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16 January 2023



Our Ref: GIPA22/ [redacted]
Your Ref: [redacted]

Dear [redacted]

Formal Access Application - Notice of Decision

I refer to your formal access application that was received by the Department of Communities and Justice (the Department) pursuant to section 41 of the *Government Information (Public Access) Act 2009* (GIPA Act) on 22 March 2022 where you requested on behalf of your client [redacted] access to a copy of the following information:



In addition to the above, can we kindly request copies of the following:

- 1. Policies and procedures with respect to the searching of detainees including but not limited to, strip searches and/or cavity searches and/or body searches in New South Wales and at Frank Baxter Juvenile Justice Centre in New South Wales from 2008 to 2014; and*
- 2. Policies and procedures with respect to placating non-compliant and violent juvenile inmates in practice in NSW at Frank Baxter Juvenile Justice Centre in New South Wales from 2008 to 2014”.*

As a result of an e-mail sent to you from this Department on the 24 March 2022 it was outlined that in order to obtain the OIMS notes and Case Management File you will have to contact Parklea Correctional Centre directly, and make a new GIPA application. This is because all other records requested will be held at Parklea Correctional Centre, which is a *private* correctional centre. It is thus outside of the scope of our Department’s function to provide these records.

Searches for information

Under section 53 of the GIPA Act, the Department must conduct reasonable searches for the government information you have asked for in your application. In order to locate the information requested in your access application, searches were conducted by Corrective Services Psychology and Education Department and also the Youth Justice Department. Information was located.

Decision

I am authorised by the Principal Officer, for the purposes of section 9(3) of the GIPA Act to decide your access application.

I have decided:

- Pursuant to section 58(1)(a) of the GIPA Act to provide you access to some of the information requested in your application,
- Pursuant to section 58(1)(d) of the GIPA Act to refuse to provide you access to some of the information requested in your application,

Reasons for Decision

In relation to your application, in deciding which information to withhold in full or in part, I was required to conduct a “public interest test” where the public interest considerations favouring disclosure of government information are weighed against those factors that do not favour disclosure. The following are a number of public interest factors I considered which favour disclosure of the information requested:

- Disclosure of the information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance.
- Disclosure of the information could reasonably be expected to inform the public about the operations of agencies and, in particular, their policies and practices for dealing with members of the public.
- Disclosure of the information could reasonably be expected to ensure effective oversight of the expenditure of public funds.
- The information is personal information of the person to whom it is to be disclosed.
- Disclosure of the information could reasonably be expected to reveal or substantiate that an agency (or a member of an agency) has engaged in misconduct or negligent, improper or unlawful conduct.
- Disclosure of the information could reasonably be expected to advance the fair treatment of individuals in accordance with the law in their dealings with agencies.
- Disclosure of the information could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision.
- Disclosure of the information could reasonably be expected to contribute to the administration of justice generally, including procedural fairness.

A number of documents have been partially withheld from disclosure as they contain information where a public interest factor against disclosure, outweighs the factors in favour of disclosure.

Information that has been withheld from disclosure under clauses 3(a) and 3(b) of the table to section 14 of the GIPA Act is information that would:

- reveal an individual's personal information.
- contravene an information protection principle under the *Privacy and Personal Information Protection Act 1998* or a *Health Privacy Principle under the Health Records and Information Privacy Act 2002*

Consideration 3(a) and 3(b) – Individual rights

Information that has been withheld from disclosure under clause 3(a) of the table to section 14 of the GIPA Act is information that would reveal another individual's personal information.

Personal information is defined in the GIPA Act as being:

...information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual (whether living or dead) whose identity is apparent or can reasonably be ascertained from the information or opinion. [Schedule 4(4)(1) GIPA Act]

Further, the term 'reveal' is defined in Clause 1 of Schedule 4 –

reveal information means to disclose information that has not already been publicly disclosed (otherwise than by unlawful disclosure).

An individual's personal information may include their identity, contact information, information relating to their involvement with the department etc. I am satisfied that the information that has been withheld is information that relates to an individual who is not the applicant, and is information that has not been publicly disclosed. I am therefore of the view that there is an overwhelming public interest against disclosing information that reveals an individual's personal information.

Information that has been withheld from disclosure under clause 3(b) of the table to section 14 of the GIPA Act is information, the disclosure of which, would contravene an information protection principle under the *Privacy and Personal Information Protection Act 1998* (PIIP Act). Section 18(1) of the PIIP Act states:

“A public sector agency that holds personal information must not disclose the information to a person (other than the individual to whom the information relates) ... unless:

(a) the disclosure is directly related to the purpose for which the information was collected, and the agency disclosing the information has no reason to believe that the individual concerned would object to the disclosure ...”

There are a number of exceptions to this principle however none appear to apply with respect to this access application. In the absence of consent or the application of an exception or exemption to section 18 of the PIIP Act, which authorises the disclosure of the personal information, disclosure of the personal information contained in the documents would amount to a breach of the PIIP Act.

I have apportioned significant weight to this public interest consideration against disclosure as the personal information contained in the documents is sensitive, and individuals should have confidence in the department's commitment to compliance with legislative obligations and the information protection principles. Further, I place additional weight on this consideration, as the disclosure would be contrary to law, but for the GIPA Act.

Balancing the public interest test

I have considered the relevant public interest considerations in favour of and against disclosure of the information you requested. On balancing the considerations I find that the public interest lies in not releasing some of the information to you. That information falls under the considerations from the Table at section 14 of the GIPA Act.

For the reasons outlined above, I am of the view that the public interest in withholding release of some of the information is outweighed by the public interest in releasing this information in response to your access application under the GIPA Act. The public interest considerations relevant to my decision are marked in the records withheld from release.

Your review rights

If you disagree with my decision, you may apply for this decision to be reviewed by seeking:

- an internal review by another officer of this agency who is no less senior than me; or
- an external review by the NSW Information Commissioner; or
- an external review by the NSW Civil and Administrative Tribunal (NCAT).

You have 40 working days to apply for an external review by the NSW Information Commissioner or the NCAT.

Please find enclosed a document outlining your review rights under the GIPA Act.



Yours sincerely


Stephen Bainbridge

Stephen Bainbridge
OGIP Officer
Open Government, Information and Privacy Unit
Department of Communities and Justice

Searching Detainees

<u>WHEN TO USE THIS PROCEDURE</u>	<u>WHEN NOT TO USE THIS PROCEDURE</u>	<u>DUTY OF CARE</u>
<u>TYPES OF SEARCHES AND REASONS FOR THEIR USE</u>	<u>PRINCIPLES OF SEARCHING</u>	<u>NATIONAL STANDARDS AND UNITED NATIONS RULES</u>
<u>LEGISLATION</u>	<u>DELEGATION TO APPROVE SEARCHES</u>	<u>DEFINITION OF "REASONABLE BELIEF"</u>
<u>RULES FOR SEARCHES</u>	<u>EQUIPMENT</u>	<u>SAFETY PROCEDURES</u>
<u>PORNOGRAPHIC MATERIAL</u>	<u>CONFISCATED MONIES</u>	<u>SEARCHING DETAINEES WITH MEDICAL / SURGICAL DRESSINGS OR PLASTER CASTS</u>
<u>REFUSAL TO BE SEARCHED</u>	<u>USE OF FORCE</u>	<u>PROCESSING AND RECORDING OF CONTRABAND</u>
<u>HOW THIS PROCEDURE WORKS</u>	<u>WAND AND CLOTHED BODY SEARCH</u>	<u>STRIP SEARCH</u>

	<p>ADMISSION - BASIC PROCEDURE BEHAVIOUR MANAGEMENT – MANAGING DIFFICULT BEHAVIOUR BEHAVIOUR MANAGEMENT – MINOR MISBEHAVIOUR BEHAVIOUR MANAGEMENT – SEGREGATION CONTRABAND – PREVENTION AND DETECTION INCIDENT – GENERAL INFORMATION INCIDENT – SUBSTANCE USE / POSSESSION PERSONAL PROPERTY OF DETAINEES SEARCHING - USE OF DRUG DETECTOR DOGS USE OF FORCE AND INSTRUMENTS OF RESTRAINT DEPARTMENTAL DISCIPLINARY PROCEEDINGS</p>
X	SEARCHING UNITS AND OTHER AREAS
	<p><i>CHILDREN (DETENTION CENTRES) ACT 1987:</i> S.14 FUNCTIONS OF THE DIRECTOR GENERAL</p> <p><i>CHILDREN (DETENTION CENTRES) REGULATION 2000:</i> CL.5 ADMISSION OF DETAINEES CL.12 UNAUTHORISED POSSESSION OF PROPERTY CL.13 DISPOSAL OF PROPERTY CL.14 RECORDS TO BE KEPT CONCERNING PROPERTY CL.50 USE OF FORCE</p>
	PART 7 MISBEHAVIOUR
<input checked="" type="checkbox"/>	<p>1.1 ABUSE FREE ENVIRONMENT 1.2 RESPECT, DIGNITY, INDIVIDUAL FOCUS 1.3 REGARD TO AGE AND GENDER 7.4 PROTECTIVE CARE</p>

	7.5 SELF HARM AND SUICIDE PREVENTION 7.6 SEPARATION 7.7 USE OF FORCE 11.3 ETHICAL PRACTICE
	<u>CIMS</u> INCIDENT ADVICE <u>CIMS</u> STAFF REPORT <u>JJ-A021</u> USE OF SEGREGATION RETURN <u>JJ-A056</u> SEGREGATION RECORD BOOK <u>JJ-A057</u> RECORD OF SEGREGATION <u>JJ-A058</u> REPORT ON USE OF FORCE <u>JJ-A059</u> SEARCH REGISTER <u>CIMS</u> CASE NOTES


When to use this procedure

The department has a duty of care to its clients and its staff. This duty may be jeopardised if dangerous or other illicit objects or substances are brought into a Juvenile Justice Centre. To minimise the entry of such objects or substances into centres, staff may be required to search detainees under well-defined circumstances and conditions.

This procedure is used to search a detainee:

- As part of routine; or
- When there is 'reasonable belief' the detainee may be in possession of contraband.

When not to use this procedure

When a detainee has met with a departmental staff member within the centre, unless staff has reasonable belief that the detainee has obtained an illicit object or substance ( below), the detainee is not required to be searched in any way.

This procedure must never be used unless the reasons described in this procedure exist. Search procedures must never be used to harass or intimidate a detainee.

The circumstances in which searches can be used are described in more detail below. The types of searches that can be conducted are also described below.

Duty of care

Staff employed by the Department of Juvenile Justice have common law and statutory duties of care towards clients of the department. Failure of an employee to discharge his or her duty of care, or otherwise act within the law, leaves the employee individually or the department (or both) open to criminal or civil action.

Departmental disciplinary action may also be taken under the Public Sector Employment and Management Act 2002 against any staff member found guilty of failing to discharge his or her duty of care.

Types of searches and reasons for their use

With appropriate approval, centre staff may perform searches in the circumstances outlined below, and using the methods outlined below.

Wand and clothed body search

A wand search involves the use of an approved metal detector on a fully clothed detainee. A clothed body search involves the careful patting down of a detainee's clothed body after the removal of outer garments (such as a coat, jacket, etc.), and shoes and socks.

Depending on the specific circumstances outlined in these procedures, a wand search followed by a clothed body search should be used when a detainee:

- moves from one area to another, where he or she may have had access to dangerous objects or substances. This includes leaving vocational and other program areas; and
- at any other time when there is a “reasonable belief” (☞ below) that the detainee may be in possession of an illicit object or substance.

Strip search

A strip search involves visual examination of the upper body after removal and searching of upper garments, followed by visual examination of the lower body after return of the upper garments and the removal and searching of lower garments. For safety and security purposes a wand search **MUST** be conducted prior to a strip search.

Routine strip search

A wand and strip search **must** be routinely used when a detainee:

- is first admitted to a centre;
- returns to a centre from court appearance or medical appointment;
- returns to a centre from day or overnight leave;
- returns to a centre from a special activity outside the centre such as training or work experience;
- prior to returning to a unit within the centre following a visit by a family member or significant other.
- is either A1o or A1b (male detainees over 16 **only**) prior to leaving the centre to attend court or transferring to another centre?. Other A **A2** class detainees (including under 16 year males and young women) should only be strip searched prior to court where there is "reasonable belief" that the detainee may be concealing contraband and/or weapons.

The use of strip searching during initial admission and subsequent re-entries to a detention centre is justified to protect the safety, security and good order of the centre by detecting contraband and illicit items (including drugs and potential weapons) and preventing their entry into the detention centre.

Apart from the circumstances above, a strip search should not be used routinely and must be based on the principles of reasonable belief outlined below.

