

United States District Court

For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARY BULL, et al.,  
Plaintiffs,

No. C 03-01840 CRB

**MEMORANDUM & ORDER**

v.

CITY & COUNTY OF SAN FRANCISCO,  
et al.,  
Defendants.

In this suit, plaintiffs challenge the San Francisco Sheriff's Department's strip search policies. Now before the Court are four motions: (1) plaintiffs' motion for a preliminary injunction; (2) plaintiffs' motion for class certification; (3) defendants' motion for judgment on the pleadings; and (4) defendants' motion for partial summary judgment. Having carefully considered the memoranda submitted by the parties, and having had extensive oral argument, the Court hereby DENIES plaintiffs' motion for a preliminary injunction, GRANTS plaintiffs' motion for class certification, DENIES defendants' motion for judgment on the pleadings, and GRANTS IN PART AND DENIES WITHOUT PREJUDICE IN PART defendants' motion for partial summary judgment.

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**BACKGROUND**

On April 23, 2003, named plaintiffs Mary Bull, Jonah Zern, Lisa Giampaoli, Marcy Corneau, Alexis Bronson, Micky Mangosing, Charli Johnson, Leigh Fleming, and Laura Timbrook (collectively “plaintiffs”) filed this putative class action lawsuit against the City and County of San Francisco, the San Francisco Sheriff’s Department, San Francisco County Sheriff Michael Hennessey, and San Francisco County Sheriff’s Deputies Does 1 through 50 (collectively “defendants”). Subsequently, plaintiffs filed an amended complaint, which seeks declaratory and injunctive relief, damages, and punitive damages.

Plaintiffs allege that they were victims of two unconstitutional policies and practices of the San Francisco County jail system. First, plaintiffs allege that the County’s policy of conducting strip searches and body cavity searches<sup>1</sup> of arrestees held prior to arraignment without reasonable suspicion that the individual possesses contraband or presents a security threat violates the Fourth and Fourteenth Amendments of the United States Constitution, as well as California law. Second, plaintiffs allege that the County’s policy of placing pretrial detainees in “safety cells” as punishment and the blanket policy of strip searching all individuals placed in safety cells violate the Fourth and Fourteenth Amendments of the United States Constitution, as well as California law.

The strip search policy in place at the time of plaintiffs’ arrests and searches permitted the Sheriff’s Department to conduct a strip search of arrestees charged with a crime involving drugs, weapons or violence and arrestees with a criminal history involving drugs, weapons or violence (as well as other categories of arrestees not relevant here). Arrestees not in those categories could be strip searched if they signed a form consenting to be strip searched. Seaton Decl. Ex. 3-5.

The safety cell policy in place at the time of plaintiffs’ arrests and searches permitted arrestees to be placed in safety cells in any of the following situations:

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<sup>1</sup> The Court recognizes that there is a spectrum of possible search practices alleged in this action, including strip searches and visual body cavity searches. However, for simplicity’s sake, the Court will use “strip search” in this decision to generally cover all of the alleged conduct unless otherwise specified.

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1. She/he displays bizarre behavior which results in the destruction of property.
2. She/he displays bizarre behavior which reveals an intent to cause self-inflicted harm.
3. She/he appears gravely disabled and less restrictive housing is unavailable.
4. She/he appears to be a danger to self or others.
5. She/he requests to use the safety cell.
6. For OBSERVATION ONLY, if it is determined by direct observation that the prisoner has ingested items that may cause injury.

Seaton Decl. Ex. 18. Under the policy, any arrestee that is placed in a safety cell, for any reason, shall be strip searched prior to placement. Id.

On January 21, 2004, the Sheriff enacted new search and safety cell policies. Under the new strip search policy an arrestee may be strip searched at the time of booking only if “There is articulable reasonable suspicion and supervisor approval on the Strip Search Authorization Form prior to the strip search”; or the arrestee is charged with a crime of drugs, weapons or violence; or has been convicted or arrested within the last 5 years for drugs, weapons or violence. Hennessey Decl. Ex. A.

The new safety cell policy provides that safety cells may be used only under the following circumstances:

1. When a prisoner is physically combative or otherwise presents an imminent danger to others.
2. When a prisoner is a danger to self, as determined by actions or words, including, but not limited to, physical or mental impairment to the point of falling down, banging his/her head against the wall, making suicidal gestures or threatening to commit suicide.
3. When there is reasonable suspicion the prisoner has ingested an injury-causing item.
4. When a prisoner requests such a placement.
5. When Jail Health Services staff recommends a safety cell placement and the Watch Commander concurs after reviewing the basis for the Jail Health Service recommendation.

