLOYEES AND VISITORS.

- (1) Searches of visitors and employees, or their vehicles and other property, shall be conducted only by facility security guards or by such other persons as designated by the Commissioner to exercise the Authority of security guards. This Authority is to be exercised only by employees specifically authorized by the head of a facility to conduct searches.
- (2) Employees entering a security facility or unit, or visitors to patients or residents in a security facility or unit may be requested to consent to a frisk search prior to the visit. Any visitor refusing consent to this procedure may be denied permission to visit.
- (3) Searches of visitors and employees are limited to searches not requiring the removal of clothing.
- (4) Searches, other than as authorized in Part 2 above, of visitors and employees, or of their vehicles or other property, shall be conducted only in the following circumstances:
 - (a) pursuant to a lawful search warrant and limited to the Authority given in the warrant, or
 - (b) with the voluntary consent of the person subject to search, or
 - (c) with the voluntary consent of the person exercising control of property subject to search, or
 - (d) with probable cause in exigent circumstances.
- (5) Whenever practicable, prior to the search of visitors or employees or of their vehicles or property, a search warrant shall be obtained pursuant to Rule 41 of the Tennessee Rules of Criminal Procedures. Searches without a warrant or voluntary consent are expressly discouraged, and should not be conducted unless a compelling need for an immediate search can be demonstrated.
- (6) No physical force shall be used by department employees in searches of employees or visitors. When a proposed search is resisted, search efforts shall cease. In appropriate cases, a report should then be made to a local law enforcement agency.

Authority: T.C.A. §§ 33—1—203, 33—1—204 and 33—1—205. *Administrative History:* Original rule filed October 2, 1986; effective November 16, 1986.

0940—2—4—.09 PROCEDURES FOR SEARCHES OF PATIENTS AND RESIDENTS.

- (1) The person and property of patients and residents shall be subject to search, including strip search, including strip search, upon admission, upon return from leave and at such other times as is determined by designated professional staff to be necessary for the protection of the patient or resident, other patients or residents, or staff of the facility. Any strip or body cavity search of a patient or resident should be conducted by clinical personnel.
- (2) Except in exigent circumstances, all searches other than those upon admission must be authorized in writing by professional staff designated by the head of the facility to authorize searches of patients or residents. The authorization shall include the justification for the search.
- (3) If an intrusion on the privacy of the person or property of a patient or resident is incidental to a care-giving activity and not for the primary purpose of discovering contraband or evidence of a crime, such intrusion is not characterized as a search. The need of the patient or resident for services that necessitate such intrusions must be specifically documented in the individual treatment or habilitation plan of the patient or resident, and the continuing need for these services periodically reviewed. Without said documentation, such services must only be performed at the request of or with the competent consent of the patient or resident. In all cases, such services must be performed with consideration, respect and full recognition of the dignity of the patient or resident.

Authority: T.C.A. §§ 33—1—203, 33—1—204 and 33—1—205. *Administrative History:* Original rule filed October 2, 1986; effective November 16, 1986.