Non-routine / one-off strip search

A non-routine one-off strip search may be authorised by a Unit Manager, Duty Shift Supervisor/A/Unit Manager or a more senior officer only when:

- a clothed body search has failed to find an object detected during a wand search; or
- there is “reasonable belief” (☞ below), following a wand and clothed body search that a detainee possesses an illicit object or substance; and
- the detainee has been repeatedly asked by searching staff, the Unit Manager, and other staff called to assist, to surrender the suspected contraband, but refuses to cooperate.

Series of random strip searches

There is only one other occasion when a strip search may legitimately be performed. It may happen as part of a series of random strip searches of a detainee, authorised by the Manager or an Assistant Manager for a brief and definite period of time (usually no more than a few days), following the detainee being found, WHILE IN CUSTODY, in possession of an illicit object or substance.

The reasons and frequency for such random strip searches must be recorded in the detainee's CIMS Case Notes and signed by the approving officer, in addition to an instruction in the Unit Log Book for the unit in which the detainee resides.

Searching with drug detector dogs

Separate procedures exist for this type of search – **SEARCHING – USE OF DRUG DETECTOR DOGS**.

Principles of searching

This procedure is based on the following principles:

- Generally, people being searched and those conducting the search consider searches to be intrusive, embarrassing, and uncomfortable.
- Because many detainees have been sexually abused, the prospect or experience of a clothed body or strip search (especially if performed insensitively or in contravention of proper procedure) may result in hostile reaction or even emotional trauma.
- Search procedures should not place the mental and physical health and safety of detainees or staff at risk.
- Staff should be aware of the need to maintain the privacy, dignity and rights of the person being searched.

National Standards and United Nations rules

The treatment of detainees in relation to searching is also regulated by the *Standards for Juvenile Custodial Facilities* (March 1999) – eg. standards 1.1, 1.2, and 1.3.

The *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* also apply to search procedures. The relevant UN Rules are:

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles.
12. The deprivation of liberty should be effected in conditions and circumstances that ensure respect for the human rights of juveniles
28. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations.
66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.
- 87(a) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman, or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever
- 87(d) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation.
- 87(f) All personnel should seek to minimise any differences between life inside and outside the detention facility which tend to lessen due respect to the dignity of juveniles as human beings.


Whilst departmental staff have obligations under the above UN Rules, these must be balanced with legislative duty of care obligations to protect the safety and security of staff, detainees and the community as outlined below.


Legislation

Managers have a legal obligation under the NSW Occupational Health & Safety Act 2000 to ensure a safe and secure workplace for all people in the workplace. This includes ensuring systems of work and the working environment are safe and without risk to a person's health. The detection of illicit substances or items and other contraband, and the prevention of their entry into a detention centre, is fundamental to those obligations.

Managers and departmental staff also have specific responsibilities under the Children (Detention Centres) Act 1987 and the Children (Detention Centres) Regulation 2005 to maintain discipline and good order among detainees, facilitate proper control and management of the detention centre and to protect the safety, security and good order of the centre. Procedures to detect and prevent the trafficking in illicit drugs and other contraband are directed at meeting these obligations.

Delegation to approve searches

In the case of a strip search, a Unit Manager, Assistant Unit Manager, Shift Supervisor or a more senior staff member must give verbal approval and must sign the appropriate authorisation in the Search Register at the first available opportunity following verbal approval. Assistant Unit Managers and Shift Supervisors may only approve a non-routine strip search in the absence of their supervising Unit Manager or Assistant Manager, and must inform one of those more senior officers as soon as practicable after the strip search has been conducted (e.g. when the Unit Manager/Assistant Manager returns to duty). In this case, the Unit Manager or Assistant Manager must check the Search Register, sign the relevant entry, and discuss any concerns with the approving Assistant Unit Managers and Shift Supervisors (eg. questionable "reasonable belief" grounds) ( JJ-A059)

Only the Deputy Director General (Operations), Regional Directors, and Assistant Regional Directors have the delegation to approve use of force to conduct a strip search ( below). However, in absolute emergencies, where the detainee or another person's life is at extreme risk, force can be used to conduct a strip search, after which one of the above officers must be contacted immediately and informed about the incident.

Definition of "reasonable belief"

A reasonable belief may be formed when reliant and reliable evidence is available to sustain the belief. This means that:


- a. The evidence must be "relevant" to the content of the suspicion (e.g. the fact that a knife is missing from the kitchen is not relevant to the suspicion that a detainee who is being re-admitted to the centre after returning from leave is carrying contraband).
- b. "Reliable" evidence must be either:
 - i. evidence of something a staff member himself or herself detected (first-hand); or
 - ii. reliable information received by staff from the detainee to be searched, another detainee, a staff member, or another person (second-hand).

Examples of "reasonable belief":




1. A staff member observes a detainee taking possession of an unauthorised item or substance during a visit and refuses to surrender or denies the existence of such item or substance;
2. A staff member overhears a conversation between detainees in which one states that he or she has drugs in his or her possession;
3. Staff observe physical or other behaviours or mannerisms that could be indicative of drug use e.g. unsteady gait; slurred speech; dilated pupils; 'on the nod'; etc;

4. Staff detect the smell of cannabis or cigarettes coming from a detainee's room and a room search fails to uncover the substance.

Exceptional unexplained evasive behaviour by a detainee is "relevant and reliable evidence", and therefore may form the basis of a reasonable belief that contraband is being concealed.

Where "reasonable belief" is the justification for conducting a search, the basis of the belief should be recorded in the Search Register. It is not sufficient to record "reasonable belief" as the reason for the search – the actual observation or evidence must be recorded in the Search Register. ( JJ-A059).

Rules for searches

- Whenever a search is performed, two staff members must be present, one performing the search, the other acting as observer of the searching staff member. **NOTE:** the second officer is not present to observe the detainee, but to observe the other staff member to ensure the correct procedure is followed.
- Staff involved in a search must be trained in these procedures and in infection control guidelines. If two trained staff members are not available, a Assistant Unit Manager, Shift Supervisor or another more senior officer must observe the search.
- The staff member conducting a clothed body search or a strip search **must** be of the same sex as the detainee being searched. The second staff member (observer) may be of the opposite sex if two same-sex staff members are not available. ( above – second officer)
- The designated or nominated search room or area must afford the detainee privacy and preserve his or her dignity. If this room is normally under camera surveillance, staff conducting the search must ensure that the cameras/videos are turned off during the procedure.
- Unless special circumstances exist, only those staff involved in the search procedure should be present.
- Clothed body or strip searches must be performed in a private room, out of view of other staff or detainees. During a strip search only one staff member should be able to look at the detainee's body.
- Centres must have "dump bins" or disposal bins installed in all search areas for the purpose of disposing of illicit objects.
- The search room or area should be free of excess furniture and non-fixed items.
- Before a search begins, the reasons for the search (and also the applicable procedure, if the detainee is not familiar with the procedure) are to be clearly explained to the detainee by the staff member conducting the search.
- Staff about to conduct a search must give all detainees the opportunity to voluntarily surrender, in private, any illicit object or substance in their possession. Detainees being admitted to the centre, or who are returning to the centre, must be informed that no police action or action under behaviour management procedures (eg. minor misbehaviour provisions) will be taken against them if they dispose of drugs and other substances voluntarily. This applies to detainees being admitted to the centre and those returning from court, leave, camps, outings, and in transit from another centre.
- Detainees who voluntarily surrender during non-admission and non-return search circumstances (eg. during a room or area search) may be subject to behaviour management procedures or possible police action and should be informed of this possibility during such searches. ( BEHAVIOUR MANAGEMENT;  INCIDENT – SUBSTANCE USE / POSSESSION)
- During a strip search, staff are not permitted to touch the body of the detainee, and the detainee cannot be directed to raise his or her legs (unless to check the soles of his or her feet), squat, part his or her buttocks, or handle his or her genitalia. The detainee can be directed to remove and hand over any illicit object or substance attached to any part of his or her body.

- When searching the lower half of a detainee's body during a strip search, the staff member conducting the search must view both sides of the detainee's body, including the genitals. The visual search of the genital area must be thorough but swift, to minimise the detainee's embarrassment as far as possible.
- Information about each search conducted, including the appropriate authority for a strip search, is to be recorded in the Search Register (JJ-A059), which is to be made available for perusal by the Regional Director, Assistant Regional Director, or any other senior officer of the Department, and the Official Visitor and Ombudsman representative.
- If a staff member witnesses a search that is not performed appropriately or in accordance with these guidelines, he or she must report this observation immediately to the Assistant Unit Manager, Shift Supervisor or the Unit Manager (in his or her absence of the Duty Manager).

Equipment

Appropriate searching equipment can be found in the **Search Kit**. A Search Kit should be located in or near all designated search areas and in each unit, in a location or cabinet that cannot be accessed by detainees. Regular checks must be conducted on this equipment (eg. once per shift), to ensure all items are always available, there is an adequate amount, and that it is operational. It is recommended that each Unit Manager delegate this responsibility to one member of his or her team.

Each Search Kit should contain:

- weight scales
- writing material (pens, paper, folders, clipboard)
- polaroid camera and film
- puncture resistant gloves
- telescopic inspection mirror and ruler
- evidence bags
- contaminated waste bag
- disposable overalls
- medical equipment, including AIDS pouch, bleach, dressings, protective masks, syringe holders, puncture-proof plastic container with a screw-top lid for collection of sharps
- OHS stickers.

It is the responsibility of the Assistant Manager (Generalist) to ensure all designated search areas and all units in the centre have a Search Kit and that the equipment is always readily available and operational for search staff.

Safety procedures

Latex and puncture-resistant gloves for use in searches must always be available in the admissions office and other designated search areas. Gloves must be worn throughout any kind of search involving contact with a detainee's clothes.

Special care is required to avoid injury from concealed sharp objects. Searching staff should never put their hands or fingers in areas that are not clearly visible. **Mirrors, rulers, pens and other objects** should be used to search areas where visibility is limited.

A **pat-down motion** must be used in preference to a sliding-hand motion when conducting clothed body searches. In any event, patting down must be performed with extreme caution to avoid injury from concealed sharp objects.

If concealed items are detected on a detainee during a search, the detainee should be asked to surrender the items to the searching staff member by placing them in an open area on a table or desk in the search area.

A detainee subject to a clothed body search or strip search should be asked to:

- empty out his or her pockets;
- remove shoes and socks, turn the socks inside out and shake out shoes;
- run hands through his or her hair;
- turn down collars and cuffs;
- take off outer garments such as sloppy joes, jumpers, coats, laying them flat on a table.

Sharps should be placed in a puncture-proof plastic container with a screw-top lid. The sharp end of a needle should never be touched by hand, and a syringe should be picked up with a gloved hand by the barrel end. In the event of an injury, such as a needle-stick injury, abrasion, or laceration, infection control guidelines are to be followed, first aid applied and medical attention sought immediately. Puncture proof plastic containers should be available in the Drug Search Kit, to ensure easy access during searches.

Pornographic material

Managers must ensure that detainees are advised on admission that any pornographic material will be destroyed when confiscated and a record kept of the material destroyed. This includes videos, magazines, pictures or written articles which may adversely affect the safety, security and good order of the centre. (CONTRABAND – PREVENTION AND DETECTION)

Staff who bring in pornographic material or contraband items to a Juvenile Justice Centre or fail to confiscate and dispose of such material, will be in breach of the Code of Conduct and duty of care and may be subject to disciplinary action. (DEPARTMENTAL DISCIPLINARY PROCEEDINGS)

Confiscated monies

Confiscated monies found during search procedures are to be processed as contraband. (CONTRABAND – PREVENTION AND DETECTION)

Searching detainees with medical / surgical dressings or plaster casts

If staff reasonably believes that a detainee is concealing an illicit object or substance behind a medical or surgical dressing or plaster cast this should be discussed with the centre's Justice Health Registered Nurse with a view to determining a procedure for searching and removing such an object or substance in manner that will not cause further injury.

If there is any difference of opinion or doubt about medical or safety issues involved in the proposed removal of a medical or surgical dressing or plaster cast for the purpose of searching, further consultation with a medical practitioner must occur before the search is conducted. The detainee may have to be segregated or otherwise closely observed and kept separate from other detainees for the waiting period.

If, after necessary medical consultation, it is decided to remove a medical, surgical dressing or plaster cast to facilitate a search, the procedure must be performed either by the Justice Health Registered Nurse or a medical practitioner in the presence of a searching staff member.

After the search, a replacement medical or surgical dressing or plaster cast (eg. back slab) must be applied by the Registered Nurse, a medical practitioner, or at a Plaster Clinic. The original dressing must not be placed on the wound again.