Hennessey Decl. Ex. B.

The policy explicitly provides that safety cells shall not be used for prisoners who only refuse to be strip searched or refuse other orders and do not otherwise meet the criteria for safety cell placement and that only the Jail Psychiatric Services staff may determine a prisoner to be gravely disabled. Those placed in safety cells because the person is deemed a danger to self or at his/her request will be stip searched. Those placed in safety cells because

1 the person is deemed gravely disabled by Jail Psychiatric staff will not be strip searched  
 2 unless Jail Psychiatric staff believe the person may be a danger to self. Others placed in  
 3 safety cells will only be strip searched if the supervisor approving the placement can  
 4 articulate reasonable suspicion that the prisoner has contraband hidden that poses a risk to  
 5 prisoners, staff, or self. Id.

6 \_\_\_\_\_ A more detailed recitation of the strip search and safety cell policies that were in place  
 7 prior to January 21, 2004 and the new policies are outlined in Appendix A to this Order.

8 Also on January 21, 2004, plaintiffs moved for a preliminary injunction. On January  
 9 22, 2004, defendants filed a cross-complaint seeking declaratory relief in which this Court  
 10 would declare that plaintiffs' case is moot, and that the Sheriff's new policies regarding  
 11 searches and safety cell use comply with state and federal law.

## 12 **II. Procedural Background**

13 Mary Bull, et al. v. City and County of San Francisco, et al., Case No. 03-1840, was  
 14 filed in this Court on April 23, 2003. Subsequently, this Court determined that Lazaneo v.  
 15 City and County of San Francisco, Case No. 03-4692<sup>2</sup>, Flick v. City and County of San  
 16 Francisco, Case No. 03-4022, and Yourke v. City and County of San Francisco, Case No. 03-  
 17 3105, are related to Bull.

18 The first hearing on the four motions currently before the Court was held on April 9,  
 19 2004. The Court, determining that further oral argument was necessary, also held hearings  
 20 on these motions on April 12 and April 13, and then requested supplemental briefing on the  
 21 class certification issue. The motions were then submitted.

## 22 **DISCUSSION**

### 23 **I. Plaintiffs' Motion for a Preliminary Injunction**

24 Plaintiffs have moved for a preliminary injunction seeking to enjoin several of  
 25 defendants' policies with respect to strip searches, body cavity searches, and the use of safety  
 26 cells. In particular, plaintiffs seek a preliminary injunction that does the following:  
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28 \_\_\_\_\_  
<sup>2</sup>Lazaneo settled on May 11, 2003.

- 1 1) Enjoins pre-arraignment strip searches at any of the San Francisco County
- 2 Jails of arrestees charged with crimes not involving drugs, violence or weapons
- 3 unless a) there is particularized reasonable suspicion that a search will be
- 4 productive of contraband or a weapon, b) the basis for that reasonable
- 5 suspicion is recorded in writing and c) the search is approved by a supervisor
- 6 prior to the search being conducted;
- 7
- 8 2) Enjoins pre-arraignment placement into safety cells of arrestees unless there
- 9 has been a prior determination by a licensed professional that the arrestee has
- 10 demonstrated behavior which reveals an intent to cause physical harm to
- 11 himself/herself or others;
- 12
- 13 3) Enjoins strip searches of persons placed in safety cells;
- 14
- 15 4) Enjoins removal of the clothing of persons placed in safety cells unless a
- 16 licensed professional has determined that the arrestee is likely to use the
- 17 clothing to harm himself.

18 Plaintiffs’ Memorandum in Support of Preliminary Injunction (“Plaintiff’s P.I. Memo.”) at 1.

19 As stated in open court, this Court denies plaintiffs’ motion for a preliminary

20 injunction because plaintiffs have failed to demonstrate that they will be exposed to a

21 significant risk of irreparable injury or immediate threatened injury under the *new* policy

22 enacted by the Sheriff on January 21, 2004. On a motion for a preliminary injunction, the

23 Court is looking at whether an extraordinary remedy shall be put in place based on a threat of

24 irreparable injury to the plaintiffs. There must be some imminence involved, otherwise the

25 litigation can proceed through its normal course. While plaintiffs argue that defendants’

26 history of ignoring its written policies demonstrates that even though there is a new policy in

27 place there is a likelihood that defendants will not follow the new policy, the Court does not

28 agree that there is an *immediate* threat of harm.

Given the new policy enacted by defendants, this Court finds no imminent threat of

injury, and concludes that a preliminary injunction is not needed to preserve the status quo

and prevent irreparable loss of rights before judgment.

