



San Diego County Sheriff's Department

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Kelly A. Martinez, Sheriff

August 7, 2023

Honorable Michael Smyth
Presiding Judge of the Superior Court
San Diego Central Courthouse
1100 Union Street, Tenth Floor
San Diego, CA 92101

Dear Presiding Judge Smyth,

San Diego Sheriff's Department's Response to Grand Jury Report: Drugs, Contraband, and the Use of High-Tech Scanning Technology in San Diego County Jails

Pursuant to California Penal Code section 933(c), the following is my response to the Grand Jury's Findings and Recommendations 23-83 through 23-89.

SAN DIEGO COUNTY SHERIFF'S DEPARTMENT

I have reviewed the Grand Jury's report outlining their findings and recommendations related to the use of scanning technology in San Diego County jails. I appreciate the thoughtful review and assessment made by Foreperson Ed Lopatin and members of the Grand Jury. This report indicated the members of the Grand Jury conducted interviews of San Diego Sheriff's Department (SDSD) staff, toured local technology vendors, toured all the County jails, and reviewed Departmental policies and other public resources related to scanning technology.

The Grand Jury identified three findings as a result of their above-mentioned methodology. Please refer below for the Sheriff's Department's responses to these findings.

Grand Jury Finding 01:

The San Diego County Sheriff's Department does not have a strong enough policy for searching incarcerated persons for drugs and other contraband upon re-entering the jails from unsecured settings.

Response: The Sheriff's Department disagrees wholly with the finding.

The Sheriff's Department's Detention Services Bureau (DSB) has a robust policy with respect to searching incarcerated persons. DSB Policy and Procedure I.52 specifically addresses the different types of searches of incarcerated persons. Searches are conducted in order to facilitate a safe environment for all individuals within our facilities and are in compliance with pertinent legal standards (*Bull v. City and County of San Francisco* (9th Cir. 2010) 595 F.3d 964).

Policy and Procedure I 52 outlines how and when strip searches and a custodial pat down search shall be conducted.

A strip search is defined as any search that requires a person to remove or arrange some or all of their clothing so as to permit visual inspection of the underclothing, breasts, buttocks, genitalia, or body cavity

Section II of Section I.52 provides the following guidelines for strip searches:

STRIP SEARCHES

- A. Strip searches shall be conducted in an area that provides as much privacy as possible without compromising facility security or observed by persons not participating in the search.*
- B. Except for licensed health staff, all persons conducting or otherwise present during a strip search or within sight of the incarcerated person shall be of the same gender identity as the incarcerated person being searched. For strip searches of individuals who identify as transgender, intersex or non-binary, refer to DSB P&P section R.13.*
- C. Except when necessary to restrain a combative or uncooperative incarcerated person, to protect themselves, or to prevent the loss or destruction of discovered evidence, persons conducting a strip search shall not touch the breast, buttocks, genitalia or body cavity of the person being searched.*
- D. Individuals shall be strip searched preceding their placement into general jail population housing areas. However, no strip search will be conducted on an incarcerated person until at least one hour after a wants/warrants check has been completed, after fingerprints have been submitted, and a total of at least three hours has elapsed from the time of initial booking into a detention facility (except as provided in subsection G). The clearance of wants and warrants marks the point at which Detention Processing Division (DPD) staff will begin accepting bail bonds. The timeframes outlined within this section will ensure individuals are provided the opportunity to post bail within a reasonable time (not less than three hours) prior to being subject to a strip search.*
- E. Strip searches will not be conducted on individuals who are being "booked and released," in the process of posting bail or when they will not serve any time in custody beyond the time necessary to complete the booking process.*
- F. Incarcerated persons may be strip searched any time there is reasonable suspicion to believe they may be concealing contraband or weapons. Additionally, incarcerated persons are subject to strip search when returning to their housing area or during scheduled or unscheduled housing unit searches, weekly hygiene inspections, laundry exchanges, criminal investigations, etc.*
- G. Any incarcerated person may be strip searched without completing the waiting period for posting bail under the following circumstances:*
 - 1. If a deputy has reasonable suspicion to believe the individual is concealing contraband or weapons in a manner that would not be detectible by a pat down search.*
 - a. Reasonable suspicion may not be based solely on the nature of the arrest and must be based on factors observed by the deputy.*
 - b. Prior to conducting a strip search based on reasonable suspicion, the deputy will complete a Strip Search Authorization Request (J-52) form.*