Refusal to be searched

There will be occasions when a detainee refuses to be searched. In such cases, the detainee must be treated sensitively because the reasons for refusal may be of a very personal nature. Not every refusal


to be searched will be a “rebellious” act or an attempt to avoid being caught with an illicit object or substance.

The reason for the search should be clearly explained or repeated by the staff member, or by another person thought to share a better working relationship with the detainee. Staff should actively seek out the assistance of another staff member who may have a different approach or relationship with the detainee and go to the Casework File to locate any information that may be relevant in this situation.

The detainee may be asked to nominate an available adult or staff member to observe the search. Alternatively, the detainee's parents or a significant other may be asked to assist, either by phone or in person, in gaining the detainee's co-operation for the search.

If refusal continues, or the detainee is uncooperative, then the search should cease and the detainee should be regarded as a safety and security risk and placed in segregation for his or her own protection or for the protection of staff or other detainees. (SEGREGATION).

If at the end of the segregation period, the detainee continues to refuse to be searched, he or she must be given an instruction to comply and be warned that refusal will result in the detainee being placed in confinement under the Misbehaviour provisions of the legislation. (MISBEHAVIOUR)

Continued refusal should be dealt with as a minor misbehaviour, not through use of force. If all the above options have been exhausted with no result and there is no immediate or urgent risk to the detainee the Unit Manager must consult with his or her supervising Assistant Manager and (where necessary) the Centre Manager. In the event the search is being conducted by transporting staff, the transporting officer must contact their line Assistant Manager/ Manager before any further action is taken. ( MISBEHAVIOUR).

Use of Force

Use of force for the purpose of searching may seem to be authorised by legislation through clause 50(1)(f) & (g) of the Children (Detention Centres) Regulation 2000 - “to search a detainee in circumstances in which the detainee refuses to submit to being searched” or “to seize any dangerous or harmful article or substance that is in the possession of the detainee”. Advice received from the Crown Solicitor’s Office indicates that using force to facilitate a strip search is a complicated issue and extreme caution should be exercised whenever this is being considered as an option.

Decision to use force

Use of force by staff to conduct a strip search procedure on a detainee to retrieve a dangerous item, harmful article or substance should only be considered:

- after a wand and clothed body search has been conducted;
- when there is an immediate and urgent risk to a detainee's life or limb;
- when all alternatives have been attempted or considered.

The major determinant of the need to use force is urgency. If the detainee can be contained, and the level of risk kept to a minimum, use of force to strip search the detainee should not occur.

Delegation and approval

The delegations to approve use of force to conduct a strip search are outlined above.

If the reason for which force is considered necessary is not an absolute emergency, supervising staff should contact the Centre Manager who will seek approval from the Regional Director or the Assistant Regional Director. Placements / Transport staff should contact their line Assistant Manager / Manager Court Logistics, Classification & Placements who will seek approval from the Deputy

Director General. (Operations). Each of these senior officers must ensure staff has exhausted every alternative option before seeking or providing approval for use of force to conduct a strip search.

Where the situation is considered an absolute emergency, and seeking approval would increase the likelihood of harm to the detainee or another person, the Unit Manager/Assistant Manager responsible for the detainee (in their absence the Duty Manager or (after hours) Assistant Unit Manager or Shift Supervisor) must contact the Centre Manager immediately after the use of force has occurred. The Centre Manager must then inform the Regional Director or Assistant Regional Director, and ensure all reports are completed and forwarded to Regional Office.

In the case of transport-related incidents, the transporting officer must contact their line Assistant Manager. If this is the Assistant Manager (Transport) he/she will report to the Director of Court Logistics, and Classification & Intelligence. The Director must then inform the Deputy Director General (Operations) and ensure all reports are completed and forwarded to the Operations Unit.

Reports

The use of force to conduct a strip search must be treated as an incident. (📄 INCIDENT – GENERAL INFORMATION).

In addition to an Incident Advice being completed by the most senior supervising officer, each staff member involved in the use of force – those using the force and those observing the use of force – must complete a detailed Staff Report outlining the circumstances leading to the use of force, the alternative options that were attempted to retrieve the contraband, and the way in which the decision to use force was made. Each staff member involved in the use of force must also complete a separate Report on Use of Force. (📄 JJ-A005; 📄 JJ-A009; 📄 JJ-A058; 📄 JJ-A059) (📄 USE OF FORCE AND INSTRUMENTS OF RESTRAINT)

When completing the Incident Advice the senior officer must demonstrate that every alternative means of retrieving the contraband was attempted. Such means should be listed in the order they occurred and should include, but may not be limited to:(📄 JJ-A005)

1. Wand and clothed body search
2. Request for the detainee to willingly participate in a strip search, an explanation of the procedure, and details of the possible consequences for refusal
3. If the detainee refused, repeated requests at least three more times, at intervals of no less than five (5) minutes
4. Use of another staff member or support person to request that the detainee participate in a strip search, to explain the procedure, and to detail the possible consequences for refusal.

Support and counselling

After any incident where force was used to strip search a detainee it is compulsory to refer the detainee and all staff involved or present for counselling. The detainee should be referred to a Centre Counsellor or Psychologist, preferably his or her Primary Worker. Staff should be referred to the counselling service subsidised by this department. All referrals should be noted on the Incident Advice and any need for follow-up recorded on an Incident Follow-Up Advice. (📄 JJ-A005; JJ-A007) (📄 INCIDENT – GENERAL INFORMATION).

Processing and recording of contraband

All contraband items and/or suspected drugs are to be processed with the exception of contraband items disposed in “dump bins” or disposal bins found during admission procedures or when detainees are returning to the centre. (📄 CONTRABAND – PREVENTION AND DETECTION)

Wand and clothed body search

A wand search must be conducted prior to a clothed body search. A wand search will not locate illicit substances that do not have metal content or wrapping.

It is the responsibility of the Assistant Manager (Generalist) to ensure the centre has an adequate number of wand metal detectors, and that these are located in areas where searches most commonly occur. The Assistant Manager (Generalist) must also ensure that a procedure is in place for the regular checking and maintenance of wand metal detectors.


The Assistant Manager (Generalist) is also responsible for ensuring that all staff who conduct searches are trained in the use of wand metal detectors, and that there are regular refresher training sessions. In most centres, it should be the responsibility of Unit Managers to conduct training and instruction sessions with supervising or searching staff.

How this procedure works

Where Unit Managers have responsibilities in these procedures, this relates to the Unit Manager, Assistant Unit Manager or Shift Supervisor responsible for the detainee involved in consultation with the Assistant Manager. In the absence of that Unit Manager, Assistant Unit Manager or Shift Supervisor his or her supervising Assistant Manager assumes the responsibilities. In the absence of the Assistant Manager, the Duty Manager assumes those responsibilities in these procedures.

After hours, when the Manager, Assistant Managers and Unit Managers are not on-site at the centre, the Duty Manager assumes these responsibilities in consultation with the Assistant Unit Manager or Shift Supervisor on duty.

Before starting a wand and clothed body search

	Responsible	Action Required
1	Staff conducting search	<ul style="list-style-type: none"> • <u>For a non-routine wand and clothed body search</u> (i.e. a search based on “reasonable belief”), contact the Assistant Unit Manager or Shift Supervisor and: <ol style="list-style-type: none"> 1. request approval to conduct the wand and clothed body search; 2. explain the reasons for the search; 3. request that a second trained staff member attend to observe or conduct the search. • Do not conduct any part of the search until there is a second trained officer present.
2	Assistant Unit Manager or Shift Supervisor	<ul style="list-style-type: none"> • <u>If you determine that the reasons for the non-routine search are adequate and reasonable in view of the principles applying to searching</u>, give approval for the search. • Sign the Search Register. For non-routine wand and clothed body searches this may be done after the search has been completed. The basis of “reasonable belief” must be documented in the Search Register. ( JJ-A059)
3	Staff conducting search	<p><u>For both routine and non-routine searches:</u></p> <ul style="list-style-type: none"> • Ensure you are in an area where security and privacy can be

	<p>maintained (this is not necessary when the search consists of a wand search only).</p> <ul style="list-style-type: none"> • Ensure the detainee to be searched is separated from other detainees in the area, to prevent any passing of contraband items. • Inform the detainee that he or she will be given a wand and clothed body search. • Explain the wand and clothed body searching procedure to the detainee before commencing the search, unless the detainee is familiar with the procedure at the centre. • Ask the detainee if he or she has any items of contraband and allow him or her to hand over such items or place them in an evidence bag before the search begins. <u>If this is a non-admission search or a non-return search</u>, inform the detainee that he or she may be punished under Minor or Serious Misbehaviour provisions, or may be referred to the police if the contraband is voluntarily declared and handed over at this stage, however decisions regarding punishment, etc, will consider the fact that the detainee voluntarily provided the contraband to staff.
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Proceeding with the wand search

Responsible	Action Required
4 Staff conducting search	<ul style="list-style-type: none"> • Direct the detainee to remove all articles from his or her pockets and turn the pocket lining out. • Direct the detainee to face away from you. • Direct the detainee to raise his or her arms up and to the side, with the palms of his or her hands facing upwards. • Direct the detainee to place his or her legs and feet apart, feet flat on the ground. This should be at a distance where the detainee is still comfortable and can maintain his or her balance. <p><u>It is advisable that a low stool (kept especially for this purpose) is used for the detainee to stand on.</u> This lowers the chances that the wand will detect metal embedded in the floor.</p> <p><u>The detainee must remain with arms outstretched and legs apart for the entire wand search.</u></p> <ul style="list-style-type: none"> • Move the wand across and over the detainee's body: <ol style="list-style-type: none"> 1. <u>Right side of body:</u> <ul style="list-style-type: none"> • start at the side of the detainee's right foot; • move the wand up the right side of the detainee's body to his or her right armpit; • move the wand along the underside of the detainee's right outstretched arm, around his or her right hand, then across the top of the right arm, to the neck. 2. <u>Head area:</u> <ul style="list-style-type: none"> • move the wand over the detainee's head, passing the right ear, over and around the head area, down past his or her left ear to the neck.

	<p>3. <u>Left side of body:</u></p> <ul style="list-style-type: none"> • move the wand along the top of the detainee's left arm, over the hand, then along the underside of his or her left arm; • move the wand down the left side of the detainee's body, to the side of his or her left foot. <p>4. <u>Inside legs and crotch</u></p> <ul style="list-style-type: none"> • move the wand from the inside of the detainee's right foot, up along the inside right leg, past the crotch area, and down the inside left leg to the left foot. <p>5. <u>Back of body</u></p> <ul style="list-style-type: none"> • move the wand (holding it lengthwise and flat across the detainee's body) up along the back of the detainee's body. <p>6. <u>Soles of shoes</u></p> <ul style="list-style-type: none"> • direct the detainee to raise each of his or her feet and move the wand across the sole of each shoe. <p>7. <u>Front of body</u></p> <ul style="list-style-type: none"> • direct the detainee to face you; • move the wand (holding it lengthwise and flat across the detainee's body) from the head down along the front of the detainee's body.
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Proceeding with the clothed body search

A wand search must be conducted before starting this procedure. Detainees are to remain dressed for a clothed body search.

Extra layers of clothing such as jackets, jumpers, sloppy joes and shoes must be removed.