**II. Defendants’ Motion for Judgment on the Pleadings**

Defendants’ cross-complaint seeks an order from this Court declaring that the San

Francisco Sheriff’s Department’s policies entitled “Searches” and “Safety Cell Use,” adopted

January 21, 2004, do not violate the United States Constitution or California state law.

Defendants have moved for judgment on the pleadings pursuant to Federal Rule of Civil

1 Procedure 12(c) of their cross complaint. Plaintiffs offer two arguments why this motion  
2 should be denied. First, they argue that defendants' cross-complaint is not ripe for  
3 adjudication, thus stripping the Court of jurisdiction over the cross-complaint. Second, they  
4 argue that the Court should deny the motion because defendants have failed to provide an  
5 adequate factual basis to establish the legality of the new policies.

6 As stated in open court, the Court agrees with plaintiffs that judgment on the  
7 pleadings is not warranted. The Court declines to issue an advisory opinion as to the legality  
8 of the new strip search policy. Additionally, in order to adjudicate this matter, the Court  
9 must consider numerous factual issues, including the scope of the particular intrusion, the  
10 manner in which it is conducted, the justification for initiating it, and the place in which it is  
11 conducted. The Court is unable to make such factual determination on the pleadings alone;  
12 thus, defendants' motion for judgment on the pleadings under Rule 12(c) is denied.

### 13 **III. Defendants' Motion for Summary Judgment**

14 Summary judgment is proper when "the pleadings, depositions, answers to  
15 interrogatories, and admissions on file, together with the affidavits, if any, show that there is  
16 no genuine issue as to any material fact and that the moving party is entitled to a judgment as  
17 a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" only if there is a sufficient  
18 evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a  
19 dispute is "material" only if it could affect the outcome of the suit under governing law. See  
20 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986). A principal purpose of the  
21 summary judgment procedure "is to isolate and dispose of factually unsupported claims."  
22 Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). "Where the record taken as a whole  
23 could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine  
24 issue for trial.'" Matsushita Elec. Ind. Co. v. Zenith Radio, 475 U.S. 574, 587 (1986).

25 There are presently nine named plaintiffs in this suit. Defendants have moved for  
26 partial summary judgment as follows: (1) on all state and federal strip search claims brought  
27 by plaintiffs Zern, Corneau, Bronson, and Giampaoli (Counts One, Three, and Four); (2) on

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1 all state law strip search claims by plaintiffs Bull and Timbrook (Counts Three and Four);  
2 and (3) on all claims by plaintiff Johnson (Counts One through Five).

3 Plaintiffs do not oppose the grant of partial summary judgment in favor of defendants  
4 and against plaintiffs Bull, Timbrook, and Giampaoli on their claims under California Penal  
5 Code section 4030 (Count Four), nor do they oppose a grant of partial summary judgment in  
6 favor of defendants and against plaintiff Johnson on all claims. Accordingly, the Court  
7 GRANTS IN PART defendants' motion as to those issues not opposed by plaintiffs.

8 The parties continue to dispute defendants' motion with respect to plaintiff  
9 Giampaoli's federal and remaining state strip search claims (Counts One and Three),  
10 plaintiffs Zern, Corneau, and Bronson's state and federal claims (Counts, One, Three, and  
11 Four), and plaintiffs Bull and Timbrook's remaining state claims (Counts Three and Five).<sup>3</sup>

12 As stated in open court, the Court concludes that summary judgment is not appropriate  
13 at this time because there are still numerous material factual, as well as legal, issues that are  
14 in dispute. Accordingly, the Court DENIES WITHOUT PREJUDICE the remaining portions  
15 of defendants' motion for summary judgment. Such issues will be addressed in further  
16 proceedings.

#### 17 **IV. Plaintiffs' Motion for Class Certification**

##### 18 **A. Legal Standard for Class Certification**

19 Class certification is governed by Rule 23, which sets forth a two-step procedure.  
20 First, the following four requirements of Rule 23(a) must be satisfied: (1) numerosity, (2)  
21 common questions of law or fact are present, (3) typicality, and (4) adequate representation.  
22 Once those four requirements are met, the plaintiffs must show that the lawsuit qualifies for  
23 class action status under one of the four possibilities found in Rule 23(b).

24 Plaintiffs seek to certify a class under Rule 23(b)(3), which is appropriate where the  
25 court "finds that the questions of law or fact common to the members of the class  
26 predominate over any questions affecting only individual members, and that a class action is

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28 <sup>3</sup>Defendants have not moved for summary judgment with respect to plaintiffs Mangosing and Fleming.