- c. *The request must be approved by the on-duty watch commander before the strip search is conducted.*
 - 2. *Incarcerated persons who are eligible for, but do not intend on posting bail will sign the J-52 form to indicate they chose to forego the waiting period and request to be strip searched and housed after completing the booking process.*
 - 3. *If an incarcerated person is booked on charges with no bail or they are not eligible for bail, the deputy conducting the strip search will complete the J-52 form to indicate the charge(s) or reason(s) why they were not eligible for bail.*
- H. *Group strip searches of incarcerated persons may be conducted only if individual privacy for each person is provided. The incarcerated persons participating in the strip search will not have direct observation of each other and will not be observed by staff and/or incarcerated persons not participating in the strip search. This includes conducting group strip searches in module living areas during searches, while processing court returns or any other time that requires an incarcerated person to rearrange their clothing to permit the inspection of the underclothing, breast, buttocks, genitalia or body cavity in a group setting.*
- I. *Sworn staff conducting the initial strip search and clothing exchange of an incarcerated person after booking shall document their ARJIS and the time of the strip search on the reverse side of the incarcerated person's face card.*

Under no circumstances will Sheriff sworn, medical or contracted health staff conduct a physical body cavity search on an incarcerated person. If warranted, body cavity searches are only completed by non-Sheriff medical staff at a hospital after a search warrant has been obtained. A strip search is not a body cavity search.

A custodial pat down search is defined as a search conducted over the clothing to prevent the entry or movement of unauthorized, illegal, or dangerous items in a custodial setting. A custodial pat down search will typically involve the inspection of an individual's pockets, waistline, collar/cuffs, footwear, hair, and visual inspection of the person's ears, nose, and mouth.

Section IV of I.52 provides the following guidelines for pat down searches:

PAT DOWN SEARCHES

- A. *Deputies will pat down incarcerated persons under the following conditions:*
 - 1. *Prior to them being transported out of the facility and upon returning to the facility.*
 - 2. *Prior to and following a professional or social contact visit.*
 - 3. *Prior to leaving from and returning to a housing area.*
- B. *All incarcerated persons are subject to pat down searches and examinations of their clothing at any time.*
- C. *Pat down searches of incarcerated persons shall be conducted by sworn staff members of the same gender identity as the incarcerated person. For pat down searches of incarcerated persons who identify as transgender, intersex or non-binary, refer to DSB P&P section R.13.*

1. *If a deputy is not reasonably available that is of the same gender identity as the incarcerated person, a deputy of a differing gender may conduct the pat down search.*
2. *Sworn staff conducting pat down searches on an incarcerated person with a different gender identity than their own, shall document the incident in the individual's JIMS history utilizing the drop down, "PDS – Pat Down Search."*

Sheriff sworn staff are directed to conduct pat down searches of incarcerated persons when they leave and return to the facility. This includes "court, medical appointments, work assignments, or any event that causes them to be removed from a secured area," as noted in the Grand Jury report. One of the facts presented in the report indicates the Body Scan policy (section C of I.50) states scanning of incarcerated persons returning from unsecured areas "should be considered." The actual section is included below.