	Responsible	Action Required
	CLOTHING	
5	Staff conducting search	<ul style="list-style-type: none"> • Put on a pair of puncture-resistant gloves. • Ensure that you are standing at a safe distance from the detainee, and in sight of the second officer. • <u>If not already done as part of the wand search</u>, direct the detainee to remove all articles from his or her pockets and turn the pocket linings out. • Direct the detainee to remove the following items, placing them on a table or another flat surface: <ol style="list-style-type: none"> 1. outer jacket or jumper; 2. shoes and remove inner soles (to be shaken by the detainee); 3. socks – turned inside out; 4. wrist watch and any jewellery. • Search all the removed items of clothing in the presence of the detainee. Use protective equipment at all times when conducting this

	<p>procedure – eg. gloves, ruler.</p> <ul style="list-style-type: none"> • Pay close attention to: <ol style="list-style-type: none"> 1. collars, cuffs, facings, lapels, seams and linings of clothing; 2. heels and linings of shoes.
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UPPER BODY	
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<p>6 Staff conducting search</p>	<p><u>To search hands:</u></p> <ul style="list-style-type: none"> • Direct the detainee to face you. • Direct the detainee to move his or her hands out to the side of his or her body with fingers spread apart. • Check the detainee's hands for contraband. <p><u>To search the head area:</u></p> <ul style="list-style-type: none"> • Direct the detainee to bend his or her head forward. • Direct the detainee to run the hands through his or her hair – from the back to the front. • Direct the detainee to raise his or her head, open the mouth and remove any false teeth. • Look into the mouth cavity and then direct the detainee to run a finger around between teeth and gums. • Direct the detainee to turn his or her head to each side and to pull the ears forward. <p><u>To search the neck and torso:</u></p> <ul style="list-style-type: none"> • Direct the detainee to stand <u>facing away</u> from you, with his or her feet apart and arms raised from the sides. • Carefully pat down the detainee, starting at the back of the head. Follow a direct course around the collar, ensuring that nothing is hidden inside or under the collar of the shirt. • Place both hands on the base of the detainee's neck, covering the shoulders with palms open and pressing firmly. • Pat down the back and side to the belt line. <p><u>To search the arms:</u></p> <ul style="list-style-type: none"> • The detainee should still be facing away from you. • Place one hand under the detainee's armpit and the other hand on top of his or her shoulder. • Carefully pat down the entire length of both sleeves to the cuff or end of the shirt. • Repeat the procedure with the other arm.
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LOWER BODY	
7	<p>Staff conducting search</p> <p><u>To search the waist and legs:</u></p> <ul style="list-style-type: none"> The detainee should still be facing away from you. Direct the detainee to release the belt line and turn it out. Search the belt line. From the back of the waistline, carefully pat down over the buttocks and sides of the hips and legs. <u>If the detainee is wearing long trousers</u>, starting at either leg, place both hands around the leg and carefully pat down from the top down. Search any trouser turn-ups or cuffs. Repeat this on the other leg. <p><u>To search feet:</u></p> <ul style="list-style-type: none"> The detainee should still be facing away from you. Direct the detainee to lift one leg at a time to display the soles of his or her feet and toes. Direct the detainee to wiggle his or her toes (to release anything held there). Direct the detainee to replace any items of clothing or jewellery that were removed (if such items are permitted in the centre).
8	<p>Staff conducting search</p> <ul style="list-style-type: none"> <u>If items of contraband were found</u>, wearing protective equipment place the items in the sharps container or secure evidence bag. All protective equipment is located in the Drug Search Kit. Seal the container/bag and label it with: <ol style="list-style-type: none"> the detainee's name and date of birth; the item of contraband found (if unknown, a description, e.g. green vegetable matter, white powdery substance); the day, date and time of the search; your name, as the searching officer. Give the evidence to the Unit Manager to be secured in the Assistant Manager (Generalist

After a search

	Responsible	Action Required
9	Staff conducting search	<u>If items of contraband were found:</u>

	<ul style="list-style-type: none"> • Ensure sharps (syringes and needles) are placed in a puncture-resistant container. • Inform the Unit Manager of the result of the search. • Ensure the Unit Manager receives the sealed container with contraband intact.
<p>10 Unit Manager (A/Unit manager/Shift Supervisor)</p>	<ul style="list-style-type: none"> • Report any items of contraband found to the Assistant Manager (Generalist). • Ensure search staff have placed sharps (syringes and needles) in a puncture-resistant container. • <u>If the items found are unauthorised for use by the detainee within the centre, but nevertheless are not items that ought to be forfeited, ensure</u> the items are placed with the detainee's stored property and are recorded accurately by Admissions staff (&personal property of detainees). • <u>If directed by the Assistant Manager (Generalist), Complete</u> an Incident Advice on CIMS and refer any other reports about the incident to the Drug Intelligence Unit and the Regional Director or Assistant Regional Director. • Submit the Incident Advice and any other reports about the incident to the CIMS Inray of the Assistant Manager (Generalist). • Check that the Search Register has been completed correctly. (JJ-A059) • If there is more information needed, direct staff to enter the additional information in the Search Register before signing. • <u>When the Search Register is accurately completed, sign</u> the appropriate section confirming the search has been conducted in accordance with departmental procedures.

Strip Search

A strip search should always be conducted with the detainee partially clothed. The search must be conducted in the following order:

1. top half of clothing removed and searched;
2. top half of body checked for contraband;
3. top half of clothing (one layer) returned and shirt put on by the detainee;
4. bottom half of clothing removed and searched;
5. bottom half of body checked for contraband;
6. bottom half of clothing returned and put on by the detainee.

Staff conducting a strip search must maintain a high level of sensitivity throughout the search procedure. Due regard must be given to privacy, decency, sexual assault history, cultural difference, and maintaining the detainee's self-respect.

The searching staff member must never touch the detainee at any time during a strip search procedure. Both staff members should be of the same sex as the detainee, if possible. If this is not possible, the staff member conducting the strip search must be of the same sex of the detainee whilst the second staff member (observer) can be of the opposite sex (note: this staff member does not observe the detainee).

The searching staff member must remain in sight of the second officer (observer) at all times during the search procedure. The second officer is (i) a witness to the searching procedure and (ii) responsible for ensuring the search procedure is conducted correctly.

Before starting a strip search

Responsible	Action Required
1 Staff conducting search	<ul style="list-style-type: none"> • <u>For a non-routine strip search</u> (i.e. a search based on “reasonable belief”), contact the Unit Manager and: <ol style="list-style-type: none"> 1. request approval to conduct the strip search; 2. explain the reasons for the search; 3. request that a second trained staff member (of the same sex as the detainee if possible) attend to observe or conduct the search. • Do not conduct any part of the search until there is a second trained officer present.
2 Unit Manager	<ul style="list-style-type: none"> • <u>If you determine that the reasons for the non-routine search are adequate and reasonable in view of the principles applying to searching, give verbal approval for conducting the search.</u> • Sign the Search Register at the first available opportunity following verbal approval. The basis of “reasonable belief” must be declared in the Register. (JJ-A059)
3 Staff conducting search	<p><u>For both routine and non-routine searches:</u></p> <ul style="list-style-type: none"> • Ensure you are in an area where security and privacy can be maintained. • Ensure the detainee you are going to search is separated from other detainees in the area to prevent any passing of contraband items. • Inform the detainee that a strip search will be conducted. • Explain the strip search procedure to the detainee before commencing the search, unless the detainee is familiar with the procedure at the centre. • Ask the detainee if he or she has any items of contraband and allow him or her to hand over such items or place them in an evidence bag before the search begins. Inform the detainee that he or she may still be dealt with under Minor or Serious Misbehaviour provisions or a referral to the police if contraband is voluntarily declared and handed over at this stage, however

	decisions regarding punishments etc, will take into consideration the fact that the detainee did volunteer the contraband.
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Proceeding with the strip search

4	Staff conducting search	<ul style="list-style-type: none"> • Put on a pair of puncture-resistant gloves. • Ensure that you are standing at a safe distance from the detainee and in sight of the second officer. Do not touch the detainee at any time during this search. • Direct the detainee to remove all articles from his or her pockets and turn the pocket linings out. • Direct the detainee to remove the following items, placing them on a table or another flat surface: <ol style="list-style-type: none"> 1. outer jacket or jumper; 2. shoes (to be shaken by detainee); 3. socks – turned inside out; 4. wrist watch and any jewellery. • Search all the removed items of clothing in the presence of the detainee and use protective equipment (eg. ruler, etc.). • Pay close attention to: <ul style="list-style-type: none"> collars, cuffs, facings, lapels, seams and linings of clothing; <ol style="list-style-type: none"> 1. heels, linings and inner soles of shoes. • <u>Footwear should not be returned to the detainee until the entire search is completed.</u>
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UPPER CLOTHING

5	Staff conducting search	<ul style="list-style-type: none"> • Direct the detainee to remove his or her upper layer of clothing. Undergarments (eg. bras, singlets etc) can be left on until overgarments have been searched. • Direct the detainee to place the upper layer of clothing on the table. • Direct the detainee to move away from the table. • Search all the removed items of clothing in the presence of the detainee and use protective equipment (eg. ruler). • Pay particular attention to collars, cuffs, facings, lapels, seams and linings of clothing. • Direct the detainee to remove undergarments for searching when all upper clothing has been searched.
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UPPER BODY

6	Staff conducting search	<u>To search hands:</u>
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	<ul style="list-style-type: none"> • Direct the detainee to face you. • Direct the detainee to move his or her hands out to the side of the body, with fingers spread, to see if he or she has anything in the hands. <p><u>To search the head area:</u></p> <ul style="list-style-type: none"> • Direct the detainee to bend his or her head forward. • Direct the detainee to run the hands through his or her hair – from the back to the front. • Direct the detainee to raise the head, open the mouth and remove any false teeth. • Look into the mouth cavity and then direct the detainee to run a finger around between teeth and gums. • Direct the detainee to turn the head to each side and to pull the ears forward. • Direct the detainee to raise the arms so that it is possible to view the armpits. • Visually inspect the top half of the detainee's body. • Direct the detainee to put on his or her upper clothing (one layer only).
LOWER CLOTHING	
7	<p>Staff conducting search</p> <ul style="list-style-type: none"> • Direct the detainee to remove his or her lower layer of clothing – under-garments (eg. underpants,) can be left on until over-garments have been searched. • Direct the detainee to place the clothing on the table. • Direct the detainee to move away from the table. • <u>Tell the detainee that he or she can turn away from you for privacy.</u> • Search all the removed items of clothing in the presence of the detainee and use protective equipment (eg. ruler). • Pay particular attention to pockets, linings, seams and facings in the clothing. • Conduct the search of clothing in this step as quickly as possible (still ensuring a thorough search), so that the detainee can be searched and have the clothing returned as soon as possible to reduce embarrassment as much as possible. • Direct the detainee to remove undergarments for searching when all lower body clothing has been searched.
LOWER BODY	
8	<p>Staff conducting search</p> <ul style="list-style-type: none"> • <u>If the detainee is wearing a long shirt or other garment that comes below the waist,</u> ask the detainee to lift the clothing to the waist-line and to hold it there while you search the lower body. Do this as quickly, but thoroughly, as possible to reduce embarrassment.

	<ul style="list-style-type: none"> • Visually inspect the lower half of the detainee's body, including: <ol style="list-style-type: none"> 1. between the toes (ask the detainee to wiggle the toes); 2. soles of the feet (ask the detainee to lift one leg at a time to display the soles); 3. inner parts of the legs and the pubic area. • Do not direct the detainee to lift genitalia, squat or part buttocks. • Direct the detainee to put on his or her lower layer of clothing. • Allow the detainee to place all remaining clothing on, and return his or her shoes and socks and any items that the detainee may have had in his or her pockets and is allowed to keep.
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Items found

9	Staff conducting search	<ul style="list-style-type: none"> • <u>If items of contraband were found</u>, wearing protective equipment, place them in the sharps container or secure evidence bag. All protective equipment is located in the Drug Search Kit. • Seal the container and label it with: <ol style="list-style-type: none"> 1. the detainee's name and date of birth; 2. the item of contraband found (if unknown, a description, e.g. green vegetable matter, white powdery substance); 3. the day, date and time of the search; 4. your name, as the searching officer. • Give the evidence to the Unit Manager to be secured in the Assistant Manager (Generalist) office for the purpose of investigation if required.
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After a search

	Responsible	Action Required
10	Staff conducting search	<u>If items of contraband were found:</u> <ul style="list-style-type: none"> • Ensure sharps (syringes and needles) are placed in a puncture-resistant container. • Inform the Unit Manager of the result of the search. • Ensure the Unit Manager receives the sealed container with contraband intact.
11	Unit Manager (Shift Supervisor/ A/Unit Manager)	Report any items of contraband found to the Assistant Manager (Generalist). <u>Items of contraband found require an Incident Advice per procedure manual (Incident – General Information)</u> <ul style="list-style-type: none"> • Ensure search staff have placed sharps (syringes and needles) in a puncture-resistant container. • <u>If the items found are unauthorised for use by the detainee within the centre, but nevertheless are not items that ought to be forfeited</u>, ensure the items are placed with the detainee's stored property and are recorded accurately by Admissions staff.

POLICY FOR THE MANAGEMENT OF DIFFICULT BEHAVIOUR



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ISBN: 0 7347 6500 2

POLICY FOR THE MANAGEMENT OF DIFFICULT BEHAVIOUR

Adolescence is a period of great change and, often, of some confusion. Neither adults nor children, adolescents test society's boundaries and frequently display challenging and difficult behaviours.

These behaviours are amplified in the department's clients. Young offenders often have poor negotiation skills, have experienced abuse at some stage in their lives and find themselves in an environment where they have little, if any, power.

Clients' behaviour can range from the compliant through to the challenging and difficult. The Managing Difficult Behaviour policy emphasises the importance of responding to this conduct in the most appropriate manner.

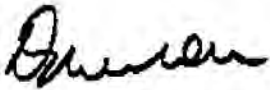
The policy establishes a framework for staff to manage difficult and challenging behaviours of clients and clearly sets out the department's expectations of staff in responding appropriately in particular circumstances.