1 superior to other available methods for the fair and efficient adjudication of the controversy.”  
 2 Fed. R. Civ. Pro. 23(b)(3).

3 Plaintiffs bear the burden of proving that certification is appropriate. See Hawkins v.  
 4 Comparet-Cassani, 251 F.3d 1230, 1238 (9th Cir. 2001). The court must rigorously analyze  
 5 whether the class action allegations meet the requirements of Rule 23. General Telephone  
 6 Co. of the Southwest v. Falcon, 457 U.S. 147, 161 (1982). “Because the early resolution of  
 7 the class certification question requires some degree of speculation, however, all that is  
 8 required is that the Court form a ‘reasonable judgment’ on each certification requirement. In  
 9 formulating this judgment, the Court may properly consider both the allegations of the class  
 10 action complaint and the supplemental evidentiary submissions of the parties.” In re Citric  
 11 Acid Antitrust Litigation, 1996 WL 655791 \*2 (N.D. Cal. Oct. 2, 1996).

## 12 **B. Analysis**

13 Plaintiffs propose that the following class of persons be certified as a class under Rule  
 14 23(b)(3):

15 For the claims brought under 42 USC § 1983 (Count One of the First  
 16 Amended Complaint); the California Constitution, Article I §1 (Count Three of  
 17 the First Amended Complaint); and California Penal Code § 4030(f) (Count  
 18 Four of the First Amended Complaint); the state and federal constitutional  
 19 claims include both felony and misdemeanor arrestees with the exceptions  
 20 stated herein; the Penal Code § 4030 claim includes misdemeanor arrestees  
 21 only:

22 All persons who, during the applicable period of limitations, and  
 23 continuing to date, were arrested on *any* charge *not* involving weapons,  
 24 controlled substances, or a felony charge of violence, and *not* involving a  
 25 violation of parole or a violation of probation (where consent to search is a  
 26 condition of such probation), *and* who were subjected to a blanket visual body  
 cavity strip search by defendants before arraignment at a San Francisco County  
 Jail facility without any individualized reasonable suspicion that they were  
 concealing contraband. This class also includes 1) all arrestees who were  
 subjected to subsequent blanket strip search(es) before arraignment after the  
 initial strip search, without any reasonable individualized suspicion that they  
 had subsequently acquired and hidden contraband on their persons; and 2) all  
 persons who, prior to arraignment, were subjected to blanket visual body cavity  
 search(es) incident to placement in a “safety cell” at any of the San Francisco  
 County Jails.

27 Plaintiffs’ Motion for Class Certification at 1.

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1 Defendants argue that plaintiffs have not met the requirements of Rule 23(a) and Rule  
2 23(b)(3). In particular, defendants argue that plaintiffs' claims are not typical of the class  
3 and that the individual fact questions far outnumber the common questions such that the  
4 predominance and superiority elements of Rule 23(b)(3) are not met. Additionally,  
5 defendants argue that plaintiffs' state law claims cannot be certified as a class.

6 "The Rule 23(b)(3) predominance inquiry tests whether proposed classes are  
7 sufficiently cohesive to warrant adjudication by representation." Amchem Products Inc. v.  
8 Windsor, 521 U.S. 591, 623 (1997).

9 The crux of defendants argument against class certification is that the issues involved  
10 in this litigation entail detailed individualized determinations. They argue that the individual  
11 background of the plaintiffs make it difficult to determine whether someone is a member of  
12 the class, in addition to the more pressing question of whether that person's rights have been  
13 violated. The determination of whether the plaintiffs suffered an illegal strip search involves  
14 a determination of whether the institutional strip search policy in place was unlawful.  
15 However, even if the policy is unconstitutional, defendants argue that the individual  
16 plaintiff's rights may not have been violated if the search was done based on reasonable  
17 suspicion. Thus, according to defendants, plaintiffs have not met the predominance element  
18 of Rule 23(b)(3) because even if the constitutionality of the institutional policy is the same  
19 for all plaintiffs, whether there was reasonable suspicion for each search will depend on the  
20 individual circumstances involved.