The policy is based on a number of principles, including the concern for the safety and well being of staff and clients.

The committee that developed the policy drew on a wide range of expertise and experience within the department, including staff from juvenile justice centres, medical staff and training professionals. The policy has been developed in consultation with the Departments of Community Services, Corrective Services, NSW Health, Education and Training and the NSW Police Service. The NSW Ombudsman's Office, Public Service Association and the Visiting Children's Legal Service have also reviewed the policy.

The introduction of the policy is accompanied by an extensive program of training and support for all staff involved in its implementation.

All staff should become familiar with the contents of the policy as it sets out clearly the appropriate response when managing this difficult part of the department's work.



David Sherlock
Director General

CONTENTS:		Page
FOREWORD FROM THE DIRECTOR GENERAL		2
SECTION 1. ABOUT THIS POLICY		4
1.1	PURPOSE OF POLICY	4
1.2	INTRODUCTION	4
1.3	PRINCIPLES	4
1.4	AIMS OF POLICY	5
1.5	COMMON TERMS AND DEFINITIONS	6
1.6	LEGAL CONTEXT	8
1.7	RELEVANT LEGISLATION	8
1.8	EXISTING POLICIES, STANDARDS AND PROCEDURES	8
1.9	INTERNATIONAL CONVENTIONS	9
SECTION 2. BACKGROUND TO THE POLICY		9
2.1	BEHAVIOUR MANAGEMENT	9
2.2	UNDERSTANDING BEHAVIOUR MANAGEMENT	10
2.3	POSSIBLE CAUSES OF CHALLENGING BEHAVIOUR	11
2.4	NATURE OF CHALLENGING BEHAVIOUR	11
SECTION 3. GENERAL BEHAVIOUR MANAGEMENT TECHNIQUES		12
3.1	GENERAL BEHAVIOUR MANAGEMENT SKILLS AND TECHNIQUES	12
3.2	COMMUNICATION AND MODELLING SKILLS	12
3.3	NEGOTIATION AND CONFLICT RESOLUTION SKILLS	13
3.4	SKILLS IN RECOGNISING INDIVIDUAL NEEDS	14
3.5	CASEWORK	14
3.6	PROGRAMS AND ACTIVITIES	14
3.7	RECREATION AND PLAY	15
3.8	SUPERVISION	15
3.9	INCENTIVE SCHEMES	16
SECTION 4. MANAGING DIFFICULT BEHAVIOURS		16
4.1	GUIDELINES FOR MANAGING INAPPROPRIATE BEHAVIOUR	16
4.2	BEHAVIOUR MANAGEMENT PLANS	17
4.3	BEHAVIOUR OBSERVATION PLANS	18
4.4	SEGREGATION	19
4.5	MINOR MISBEHAVIOUR	20
4.6	SERIOUS MISBEHAVIOUR	21
4.7	POLICE INVESTIGATION	22
4.8	YOUTH JUSTICE CONFERENCES	22
4.9	PROHIBITED PUNISHMENTS	23
SECTION 5. PHYSICAL CONTACT		24
5.1	PRINCIPLES OF PHYSICAL RESTRAINT	24
5.2	GUIDELINES FOR PHYSICAL CONTACT	24
5.3	STAFF RESPONSIBILITIES	25
5.4	THE USE OF FORCE AND PHYSICAL RESTRAINT	25
5.5	GUIDELINES ON THE USE OF FORCE	26
5.6	SITUATION ASSESSMENT	27
5.7	LIMITATIONS ON THE USE OF FORCE	28
5.8	PHYSICAL RESTRAINT	29
5.9	GUIDELINES FOR VIDEOTAPE RECORDING	30
5.10	EXCESSIVE FORCE	30
5.11	INSTRUMENTS OF RESTRAINT	30
SECTION 6. MONITORING OF THIS POLICY		32
ADDENDUM		33

SECTION 1. ABOUT THIS POLICY

1.1 PURPOSE OF POLICY

The purpose of this policy is to provide custodial staff with a framework for the management of difficult and challenging behaviours exhibited by some clients in the custody of the Department of Juvenile Justice.

1.2 INTRODUCTION

The *Policy for the Management of Difficult Behaviour* introduces behaviour management techniques that are to be used when clients exhibit difficult behaviours. These techniques include, but are not limited to, the use of force and physical restraint. The department primarily influences the behaviour of clients by the use of casework, program interventions and supervision. These techniques are described in the *Design and Use of Incentive Schemes at Juvenile Justice Centres* and the *Case Management Policies*.

The policy has been divided into six sections for ease of reference. Section One covers all the details of the policy itself. Section Two gives the background to the policy. Section Three covers information and strategies for managing general behaviours of clients. Section Four outlines strategies for dealing with difficult behaviours, Section Five covers the use of force and Section Six highlights that the policy will be monitored. Also included is an addendum containing reference material relevant to particular sections of the policy.

A procedures manual exists to support the policy along with a self-paced policy learning kit and training manual to assist in its implementation.

While this policy is for staff in juvenile justice centres, the principles of the policy apply to all staff.

1.3 PRINCIPLES

Thirteen principles underpin this policy:

- | | |
|------------------------|---|
| <i>Principle One</i> | This department is committed to the safety and well being of staff and clients. |
| <i>Principle Two</i> | Clients in custody or under supervision of the department have a right to departmental services free from all forms of abuse and neglect. |
| <i>Principle Three</i> | Effective communication and positive interactions are the most effective method of managing clients in the custody of the department. |
| <i>Principle Four</i> | Difficult adolescent behaviours are on a continuum and the methods of intervention are also on a continuum with physical |

intervention strategies always being used as the option of last resort at all times.

- Principle Five* Behaviour management commences with the identification of the clients' individual needs and the planned provision of services and programs to meet those needs.
- Principle Six* Behaviour management focuses on techniques that reinforce appropriate behaviour and provides consistent and fair consequences for inappropriate behaviour.
- Principle Seven* Behaviour management also involves the ability of staff to anticipate potential incidents or situations to prevent them escalating.
- Principle Eight* Responses to challenging behaviour are timely, consistent and specific to the observed behaviour.
- Principle Nine* Behaviour management extends beyond managing behaviour within juvenile justice centres to enabling detainees to improve their ability to cope in the community.
- Principle Ten* The use of instruments of restraint in behaviour management is strictly limited to occasions when there is an unacceptable risk of escape, immediate harm to the client, or immediate harm to others.
- Principle Eleven* Instruments of restraint are used for the shortest possible period of time with the minimum amount of force and in such a way as to avoid or minimise feelings of humiliation.
- Principle Twelve* The use of force or the use of instruments of restraint with the minimum amount of force is used as the option of last resort at all times in behaviour management.
- Principle Thirteen* Staff have a duty of care to the clients of the department.

1.4 AIMS OF POLICY

This policy aims to:

- 1.4.1** Enhance established procedures for the management of difficult and challenging client behaviour and to ensure the safety of the client.
- 1.4.2** Enhance the safety of staff and clients through the development of appropriate strategies to deal with challenging client behaviour.
- 1.4.3** Ensure that all staff are aware of their duty of care obligations.

- 1.4.4 Provide guidelines for staff on strategies designed to manage inappropriate client behaviour.
- 1.4.5 Provide guidelines for staff on when to use force and instruments of restraint.
- 1.4.6 Provide a mechanism for monitoring staff understanding and implementation of this policy and associated guidelines.
- 1.4.7 Ensure that all staff are aware of their legal obligations in relation to managing difficult behaviour.
- 1.4.8 Ensure that staff strive to improve their professional competencies and quality of work with detainees.

1.5 COMMON TERMS AND DEFINITIONS

“antecedents” – circumstances that happen before a particular point in time or action.

“at risk” is used to describe young people who are vulnerable to abuse.

“behaviour” is used to describe the manner in which a person conducts himself or herself; it includes thought, speech and actions towards others.

“behaviour management” is used broadly to mean any intervention by centre staff designed or intended to control or manage or influence a client’s behaviour.

“biological” – related to the physical workings of the human body.

“centre” means a Juvenile Justice Centre administered by the department.

“client” and “young person” has the same meaning as “detainee” in the *Children (Detention Centres) Act 1987*.

“cognitive” - the ability to process, organise and understand information.

“control” refers to a mandate from a court that a client be held within a Juvenile Justice Centre for a specified period as a sentence for an offence.

“covertly” the action of concealment and or disguise.

“custody” refers to the situation where clients are being held and cared for in a Juvenile Justice Centre, under a legal mandate of either remand or control.

“department” refers to the Department of Juvenile Justice.

“Detention Centre” means a Juvenile Justice Centre administered by the department.

“desirable or acceptable behaviour” means behaviour that is in the best interests of the client, and may include behaviour necessary for the safe and secure operation of a centre in the best interests of all its clients.

“difficult” or “challenging” behaviour means behaviours that are demonstrated by a person which are of such intensity, frequency and duration that the physical safety or emotional well-being of the person or other persons is placed at significant risk.

“force” includes threat of the use of force, use of force and the use of instruments of restraint.

“incentive scheme” means a system of behaviour management aimed to increase a client’s desirable behaviour through positive reinforcement of the behaviour, in co-operation with the client.

“instruments of restraint” are those items or devices approved by the Director-General for use in the management and control of difficult client behaviour in specific circumstances and may include such things as handcuffs, protective shields and helmets.

“interpersonal” - between two or more people.

“officer” or “staff” refers to people employed by the Department of Juvenile Justice on a permanent, temporary or casual basis.

“overtly” – being open / uncovered.

“philosophy” – a set of values that guide the work of the department.

“psychological” – relates to the functioning of the human mind.

“punishment” means any punitive action by staff against a client, including negative reinforcement of client behaviour.

“punitive” - involving punishment.

“reinforcement” means the act of strengthening or making stronger, in terms of this policy two concepts around reinforcement exist:

- (a) positive reinforcement means to encourage specific behaviour using something valued by a client;
- (b) negative reinforcement means to eliminate specific behaviour by the use of something disliked by a client.

“remand” refers to clients who have been refused bail by either the police or court.

“restraint” is defined as controlling within bounds, checking, confining or repressing of an action by a staff member or a group of staff.

“stimuli” – things that cause action or quicken activity.

“use of force” means that clients are made, against their will, to comply with a reasonable or proper order or direction from a person so authorised to direct or order.

“weapon” includes anything normally regarded as a weapon (e.g. a knife), as well as anything which, though not ordinarily regarded as a weapon, is used offensively against a person (e.g. a chair thrown at a person).

1.6 LEGAL CONTEXT

This policy has its basis in legislation and international conventions, as well as national standards and departmental policies. All staff must ensure that they both understand and comply with all legislation relevant to the management of clients in the custody of the Department of Juvenile Justice.

1.7 RELEVANT LEGISLATION

Children (Detention Centres) Act 1987

Of particular relevance to this policy are:

Section 4 Objects of Act

Section 14 Functions of the Director-General

Section 21 Punishments for misbehaviour

Section 22 Prohibited punishments

Children (Detention Centres) Regulation 2000

Of particular relevance to this policy are:

Clause 3 Definitions – instrument of restraint

Clause 49 Order generally

Clause 50 Use of Force

Clause 51 Reports on the use of force

Young Offenders Act 1997

Of particular relevance to this policy are:

Section 8: Offences covered by the Act

Occupational Health and Safety Act 2000

Refer to *addendum A1* for extracts of relevant legislation.

1.8 EXISTING POLICIES, STANDARDS AND PROCEDURES

Policies

Case Management Policy

Client Protection Policy

Code of Conduct

Harassment Free Workplace Policy and Grievance Procedures

Internal Reporting Policy

Language Services Policy

Policy on the Management of Suicide and Self-harm in Juvenile Justice Centres

Standards

Australasian Standards for Juvenile Custodial Facilities

Refer to *addendum A2* for extracts of relevant national standards.

Procedures

Operational Procedures Manual for Juvenile Justice Centres

1.9 INTERNATIONAL CONVENTIONS

Parties who are signatories to international conventions are required by the appropriate United Nations body to report regularly on implementation and observation of these instruments into domestic law, and are subject to international criticism for non-compliance.

There are four international conventions impacting on the management of juvenile justice in Australia and NSW. They are:

- *United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)*
- *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*
- *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)*
- *United Nations Convention on the Rights of the Child (CROC)*

Refer to *addendum A3* for extracts of relevant international conventions.

SECTION 2. BACKGROUND TO THE POLICY

2.1 BEHAVIOUR MANAGEMENT

Department of Juvenile Justice philosophy requires that detained clients are managed in a manner which:

- recognises individual needs including cognitive and physical abilities.
- takes into account the diverse individual needs of clients.
- focuses on the effective use of communication and interpersonal relationship skills.
- promotes and reinforces appropriate behaviours.
- aims to minimise and deter inappropriate behaviours.
- ensures that clients take responsibility for their actions and behaviours.

- offers clients opportunities to develop self management skills.
- is not authoritarian and controlling but aims to guide clients as they develop their own identity as adults.
- reflects an understanding of the range of behaviours exhibited by adolescents.

2.2 UNDERSTANDING BEHAVIOUR MANAGEMENT

Adults often find it demanding to deal with the difficult behaviours typically exhibited by adolescents. It can be useful, however, to think about adolescent behaviours as on a continuum, ranging from those behaviours that merely annoy adults to those behaviours that may warrant appropriate verbal or, as a last resort, physical intervention.

Behaviours that merely annoy adults include “normal” adolescent behaviours such as challenging authority, testing boundaries, challenging societal norms, risk taking, or adopting a different appearance.

In a juvenile justice centre environment it is important that adolescent behaviours are evaluated in terms of this continuum, as many of the behaviours displayed by detained clients simply reflect the fact that they are adolescents.

Department of Juvenile Justice staff, when assessing clients behaviours’, will consider:

- what behaviour is deemed to be unacceptable and why is it deemed to be unacceptable.
- the circumstances under which the behaviour occurred and the client’s emotional state at the time.
- the frequency and duration of the behaviour.
- the nature of the behaviour. Is it “typically” adolescent e.g. testing boundaries, risk taking etc. Is the behaviour out of character for this particular individual? If so what are the possible causes?
- the developmental stage or intellectual ability of the client and the significance of the behaviour for the adolescent.
- how others respond to the behaviour and the impact of this response upon the client.
- client’s prior history of similar behaviours and the context of those behaviours.

2.3 POSSIBLE CAUSES OF CHALLENGING BEHAVIOUR

Clients may acquire, adopt or display challenging behaviours for a variety of reasons. These may include:

- psychological causes relating to a young person's feelings of anxiety, depression, fear, insecurity, or interpersonal conflict.
- biological causes related to substance withdrawal, seizures, physical illness or injury.
- behavioural causes which relate to the antecedents for the behaviour and consequences of the behaviour. For example, violent adolescents who have learned that by being violent, people "back down" and give in to their wants.
- environmental causes which result from the young person's interaction with the environment. For example, stimuli such as loud noises, high temperatures, over-crowding, control over routine and lifestyle and the physical structure of the environment, lack of stimulation and purposeful activity, inflexible authority, denial of personal identity, lack of privacy, or punitive treatment.
- educational causes which may include a lack of skills development. For example, lack of problem solving skills, lack of social skills or inappropriate interpersonal skills.
- social causes which may flow from being in a disadvantaged group and, in the case of Indigenous people, historically disadvantaged and socially isolated. This may result in a low self-esteem and self-image. In the case of adolescent males, a fear of exposing this low self esteem may be camouflaged with a perceived high level of competence which can result in aggressive outbursts if challenged.
- other social causes such as those associated with childhood rejection, abuse, sexual abuse or neglect.
- biological and developmental changes which in many situations is normal for this age group.

2.4 NATURE OF CHALLENGING BEHAVIOUR

Challenging behaviours usually always serve a purpose or function. For example, an adolescent may become extremely challenging and angry when asked to perform a task, in the hope that in an effort to stop the "performance" someone else will perform the task. A single challenging behaviour such as this may have a number of purposes or functions.

It is important to separate the "behaviour" from the "person". It is important therefore for staff to recognise that clients displaying challenging behaviours are people first, and not simply the behaviour they are demonstrating.

The frequency of challenging behaviours can be diminished over time. If clients:

- are listened to in the manner described in *addendum A4*;
- have appropriate behaviours consistently reinforced;
- do not have negative behaviours endorsed, either overtly or covertly.

SECTION 3. GENERAL BEHAVIOUR MANAGEMENT TECHNIQUES

3.1 GENERAL BEHAVIOUR MANAGEMENT SKILLS AND TECHNIQUES

Behaviour management in juvenile justice centres is comprised of a number of schemes and options for the support and encouragement of positive behaviour, and the management and control of negative behaviour. These schemes can be separated into skills that staff need to use to be effective at managing behaviours and techniques the department has in place that can be utilised to manage behaviour.

The skills that are essential for front line staff are:

- Communication and modelling skills.
- Negotiation and conflict resolution skills.
- Skills in recognising individual's needs.

The techniques and tools that departmental staff have at their disposal include:

- Casework
- Programming & Activities
- Supervision
- Incentive Schemes
- Observation / Management Plans
- Disciplinary systems

3.2 COMMUNICATION AND MODELLING SKILLS

Adolescents in the department's care are skilled at determining whether or not staff are genuine, especially "at risk" adolescents who have highly tuned survival skills and who are experts in "reading" non-verbal messages (body language). A non-genuine staff member will quickly lose his/her credibility and, most importantly, the respect of the client in custody. If staff are not genuine and do not model respect, then clients cannot be expected to respond to them in a positive pro-social manner.

A good communicator is someone who is able to both clearly express their message and interpret the messages of others. Remembering that messages can

be verbal and non-verbal, it is important to check that a person's non-verbal signals match their verbal communication.

See *addendum A4* for examples of effective communication and modelling strategies.

3.3 NEGOTIATION AND CONFLICT RESOLUTION SKILLS

Many young offenders are unlikely to have the level of skills required to resolve conflict satisfactorily. Therefore, staff are to take the lead in negotiations with clients and role model appropriate conflict resolution skills.

In negotiation, the objective is to reach a balanced agreement that seems fair to both parties and is consistent with departmental and centre procedure.

As with all communication, it is critical to gain an understanding of the clients position and desires before negotiating any details. Staff must find out what the clients want and how they feel. Only then should staff put forward their point of view and begin sorting through options. Both parties must understand and be committed to agreement.

When negotiating with female clients it is more appropriate to have a female staff member undertake the negotiations, therefore where it is possible female staff are to be utilised in all negotiations with female clients. This will also ensure that a female staff member is readily on hand to deal with the situation should it escalate.

Once the boundaries of behaviour are set, there are often a series of negotiations to persuade a client to abide by a request. Some negotiations will be quick, others more lengthy.

Before implementing other strategies, staff, wherever possible, must engage in negotiation with the client. Even if verbal negotiations have failed, and it is agreed to use minimal force, verbal negotiations must continue during the use of force. The goal is always to gain the client's agreement, not to coerce it.

While many young offenders are skilled in aggressive and manipulative behaviours, they are often inadequate in the more socially approved conflict management strategies such as negotiating through differences of opinion. The juvenile justice centre can provide a valuable opportunity for sound pro-social learning for the client. It is essential that centre staff teach by example and continue to practice the skills of conflict resolution when attempting to manage difficult situations.

After the conflict has been resolved, check the feelings of the client and your own feelings. Assess whether there needs to be any further debriefing.

See *addendum A5* for a guide to conflict resolution.

3.4 SKILLS IN RECOGNISING INDIVIDUAL NEEDS

In order to manage clients effectively, juvenile justice staff must be proactive and anticipatory and consistent in their approach to their work. The particularly difficult adolescent years require staff to constantly assess client's behaviours in light of their individual needs. If attention is paid to the individual needs of clients, and this is communicated through staff words or actions, desired behavioural change is a more likely outcome.

To achieve this staff must, at a minimum, take into account a client's:

- age
- gender
- culture
- intellectual development
- likelihood of previous abuse and/or neglect
- dysfunctional family history (if applicable)
- mental health
- alcohol / drug use
- emotional state

3.5 CASEWORK

Casework practices and case management is an efficient tool for developing individual plans to promote growth and development of clients based on age, gender and developmental needs. Senior Youth Workers are an integral part of this process and are to be involved in case management and the development of individual plans.

Casework can also be used to develop specific strategies, with the client's participation and "ownership", to address difficult and challenging behaviour exhibited by the client.

Case management recognises that clients often have multiple and complex needs and that possible interventions require a multidisciplinary approach with involvement from relevant staff, the client's family and other support people/agencies.

Further information for staff is contained in:

- *Case Management Policy*
- *Operational Procedures Manual for Juvenile Justice Centres*

3.6 PROGRAMS & ACTIVITIES

Specific programs are used to address offending behaviour within the community and to assist in the management of difficult and challenging behaviours. For example, for a client who repeatedly exhibits aggressive/violent behaviour or poor self-control and personal responsibility, it may be appropriate for the Centre Support Team to develop a behaviour management plan to address specific anger management issues.

Programming also helps to minimise the effects of boredom, lethargy and apathy by providing a variety of relevant and stimulating programs or activities.

3.7 RECREATION AND PLAY

Senior Youth Workers are responsible for assisting in the developing and implementing of programs and activities as a part of their normal duties.

Young adolescents are emerging from their childhood where games and play are important, whilst for older adolescents play is replaced by sport or other age appropriate recreational activities. Unfortunately many clients have missed normal childhood experiences, yet they appear to have older interests because they may be “street wise”. It is important that staff recognise the need for clients to play games. Play in an acceptable form should be part of recreational activities. Young adolescents are to be separated from the older more experienced recidivists, who often gain status by boasting to younger people about their criminal exploits.

Appropriate programs including school, vocational education and training, celebrating significant events, having appropriate visiting arrangements and procedures can contribute to a reduction in difficult behaviour.

Further information for staff is contained in the department's *Operational Procedures Manual for Juvenile Justice Centres*, specifically the sections on:

- Program Development, and
- Programming – Delivery Model.

3.8 SUPERVISION

All Juvenile Justice Centre staff, regardless of their position, have a responsibility to observe, supervise and support clients in the centre. Any staff in the vicinity of clients, including specialist, casework and programs staff must share supervisory responsibility for those clients with other staff present.

Staff are to implement active and preventative supervision in an effort to anticipate problems and incidents and take action to stop these from occurring. If staff suspect that a problem is about to occur they must take action to prevent the incident or problem occurring.

Supervision is much easier and more effective when clients are occupied in activities and programs.

Staff supervising clients must:

- be aware of the psychological, emotional, cultural, physical and developmental needs of clients.
- have some knowledge of each young person's case and custodial history.
- listen to what clients are saying, watch what they are doing and be aware of a change in the feelings in the group.

- be aware of the dynamics and interactions of the group of clients at any given time, and of potential problems.
- maintain constant and effective communication with staff and clients – both verbal and non-verbal.
- be aware, at all times, of the total number of clients in the group.
- wherever possible, keep groups of clients together.
- be familiar with the physical layout of units and the centre in general and know the strengths and weaknesses of the environment.
- be aware of the centre's emergency procedures.
- give clear and accurate directions; avoid emotional, offensive and loud statements.
- whenever possible, avoid physical confrontation and physical contact with clients; always attempt to use alternative strategies to physical confrontation
- maintain a pro-active presence.
- establish clear, concise boundaries with clients with clearly defined consequences for any breaches of these boundaries.

3.9 INCENTIVE SCHEMES

The incentive scheme and the punishment system must operate separately in centres, i.e. they must not overlap. For example, it is possible for a young person to be dealt with for misbehaviour, yet be given incentives at the same time – but under separate procedures – for positive and desirable behaviour.

Incentive schemes focus on positive behaviour and rewards. The departmental *Policy on the Design and Use of Incentive Schemes at Juvenile Justice Centres (June 1998)* includes principles for the development and operation of incentive schemes.

SECTION 4. MANAGING DIFFICULT BEHAVIOURS

4.1 GUIDELINES FOR MANAGING INAPPROPRIATE BEHAVIOUR

Where instances of inappropriate behaviour by clients occur the immediate response of staff is to be as follows:

1. Identify the behaviour.
2. Explain the inappropriateness of the behaviour.
3. Caution the detainee to cease the displayed behaviour.
4. Report the matter to his/her supervisor.

Should the behaviour continue:

1. Explain that they have been asked to cease their inappropriate behaviour.
2. Caution the detainee that should the behaviour continue, there will be consequences for their actions.

Should the behaviour continue to be displayed:

1. Explain to the young person that they have chosen not to cease the behaviour, therefore there is no other alternative than to issue/recommend a consequence.
2. Consequences must be given for inappropriate behaviour but by the appropriately delegated person after routine procedures are followed.
3. Consideration is to be given to the development of Behaviour Management Plans and Behaviour Observation Plans.

4.2 BEHAVIOUR MANAGEMENT PLANS

When a behaviour is identified as problematic, a Behavioural Management Plan will be developed in consultation with the Centre Support Team, operational staff and the young person.