21 Defendants argument does not defeat class certification. The arguments presented by  
22 defendants are virtually the same arguments that were presented by the defendants in Tardiff  
23 v. Knox County, 365 F.3d 1, 7 (1st Cir. 2004), where the First Circuit affirmed the  
24 certification of class actions in similar challenges to county strip search policies. Tardiff was  
25 a consolidation of two district court cases in which several arrestees brought separate section  
26 1983 suits against two different counties alleging that the policies of conducting routine,  
27 suspicionless strip searches of all pre-arraignment jail detainees was unconstitutional. Id. at  
28 2. Both district courts granted the plaintiffs' motions for class certification. Id. On appeal,

1 the First Circuit determined that while some individualized evaluations may be necessary,  
2 overall it could be assumed that the plaintiffs were searched based on the county's custom or  
3 policy, and any individual questions did not defeat certification. Id. at 5-6. Defendants argue  
4 that Tardiff is not applicable to this case because, unlike Tardiff, the nature of the strip  
5 search policy is not at issue here. The Court disagrees and finds the reasoning in Tardiff to  
6 be persuasive.

7         Similar to Tardiff, what really is at issue here is the constitutionality of the policies  
8 and practices of the Sheriff's Department, which were applied to all class members. While  
9 the "nature" of the department's policy and practices is not at issue, the legality of those  
10 policy and practices is. The common legal question presented by the members of the  
11 proposed class of whether the Sheriff's strip search policy is unconstitutional predominates  
12 this action, and the allegations of the named plaintiffs closely track the claims of the class  
13 and share a common legal theory. Given the alleged uniform and indiscriminate nature of the  
14 strip search policy and practice at issue, including the practice of strip searching all those  
15 placed in safety cells, it appears that liability can be determined on a class-wide rather than  
16 an individual basis.

17         However, the Court agrees with defendants that the class definition must specifically  
18 exclude all persons arrested on a charge of violence, regardless of whether it is a felony or  
19 misdemeanor charge of violence. The class definition should be amended accordingly.

20         As such, the class definition itself will address some of defendants' concerns because  
21 it does not include those plaintiffs arrested on charges involving weapons, controlled  
22 substances, or a felony charge of violence. As the Tardiff court noted, the legality of the  
23 strip search policy presents complicated issues because it might be lawful as to some groups  
24 of arrestees and not others, but that issue is somewhat addressed by limiting the class  
25 definition to certain arrestees. 365 F.3d at 5. Moreover, although it may still be determined  
26 that it was permissible to strip search some within the group of arrestees that remain in the  
27 class, that determination presents a common set of issues that is proper for resolution on a  
28 class-wide basis. Id.

1 The class includes only those subjected to a blanket visual body cavity strip search  
2 *without any individualized reasonable suspicion* that they were concealing contraband.  
3 Thus, those that were subjected to searches based on individualized reasonable suspicion are  
4 not included in the class. The issue of whether a post hoc determination of reasonable  
5 suspicion is sufficient to avoid a constitutional violation will not be addressed at this time.  
6 Nonetheless, even if there is a post hoc determination of reasonable suspicion, that does not  
7 mean that an individual was not searched pursuant to a blanket visual body cavity strip  
8 search, the constitutionality of which will be determined in this litigation.

9 As stated in Tardiff:

10 Without prejudging disputable issues, we think that such threats of undue  
11 complications as to liability are limited in this case. If there was in fact a rule, custom  
12 or policy of strip searching every arrestee or a substantially overlarge category, then it  
13 is a fair guess that most arrestees so classed were strip searched on this basis. There  
14 might yet be some number as to who defensible individual judgments to strip search  
were actually made or could have been made--two different situations with different  
legal implications; but whoever has the burden of identifying such person, they may  
well not be numerous.

15 Id. at 6.

16 The situation in this case is even more appropriate for class certification because  
17 defendants acknowledge that there was a rule, custom, or policy in place regarding strip  
18 searches, and it is this policy that plaintiffs challenge. Thus, it is a fair guess that most  
19 arrestees were searched on that basis. Nonetheless, this Court agrees with the reasoning of  
20 the Tardiff court that any potential individualized issues can be addressed later in the  
21 litigation and do not defeat class certification.

22 This Court also agrees with the Tardiff court that the “individualized damage  
23 decisions [do] not ordinarily defeat predominance where there are still disputed common  
24 issues as to liability.” Id.

25 There are still numerous questions that need to be resolved, such as whether it is  
26 constitutional to have a blanket policy that allows the Sheriff’s Department to search all  
27 those charged with crimes of violence to visual body cavity searches; how to define crimes of  
28 violence that would warrant such searches; and whether it is constitutional to have a blanket

1 policy to search all those placed in safety cells. Regardless, whatever is decided on those  
2 issues, would seemingly affect all class members.

3 As to superiority, at this stage it is apparent that the resolution of the liability and  
4 damages issues within the context of a class action is likely to be a far more efficient method  
5 of adjudication than the individual assertion of lawsuits grounded on similar sets of facts.