The Behaviour Management Plan may include strategies such as behavioural contracts, or individualised incentive plans. Contracts must focus on positive reinforcement that counteracts undesirable behaviour and must be regularly reviewed by staff and the young person.

A Behaviour Management Plan is a useful management strategy because it targets specific behaviours that require change and is developed with the direct involvement of the young person and key staff.

The Team Leader will liaise with the Centre Support Team and Co-ordinator Operations when developing the Behaviour Management Plan, as well as the young person. This facilitates a sense of ownership and personal responsibility.

Behaviour management plans are to outline:

- the specific behaviour(s) to be addressed - no more than two specific behaviours should be addressed in one plan.
- known triggers for the behaviour.
- purpose of behaviour.
- behaviour history.
- interventions which will address the behaviours including counselling, programs.
- duration of the plan.
- daily schedule, including times the young person will be offered access to specific areas of programs.
- consequences for continued inappropriate behaviour.

4.3 BEHAVIOUR OBSERVATION PLANS

Behaviour Observation Plans are to ensure the safety of clients and staff when clients display disturbed and/or difficult behaviours or when staff are concerned about the safety or welfare of the client. Staff must introduce specific strategies in order to monitor the client and their behaviours. Examples that may require monitoring include, but are not limited to, situations where clients:

- have been assaulted by another person resulting in them becoming anxious and fearful or aggressive and expressing an intent to “pay back” the other person.
- are withdrawing from substances and display disturbed behaviour.
- are being monitored in relation to emerging mental illnesses and perhaps interactions with others and/or behaviours need to be observed in order to provide information to specialist staff.
- have received “bad news” about a family member or significant other and are appropriately sad, and there is an assessed need to monitor them to ensure that they are coping.
- are suspected of being involved in any activity that may threaten the security or safety of the centre.
- have been transferred to another detention centre and, as a precautionary measure, are monitored for a period of time to ensure that they have “settled in”.

A Behaviour Observation Plan will help to address staff concerns about a client’s safety and will also assist in managing difficult behaviours. The plan encompasses:

- Step One* Assessment – frequency, intensity, duration of behaviour, possible triggers for behaviour, impact of behaviour on self or others. For example assess whether the young person is withdrawing from a substance, is depressed following family death, etc.
- Step Two* Planning – identify the reasons for initiating a schedule of observations. Target the behaviours that are to be observed and identify frequency of observations; length of time, staff responsibilities, etc.
- Step Three* Intervention – behaviour observation may only be one part of the intervention offered. Other interventions may include additional contact, or medical/psychological assessments, etc.
- Step Four* Review – This is the responsibility of the staff group that initiated the behavioural observation process.

4.4 SEGREGATION

Segregation is the unanticipated separation of a young person in response to a belief, on reasonable grounds, that there is a need to protect the personal safety of the young person or any other person in the centre.

This definition distinguishes other forms of separation of a detainee. Such as, locking the young person in his or her room for the night as part of the routine lights out procedure, or confining the young person to a room as punishment under the minor misbehaviour procedure.

Four rules apply to the use of segregation:

Rule One Segregation is for the safety and protection of clients and staff.

Rule Two A young person will be segregated only when there is no other way to resolve the identified safety issue or risk of harm presented to:

- a) some member of staff by that young person.
- b) that young person by the young person himself or herself (i.e. self harm).
- c) that young person by some other young person/s.
- d) the good order and security of the centre (e.g. in cases of violent destruction of property, planning or attempting to escape, suspected concealment of drugs or weapons, following an assault, although not as punishment for the assault).

Rule Three Segregation must end either immediately after the unacceptable danger or risk of harm has passed or after the legislated period of time has elapsed, whichever ever occurs first.

Rule Four Segregation is not a punishment.

In relation to the Rule Two the judgement about the existence (or not) of imminent danger or harm must be made by staff, reasonably, fairly and objectively.

In relation to the Rule Four, because segregation and confinement are interventions that are not in any way related (other than in their effect, which is to separate a young person), it is not allowable to use segregation merely to extend a period of confinement or vice versa. For example, a maximum period of 3 hours confinement for a young person less than 16 years of age cannot be extended to 6 hours by the inappropriate application of 3 hours segregation – segregation and confinement are mutually exclusive and **must** be strictly applied in accordance with the legislation.

4.5 MINOR MISBEHAVIOUR

All juvenile justice centres operate the same disciplinary system, which is outlined in the *Children (Detention Centres) Act 1987* and *Children (Detention Centres) Regulation 2000*.

The Minor Misbehaviour provisions are the most common disciplinary procedure used in juvenile justice centres. The existence of a disciplinary scheme, which is included in legislation, does not mean the scheme has to be used every time a young person misbehaves.

The procedures for Minor Misbehaviour are outlined in the *Operational Procedures Manual for Juvenile Justice Centres*.

Staff are to first attempt to use strategies other than the legislated punishments to respond to misbehaviour. Such strategies have been outlined in previous Sections 3.2 and 3.3.

With the increase in structured activities and programs in juvenile justice centres, the opportunity to respond to negative behaviour in creative and often more constructive ways also increases. However, any alternatives must still be within the parameters of the *Children (Detention Centres) Act 1987* and *Children (Detention Centres) Regulation 2000*.

4.5.1 CONSULTATION WITH DETAINEES

When a young person has been found guilty of minor misbehaviour, staff are to take all reasonable steps to consult the young person about the punishment before the final decision is made. If the client is part of the process it is more likely that the response of the client will be positive and long term.

The consultation will occur between the detainee and the senior officer delegated to determine the final punishment, with the officer reporting the misbehaviour present.

Effective consultation assists in building positive relationships between staff and clients, and gives the young person a role in the process.

These processes ensure accountability of both staff and the client/s for their actions.

4.5.2 REVIEW OF PUNISHMENTS BY SUPERVISORY STAFF

Depending on the type and duration of the punishment, staff may review the initial punishment.

Reviews are an effective tool when a detainee is resistant to a punishment. They are also effective when a fairly extreme or lengthy punishment has been determined. In this case, there is the possibility that the young person will

discontinue problematic or undesirable behaviour during the punishment period. If the young person's response is positive, the punishment period can be shortened.

The option of review can be included in negotiations with a young person being placed in confinement. If he or she is resistant, and it is likely that physical force may be necessary, the staff member can offer reduced time in return for the young person's willing movement to the confinement room. In this instance, the risk of physical and emotional injury to staff and clients may be avoided. A consequence for the misbehaviour will still apply.

Staff that do not have the delegation to determine outcomes of minor misbehaviour are to be careful in their discussions regarding reduction of confinement time / consequences. These staff are to stress that they are only able to recommend or advocate on the clients' behalf, about reduced confinement time / consequences based on their cooperation. If clients are given the impression that consequences will be minimised based on their cooperation, and this does not occur, it may create difficulties and distrust in any future management.

4.5.3 PUNISHMENTS FOR MINOR MISBEHAVIOUR

There are standard punishments for minor misbehaviour, which are outlined in s. 21(1) of the *Children (Detention Centres) Act 1987* and include cautions, restrictions from participating in activities or receiving additional duties.

4.6 SERIOUS MISBEHAVIOUR

Serious misbehaviour can only be utilised with clients on control orders.

Serious misbehaviour is outlined in the *Children (Detention Centres) Act 1987* and *Children (Detention Centres) Regulation 2000*. Serious misbehaviour provisions tend to be used less often than minor misbehaviour.

These provisions can be used when a young person misbehaves in a manner which is defined in the *Children (Detention Centres) Regulation 2000 (Schedule 1 Misbehaviour, Part 2)* as:

- *Assault*
- *Concealment for the purpose of escape*
- *Insubordination*
- *Inciting behaviour*
- *Mistreatment of animals*
- *Unauthorised medication or substances*

and:

- There is no alternative strategy available to respond to and manage that misbehaviour, or
- The behaviour is also defined as a criminal offence, the police have been notified and they will not be taking any action.

Serious misbehaviour, unlike minor misbehaviour, is not dealt with within the centre. Clause 65 and 66 of the *Children (Detention Centres) Regulation 2000* outlines the procedures to be followed when there has been a complaint of serious misbehaviour.

4.6.1 PUNISHMENTS FOR SERIOUS MISBEHAVIOUR

There are no departmental punishments for serious misbehaviour. The punishment available for serious misbehaviour is outlined in s.21 (1)(e) *Children (Detention Centres) Act 1987* and includes an extension of up to 7 days onto a client's control order.

4.7 POLICE INVESTIGATION

All alleged criminal offences, including allegations of assault, must be reported to police in accordance with departmental policies and procedures. The nearest Youth Liaison Officer or accredited Specialist Youth Officer are to be called in the first instance. Police will generally deal with the offence by way of warning, caution, or youth justice conference referral. Charges should be a response of last resort, and used largely for those offences that are outside the operation of the *Young Offenders Act 1997*.

In the event that the offence is reported to the police but the victim declines police intervention or the police decide not to take further action, the provisions under Serious Misbehaviour of the legislation can, and in some cases should, be enacted. Matters acted on by the police cannot be dealt with under the misbehaviour provisions of the legislation.

If, in the course of their duties, staff are assaulted by a young person, the department will proceed with notification to the police. Staff also have the right as individuals to initiate criminal proceedings.

Clients have the right to initiate criminal proceedings if they believe a staff member or another young person has assaulted them.

It is also possible that allegations of physical abuse against staff could result after a situation involving physical restraint. There is a documented policy and procedure for managing allegations of abuse, *Client Protection Policy*. All staff members must ensure that they are totally familiar with these policy and procedure documents.

4.8 YOUTH JUSTICE CONFERENCES

Clients in custody who have committed an offence may be eligible to have this matter dealt with via the options available under the *Young Offenders Act 1997*.

One of the principles of this Act is that "*the least restrictive form of sanction is to be applied against a child who is alleged to have committed an offence, having regard to matters required to be considered under this Act.*"

The Young Offenders Act 1997 is an innovative approach to dealing with clients who break the law. The Act establishes a hierarchy of interventions, namely:

1. Warning
2. Caution
3. Youth Justice Conference
4. Court

Any one of these options can be undertaken for clients in custody. The Act allows for a conference to be held at a juvenile justice centre, if the child who is the subject of the conference is detained in the detention centre.

At a youth justice conference the young offender and members of their community meet together to help the young person take steps towards repairing the harm they have caused and taking responsibility for their actions. Youth Justice Conferences bring the offender, their family and supporters together, face-to-face with the victim(s) and their support people. Together they must agree on a suitable outcome that may include an apology, reasonable reparation to victims and steps to link the young person back into the community.

4.9 PROHIBITED PUNISHMENTS

Section 22 (1) of the *Children (Detention Centres) Act 1987* states that a detainee shall not be punished by being:

- struck, cuffed, shaken or subjected to any other form of physical violence
- dosed with medicine or any other substance
- compelled to hold himself or herself in a constrained or fatiguing position
- deprived of food or drink
- denied the right to read or write letters or to make or receive telephone calls (except during any period of punishment by exclusion or confinement referred to in section 21 (1)(d))
- subject to treatment of a kind that could reasonably be expected to be detrimental to his or her physical, psychological or emotional well-being
- subject to treatment of a kind that is cruel, inhuman or degrading
- segregated in contravention of section 19; or
- subject to treatment of a kind forbidden by the regulations

Section 22(1)(a) –states that a “*detainee shall not, without reasonable excuse, be handcuffed or forcibly restrained.*”

Section 22(1)(b) –states that a “*person who punishes a detainee, or causes a detainee to be punished, in a manner prohibited by subsection (1) or (2) is guilty of an offence and liable to a penalty not exceeding 10 penalty points or imprisonment for a period not exceeding 12 months, or both.*”

SECTION 5. PHYSICAL CONTACT

5.1 PRINCIPLES OF PHYSICAL CONTACT

Three principles underpin physical contact:

Principle One Staff must endeavour at all times, to maintain the dignity of clients. Their right to privacy is already diminished due to the nature of the custodial environment.

Principle Two Staff exercise a high degree of integrity and common sense when they are in situations where physical contact is likely to occur with clients.

Principle Three Staff remain alert to the fact that many clients have a history of physical and/or sexual abuse and for this reason they must carefully consider whether physical contact is appropriate and if so, how and by whom that contact is made.

5.2 GUIDELINES FOR PHYSICAL CONTACT

This section should be read in conjunction with the *Client Protection Policy* that outlines inappropriate sexual physical contact and abuse. The *Operational Procedures Manual for Juvenile Justice Centres* outlines procedures where physical contact involves the use of force.

This section deals solely with physical contact in the day to day activities and interactions between staff and clients.

It is recognised that physical contact between staff and clients in custody will at times be necessary for the performance of routine living tasks, administering of first-aid or to communicate concern by non-verbal means.