6 Based on the information that is currently before the Court, the Court finds that  
7 individualized issues will arise only in a limited number of cases. Accordingly, the Court  
8 concludes that all of the requirements of Rule 23 have been met and certification of a class is  
9 warranted.

10 Importantly, however, “Determinations to certify a class depend on initial predication  
11 and are always subject to revision.” Tardiff, 365 F.3d at 6 (citing General Telephone Co.,  
12 457 U.S. at 160). This Court can always decertify the class should that become necessary.

### 13 CONCLUSION

14 For the foregoing reasons, the Court hereby DENIES plaintiffs’ motion for a  
15 preliminary injunction, DENIES defendants’ motion for judgment on the pleadings,  
16 GRANTS IN PART AND DENIES WITHOUT PREJUDICE IN PART defendants’ motion  
17 for partial summary judgment, and GRANTS plaintiffs’ motion for class certification.

18 Accordingly, the Court certifies the following class:

19 All persons who, during the applicable period of limitations, and continuing to date,  
20 were arrested on *any* charge *not* involving weapons, controlled substances, or a charge of  
21 violence, and *not* involving a violation of parole or a violation of probation (where consent to  
22 search is a condition of such probation), *and* who were subjected to a blanket visual body  
23 cavity strip search by defendants before arraignment at a San Francisco County jail facility  
24 without any individualized reasonable suspicion that they were concealing contraband. This  
25 class also includes 1) all arrestees who were subjected to subsequent blanket strip search(es)  
26 before arraignment after the initial strip search, without any reasonable individualized  
27 suspicion that they had subsequently acquired and hidden contraband on their persons; and 2)

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APPENDIX A

I. Strip Search Policy Prior to January 21, 2004<sup>4</sup>

**POLICY:**

All arrestees entering the San Francisco County Jail System shall be processed through a booking search. The search shall either be a “pat search” performed in conjunction with a hand held metal detector, and/or a strip search. The type of search will be based of the elements of the current criminal charges, prior criminal history or on reasonable suspicion that the prisoner is in possession of contraband.

**PURPOSE:**

To protect inmates, staff and visitors by establishing policy and procedure for searching inmates to detect and recover weapons, drugs, and other contraband concealed upon their person.

**DEFINITIONS:**

\* \* \*

**Visual Body Cavity Search** - means visual inspection of a body cavity

**Strip Search** (same as Custodial Search) - means a search which 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 of such person. Includes a visual inspection of the mouth, ears, hair, hands, skin folds, armpits as well as a thorough search of all clothing items.

\* \* \*

**PROCEDURE:**

\* \* \*

II. **Strip Search Criteria**

A. A strip search shall be conducted by an officer of the same sex, and may be conducted on a person received at the Intake and Release facility, without written authorization, when **any** of the following conditions apply:

1. An arrestee charged with a crime involving drugs, weapons or violence.
2. An arrestee with a criminal history involving drugs, weapons or violence. Criminal history shall be verified and means a conviction for drugs, weapons or violence within the preceding five years or multiple arrests within the last five years for drugs, weapons or violence. . . .

\* \* \*

<sup>4</sup>The policy went through several iterations and clarifications prior to this date; this statement incorporates any relevant changes to the policy and reflects the policy as it existed up until January 21, 2004. One notation on a clarification memorandum provides that this policy applies to “Felony and misdemeanor charges.” Seaton Decl., Ex. 5.

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10. A person assigned a custody level by Classification and scheduled for custodial housing.

\* \* \*

**B. Authorization to Perform a Strip Search** of arrestees who do not fall within criterial listed in IIA

If any arrestee or person accepted at intake does not fall within Section II above, permission to conduct a strip search may be requested by the arresting, transporting or booking officer when he/she has a reasonable suspicion based on articulable facts that the arrestee or person may possess contraband. Permission to conduct a strip search may be requested by completing Part A, Request for Strip Search, of the San Francisco Sheriff's Department - STRIP SEARCH AUTHORIZATION form.

Seaton Decl. Ex. 3-5 (emphasis in original). The policy also provided that all prisoners should be strip searched before the conclusion of the watch. Id.

**II. Safety Cell Policy Prior to January 21, 2004**

**POLICY:**

The San Francisco Sheriff's Department permits the use of a safety cell to house a prisoner in conformity with California Code of Regulations, Title 15, Section 1052, 1055 and 1083. Confinement to a safety cell is only justified for a minimum period of time necessary, until the prisoner can be removed for medical or psychiatric attention. A safety cell shall not be used as disciplinary housing.

**PURPOSE:**

To provide consistent guidelines for the use of safety cells in each facility. To protect prisoners and staff. To delineate lines of authority and responsibility in the placement in and removal of a prisoner from a safety cell. To ensure documentation of all phases of the safety cell process.

**DEFINITIONS:**

Safety Cell - A padded, single cell. Some safety cells have toilet and sink features, some have toilet facilities that are mounted into the floor, some have raised padded toilet fixtures and some have no toilet or sink facilities.

\* \* \*

Danger to Self or Others - The prisoner presents an immediate threat that she/he will inflict actual physical injury on her/himself or another person.

**PROCEDURE:**

**I. Permitted Use of Safety Cells**

A. A prisoner may be placed in a safety cell when:

- 1. She/he displays bizarre behavior which results in the destruction of property.

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- 2. She/he displays bizarre behavior which reveals an intent to cause self-inflicted harm.
- 3. She/he appears gravely disabled and less restrictive housing is unavailable.
- 4. She/he appears to be a danger to self or others.
- 5. She/he requests to use the safety cell.
- 6. For OBSERVATION ONLY, if it is determined by direct observation that the prisoner has ingested items that may cause injury.

B. A safety cell SHALL NOT be used under any circumstances for disciplinary or punitive purposes. A prisoner SHALL NOT be placed in a safety cell for merely being uncooperative with staff or being verbally abusive to staff.

\* \* \*

**II. Procedure for Use of the Safety Cell**

\* \* \*

C. When a prisoner is placed in a safety cell at the initiation of custody staff, the custody staff person will immediately contact the Watch Commander to approve the use of the safety cell. The officer will immediately contact [Jail Medical Services] to arrange for a medical evaluation of the prisoner. The date, time and reason for such placement shall be documented on all appropriate forms.

- 1. When a prisoner is placed in a safety cell, for any reason, that prisoner shall be strip searched prior to placement.
  - a. In the event the prisoner is not cooperative during a strip search, she/he will remain in restraint while her/his clothing is cut off in a manner that prevents injury to the prisoner.
  - b. Unless placement is made because th prisoner has been determined to be suicidal, substitute clothing will be immediately provided.
- 2. When a prisoner is placed in a safety cell because of bizarre behavior resulting in destruction of property or revealing an intent to cause self inflicted harm, [Jail Medical Services] will ensure that a medical assessment is completed within 12 hours or at the next daily sick call, whichever is earlier.

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**III. Standards for Treatment of Prisoners in Safety Cells**

- A. When a prisoner is confined in a safety cell without internal drinking facilities, water shall be provided upon prisoner request or at least every 2 hours. . . .
- B. Prisoners in safety cells will be fed meals on the regular schedule. . . .
- C. Prisoners shall be deprived of clothing, mattress or blankets ONLY when it has been demonstrated that:
  - 1. The prisoner will use them to harm her/himself.
  - 2. The prisoner will destroy them.
  - 3. The prisoner will use them to clog the plumbing or block observation windows.
- D. Deprivation of clothing, mattress or blankets must be approved by the Watch Commander and so documented on the Safety Cell housing Form.
  - 1. The reasons for deprivation will be documented.
  - \* \* \*
  - 3. SFSD staff will provide a prisoner who has been deprived of clothing a suitably designed "safety garment" or fire retardant [sic] blanket for the prisoner's personal privacy, unless specific, identifiable risks to the prisoner's safety or to the security of the facility are documented.

Seaton Decl. Ex. 18 (emphasis in original).

**III. Strip Search Policy Issued January 21, 2004**

**PROCEDURE**

**II. Permissible Strip Searches**

**A. Prior to Intake Booking**

- 1. A prisoner may be strip searched prior to booking only if:
  - a. There is reasonable suspicion and supervisor approval on the Strip Search Authorization Form prior to the search; or
  - b. Supervisor approval is not required if the prisoner:
    - 1. Is charged with a crime of drugs, (except when arrested for violation of Health and Safety Code 11550 only), weapons and/or violence; or
    - 2. Has been convicted or arrested within the last 5 years for drugs, (except when arrested for violation of Health and Safety Code 11550 only), weapons and/or violence, as documented in the criminal history information system; or

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- 3. Is charged under California Penal Code Section 3056 or booked with a State Parole hold; or
- 4. Is charged under California Penal Code Section 1203.2; or
- 5. Is in the custody of another agency and is booked into the jail for safekeeping, including a prisoner booked on a U.S. Marshall [sic] hold.