Discretionary physical contact such as touching, patting, hugging and play fighting is subject to varying personal norms and levels of acceptance. Consequently these behaviours could be misinterpreted by those involved, or observers and therefore their use is to be avoided.

Gender issues need to be taken into account prior to staff determining that physical contact is appropriate.

The three rules applying to physical contact are:

Rule One Under no circumstances should staff engage in:

- a frontal embrace of a young person;
- kissing or other facial contact;

- body rubbing, pressing, bumping or genital contact;
- sparring or mock fighting.

Rule Two Physical contact is **not** permitted in the following circumstances;

- when the young person is in his or her bedroom or bathroom area;
- during unclothed searches.

Rule Three Physical contact is only permitted by;

- making hand contact with a young person's shoulders, arms, back in order to communicate interest, care and concern;
- offering a sideways hug, if the young person is very distressed, provided it is assessed that this contact will comfort the young person and the young person is accepting of this contact.

Staff are to be mindful that it is in the best interest of both the staff members and clients involved, that this type of physical contact be conducted whilst in sight of another staff member.

5.3 STAFF RESPONSIBILITIES

On occasion, clients in custody may engage in inappropriate, provocative or manipulative behaviours. These behaviours may be learned behaviour patterns as a consequence of an abusive background, or the intention may be to make an allegation of inappropriate behaviour against staff.

Whatever the reason, it is the adult staff member who is in the position of power. Therefore, it is the responsibility of the staff member to stop the interaction.

Staff also have a responsibility for identifying and appropriately responding to clients who display inappropriate sexual behaviour. All staff must be supported in this area and actively support other staff, to provide the young person with a clear message that inappropriate sexual behaviour is not acceptable.

5.4 THE USE OF FORCE & PHYSICAL RESTRAINT

Only such force as is reasonably necessary to maintain the safety of staff, clients and the security and good order of the centre is acceptable. The degree of force used is to be the minimum amount necessary to achieve the desired outcome.

It is not uncommon for clients in custody to exhibit a range of difficult behaviours such as being non-compliant, abusive and aggressive. On occasion their behaviour

may become physically threatening or violent towards other clients or staff. Clients may also exhibit behaviour that is harmful to themselves.

It is always preferable, in dealing with these situations, to intervene using behaviour management techniques that are minimally intrusive and cause least possible harm to the young person and staff concerned.

Staff must draw upon a range of behaviour management strategies including conflict resolution, negotiation (as outlined in sections 3.2 and 3.3), withdrawal from the situation and separating clients, in order to deal with disruptive or aggressive behaviour.

Should these methods for dealing with disruptive or aggressive behaviour prove unsuccessful, a level of physical intervention may be required. In some situations this may only involve a minimal amount of pressure or force; for example, escorting a young person or leading them by the arm away from a group or area.

In some more serious situations, where a young person is acting out violently and has the potential to hurt themselves or others in the vicinity, a greater degree of physical intervention may be required. In these instances, the use of force and physical restraint techniques that restrain the young person and curb their behaviour may be necessary as a last resort.

Staff are to refer to the *Operational Procedures Manual for Juvenile Justice Centres* for detailed procedures on the use of force.

5.5 GUIDELINES ON THE USE OF FORCE

- Guideline One* Force must be avoided until it is the only remaining method available to manage a dangerous or threatening situation.
- Guideline Two* Where force is to be used with a female client a female staff member should be present.
- Guideline Three* On every occasion the amount of force used is to be the minimum force necessary to restrain or move a client, and the application of force is to cease immediately the need to restrain or involuntarily move them has passed.
- Guideline Four* Where time and circumstances allow, verbal interaction with a client is to be prolonged for as long as possible, and a variety of verbal strategies are to be exhausted by a variety of staff (especially staff with a pre-existing good relationship with the client), before reasonable force is used as a last resort.
- Guideline Five* When considering the use of force, a staff member is to give weight to his or her own safety, and his or her long-term working relationship with the client.

- Guideline Six* Where time and circumstances allow, staff are to warn a young person of their intention to use force prior to the application of the force. Following a warning, the client is to be given another opportunity to comply with staff instructions, in full knowledge that force may be applied if the refusal continues.
- Guideline Seven* Where the objective is to move a resisting client to confinement (in consequence of misbehaviour), staff are to consider the appropriateness of negotiating with the client a reduction of time in confinement in the event the detainee chooses to comply with the instruction. Of course, this strategy is to be used sparingly, to avoid reinforcement of non-compliant behaviour. But there will be situations where the risk of injury is so high that use of this strategy is justified.
- Guideline Eight* If possible, staff are to wait for extra staff to assist with the restraint of a client. There are to be a minimum of two staff present when force is used and this is to be performed under the supervision of a supervising officer e.g. Team Leader, Assistant Team Leader.
- Guideline Nine* Staff are to continue to use their communication and negotiation skills during the physical intervention procedures in an attempt to resolve the issue and to reduce the risk of injury to all parties.
- Guideline Ten* When using force staff are not to increase the amount of force applied once they have a client under adequate control; otherwise they may be charged with “use of excessive force”.
- Guideline Eleven* Use of force must not involve the use of any weapon.
- Guideline Twelve* Staff need to be aware of the reporting guidelines as stipulated in Clause 51 of the *Children (Detention Centres) Regulation 2000*, i.e. Reports on the Use of Force.

5.6 SITUATION ASSESSMENT

When making an assessment of the situation, staff must take into consideration the following factors:

- relevant legislation
- escape route
- the client/s (size, skill level, number)
- gender
- personal safety & safety of others
- weapons involved
- client's previous and current behaviour
- possibility of evidence being destroyed
- medical condition of detainee
- disability

- capabilities of staff involved (no injuries)
- senior officer present, if possible
- additional resources e.g. additional staff from other areas/centre, police involvement
- availability of equipment, if needed
- videotape recording of event, if possible
- possible causes of the client's behaviour
- pregnancy
- environment
- urgency to respond/retreat

5.6.1 INTERVENTION GUIDE

The following table can be used a guide for staff:

CATEGORY	THREAT/ACTION	LEVEL OF INTERVENTION
Verbal threat to assault (no physical contact)	Threat to push, hit, kick, scratch, bite, pull hair etc. (No physical contact)	Crisis communication. Use non-physical intervention strategies to de-escalate the situation.
Assault (actual physical contact is made)	As above but physical contact is made. Normally no medical treatment would be required.	Where practicable, remove yourself from the line of attack. Seek assistance and if necessary use physical intervention strategies. Reasonable force can be used.
Threats to cause serious injury, to incite riots, or escape attempts	Threats with chairs, weapons or other objects or to cause serious injury nominating what injury etc.	Protect yourself or others as necessary. Seek assistance and use physical intervention strategies. Reasonable force can be used.
Assault causing serious injury	Hitting with chair, weapon, breaking bones, repeated punching and kicking. Medical attention is required.	Protect yourself or others. Seek assistance and use physical intervention strategies. Use reasonable force.

5.7 LIMITATIONS ON THE USE OF FORCE

According to common law it is the right of individuals to use reasonable force to defend themselves in situations of actual assault. Notwithstanding this, staff members are required to abide by Department of Juvenile Justice standard procedures and policy in relation to any physical intervention or use of force.

All staff using force will be held responsible and accountable for the manner in which they exercise that authority. Because staff are accountable for their actions, they have to substantiate them later in either an investigation, a court of law or both.

The authority to use force is given individually, therefore individuals must use their own judgement within the legally provided framework of both common law and the

Children (Detention Centres) Act 1987 and Children (Detention Centres) Regulation 2000.

See *addendum A6* for legal issues associated with assault.

5.8 PHYSICAL RESTRAINT

5.8.1 TECHNIQUE

If a decision has been made to use minimal force (as a result of all other options being attempted without success), a method that minimises the risk of injury to the young person and staff, quickly restrains the young person, and limits the opportunity for him or her to move in a threatening way, must always be used.

A method that restrains the young person by the shoulder or arms is preferred. This will make it easier for staff to control the client's movements, and will minimise the risk of injury to everyone concerned. For the same reasons the client's body is not to be lifted off the ground.

Only those methods of physical restraint approved for use by the department and taught to staff by approved trainers are to be used.

Physical restraint techniques:

- must not involve any restrictions of airways;
- must not involve any use of holds or level of force that is intended to cause injury or unnecessary pain to the young person;
- are to be used within the limits of the staff member's capacity. Support from other staff members is always to be sought, to ensure least possible injury to staff or client or to address gender issues.

Priority must be given to the following:

- staff involved in the use of force, must be adequately trained in restraint procedures and in the use of all approved instruments of restraint;
- where possible female staff members are to restrain female clients;
- staff involved in the use of force are to be physically capable of performing such a task and not have any existing ailments;
- a Team Leader or Assistant Team Leader are to be present to take charge of the situation;
- if appropriate the situation is to be isolated, and uninvolved clients are to be moved from the scene and adequate security implemented;
- the recording of the event via videotaping.

5.9 GUIDELINES FOR VIDEOTAPE RECORDING

The use of videotape recordings is a safeguard for staff and the client involved. It may be used as evidence in the event that allegations of assault and/or use of excessive force are directed towards staff or where the young person may be charged with an offence or misbehaviour.

Videotape recordings are to be made of all incidents where reaction time is sufficient to take a camera to the area and where:

1. Use of force or any other serious incident is anticipated;
2. During a cabin search or strip search if a problem is anticipated in relation to allegations against staff. In this situation a videotape recording can only be used for recording the actions of the staff member conducting the search. Under no circumstances can it be used to videotape the young person being subjected to a strip search;
3. Any other incident that management deems necessary.

All recordings must be of an overt nature and the recording must be continuous in order to satisfy evidentiary requirements.

The Coordinator Operations is to ensure that all relevant forms associated with the use of videotape equipment have been completed and the videotape has been catalogued and maintained in a secure location. Any relocation of the videotape is to be documented.

5.10 EXCESSIVE FORCE

If the force used was unreasonable, in that

- (i) force was used to achieve an unreasonable end, or that;
- (ii) the amount of force used exceeded what was necessary to achieve a reasonable end.

Staff may be subject to an investigation by the department or the police and charged with use of excessive force.

5.11 INSTRUMENTS OF RESTRAINT

For references to the legislative base for Instruments of Restraint see Section 1.6 of this policy.

The following articles have been approved as Instruments of Restraint and must be used in strict accordance with this policy and established procedures as outlined in the *Operational Procedures Manual for Juvenile Justice Centres*:

- Handcuffs (Peerless/Safelok)
- Disposable flexi-cuffs
- Ankle cuffs (only hospital use with Manager approval/ Transport section use with Manager approval)
- Restraint belts (only Kariong JJC with Manager approval and Transport section with Manager approval)
- Protective shields
- Protective helmets

Instruments of restraint are to only be used:

- if a young person is outside a detention centre or is about to leave a detention centre under escort and approval for the use of handcuffs or other instruments of restraint has been received; or
- if it is considered on reasonable grounds that a young person:
 - a) will attempt to escape;
 - b) could seriously harm himself/herself or others;
 - c) could seriously disrupt order and security at the centre.

Consequently, when restraints are used to manage the behaviour of clients they must only be used:

- as a last resort;
- in exceptional circumstances when all other methods of intervention have been exhausted and they have failed;
- in a manner which does not cause the client humiliation, degradation or physical harm;
- for the shortest possible time.

Only the Centre Manager or delegate can authorise the issue of restraint equipment. Where available, restraint equipment is to be used at any time it is deemed necessary to use pre-planned force to control a client or a group of clients.

There are some situations where the use of handcuffs, for example, would be inappropriate, namely when:

- the client is entering court;
- an injury prevents handcuffs being applied;
- a medical practitioner requests that handcuffs be removed for medical reasons;
- the client is a pregnant young woman.

If approved for use by the Manager of Kariong Juvenile Justice Centre or the Manager of Juvenile Placements/Transport Unit, restraining belts may be used in conjunction with handcuffs as an added measure of security for specific offenders.

Clients that are required to wear restraining belts must be escorted in a sedan vehicle or an aircraft. They cannot be escorted in the back of escort vans or buses

as the restrictive movement of their arms makes them extremely vulnerable to injury in the event of an accident.

SECTION 6. MONITORING OF THIS POLICY

The Quality Reviews will monitor the compliance and extent to which the policy is being implemented by staff and management in Juvenile Justice Centres.

Where the management of difficult behaviour involves the Use of Force procedures, as outlined in the *Operational Procedures Manual for Juvenile Justice Centres*, staff are to record these incidents on the appropriate forms. Centre Managers and other supervisory staff including Regional Directors and the Director of Operations review these records periodically.