B. At Intake/Booking

- 1. Prisoners may be strip searched at the time of booking only if:
  - a. There is articulable reasonable suspicion and supervisor approval on the Strip Search Authorization Form prior to the strip search; or
  - b. The prisoner is:
    - 1. Is charged with a crime of drugs, (except when arrested for violation of Health and Safety Code 11550 only), weapons and/or violence; or
    - 2. Has been convicted or arrested within the last 5 years for drugs, (except when arrested for violation of Health and Safety Code 11550 only), weapons and/or violence, as documented in the criminal history information system; or
    - 3. Is charged under California Penal Code Section 3056 or booked with a State Parole hold; or
    - 4. Is charged under California Penal Code Section 1203.2; or
    - 5. Is in the custody of another agency and is booked into the jail for safekeeping, including a prisoner booked on a U.S. Marshall [sic] hold.

Hennessey Decl. Ex. A (emphasis in original).

**IV. Safety Cell Policy Issued January 21, 2004**

**POLICY:** It is the policy of the San Francisco Sheriff's Department to use safety cells only when necessary to hold those prisoners who display behavior which reveals an intent to cause physical harm to self or others.

**DEFINITIONS:**

Combative: A prisoner whose behavior requires physical restraint by one or more deputies to prevent harm to himself or herself, to staff and/or to other prisoners.

Danger to Self: A prisoner making overt gestures to harm himself or herself or who articulates a strong desire to harm himself or herself.

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Danger to Others: A prisoner whose behavior is likely to cause harm to staff or other prisoners.

\* \* \*

Safety Cell: A padded single cell[.]

**PROCEDURE:**

**I. General**

- A. A prisoner will be placed in a safety cell only with the approval of the Facility Commander, the Facility Watch Commander or a designated physician as delegated by the Sheriff.
- B. Safety cells may be used only under the following circumstances:
  - 1. When a prisoner is physically combative or otherwise presents an imminent danger to others.
  - 2. When a prisoner is a danger to self, as determined by actions or words, including, but not limited to, physical or mental impairment to the point of falling down, banging his/her head against the wall, making suicidal gestures or threatening to commit suicide.
  - 3. When there is reasonable suspicion the prisoner has ingested an injury-causing item.
  - 4. When a prisoner requests such a placement.
  - 5. When Jail Health Services staff recommends a safety cell placement and the Watch Commander concurs after reviewing the basis for the Jail Health Service recommendation.
- C. The safety cell shall not be used for prisoners who only refuse to be strip searched or refuse other orders and do not otherwise meet the criteria for safety cell placement above.
- D. Only Jail Psychiatric Services staff may determine a prisoner to be gravely disabled.
- E. In no case shall the safety cell be used for punishment or as a substitute for treatment.

**II. Safety Cell Placement**

\* \* \*

- F. The reason for the safety cell placement will determine whether the prisoner is stripped of clothing.
  - 1. In safety cell placements that result because the prisoner is a danger to self or at his/her request, the prisoner will be required to remove all clothing and a stip search will be conducted to ensure the prisoner does not have contraband that poses a threat

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to his/her safety. The prisoner will **immediately** be given a safety cell garment and/or safety cell blanket.

2. Prisoners placed in a safety cell after being determined to be gravely disabled by Jail Psychiatric staff will not be strip searched unless Jail Psychiatric staff believe the person may be a danger to self. Jail Psychiatric staff will document the reason for the strip search on the Strip Search Authorization form and in their psychiatric records.

3. In safety cell placements that result because a prisoner is a danger to others, the prisoner will be pat searched before being placed in the safety cell. Clothing will **not** be removed nor will a strip search be conducted unless the supervisor approving the placement can articulate reasonable suspicion that the prisoner has contraband hidden that poses a risk to prisoners, staff, or self.

4. The approving supervisor must document the reasonable suspicion justifying the strip search and complete the Strip Search Authorization form. The form shall be kept on file at the jail facility for one year. After one year, the records should be put into storage and retained in accordance with the department records storage policy.

5. Any contraband found must also be documented in an Incident Report to be attached to the Safety Cell Observation form.

G. Once the prisoner is in the safety cell, the deputy responsible for the placement will provide the prisoner with the following:

1. If in the safety cell as a danger to self or at his/her own request, the prisoner will be given a safety cell garment and/or safety cell blanket **immediately** following the search for contraband.

2. For all other safety cell placements, the prisoner may be given an exchange of jail clothing or a safety cell garment and/or a safety blanket **immediately** following the placement, if necessary.

3. The actual time when items were provided will be documented on the Safety Cell Observation form.

Hennessey Decl. Ex. B (emphasis in original).