I.50 Section C

As a proactive measure to reduce contraband from entering the detention facilities, body scan use should be considered for the following:

1. *Incarcerated persons who are returning to the facility from court, clinic runs, temporary out-of-custody, work assignments or any other event that caused them to be removed from the secure area of the facility,*
2. *Incarcerated persons returning from social or professional contact visits,*
3. *Incarcerated workers returning to their housing unit after performing their assigned duties,*
4. *Any incarcerated person based on the recommendation of the Detentions Investigations Unit, or a canine handler, and concurrence of the watch commander or designee.*

Currently, deputies do use the body scanner and other search mechanisms, to search incarcerated persons returning to the facility. Operationally, it is not always feasible to perform body scans of all incarcerated persons returning from court. These groups can be large and to do so would have a direct impact on intake processes. The scanners are in the booking area of the facilities where staff are receiving new arrestees. Co-mingling populations, workload impacts, and the impact to arresting officer wait times, are all considered when deciding to conduct body scans of incarcerated persons returning to court. Additionally, daily exposure to a body scan for an incarcerated person who may be attending court for an extended trial could expose the incarcerated person to continued and potentially harmful radiation. To remain proactive and prevent contraband from entering our facilities, deputies employ a variety of body scans, pat down searches, and strip searches on large groups of incarcerated persons returning from court.

There are other DSB policies which address how and when different types of searches will be conducted.

- Section I.50 covers the use of body scanners and x-rays on incarcerated persons and staff.
- Section J.8 covers contraband watch for incarcerated persons who may have contraband secreted in their person.
- Section R.13 covers the search of transgender, intersex and non-binary incarcerated persons.
- Each facility has directives, called "Green Sheets" which outline search conditions for their incarcerated workers.

Overall, SDSD policies related to searches of incarcerated persons are comprehensive and serve as appropriate guidelines to conduct such searches in a safe, effective manner and in accordance with the law.

Grand Jury Finding 02:

Anyone who has been trained can operate a scanning machine, but currently only sworn staff operate scanning machines in the San Diego County jails. Therefore, the department has inefficient staffing flexibility to operate the scanning machines.

Response: The Sheriff's Department disagrees wholly with the finding.

In January of 2023, the Sheriff's Department developed a robust Narcotics Interdiction Team (NIT) at our three intake facilities. Deputies selected for the team are trained in the body scanner mechanics and how to develop actionable intelligence on who may be trying to smuggle narcotics into the jails. Incarcerated persons who are suspected of smuggling or body carrying narcotics, or when an anomaly is seen in the body scan, will be placed on a contraband watch. Deputies also conduct thorough searches of the holding cells throughout the shift, in the event any narcotics have been hidden. Narcotics detection canines are regularly run through the intake area to supplement these searches.

The Sheriff's Department is not in disagreement with the Grand Jury's assertion that "Anyone who has been trained can operate a scanning machine...". Contraband interdiction is one of our highest priorities in jail security. As such, the Sheriff's Department believes sworn deputies who are trained in narcotic interdiction, investigation, and identification provide the highest level of prevention related to contraband smuggling. Deputies have access to computer systems and law enforcement networks that lend more information to a contraband smuggling operation and the identification of potential smuggling attempts.

The booking process can be a highly volatile and risky time for both arrestees and staff. Many arrestees are under the influence of narcotics, and/or alcohol. Most arrestees are facing serious criminal charges and can be emotionally charged during the arrest and booking process. The safety of staff and the individuals dictate that a sworn deputy conduct the body scanning and follow up when contraband is present or suspected. Deputies have a primary responsibility of jail security. Our professional staff rely upon sworn deputies to ensure a safe environment for them as well as for the incarcerated persons. We would not expect a civilian staff member to perform a security function in the facility, nor at time of booking. The jail environment is not like an

airport, hospital, or other location where the individuals being scanned are always cooperative with the process.

We recognize that a professional staff member could be trained to work the body scanning equipment, and to identify contraband. However, we believe the best practice, based on deputy experience, training, and security responsibilities, is to employ sworn staff not civilians to manage this function.

Grand Jury Finding 03:

The SDCSD lacks the most effective scanning equipment for scanning mail, packages, or supplies.

Response: The Sheriff's Department disagrees partially.

Currently, SDCSD has a centralized mail processing center (MPC) for all incoming mail sent to our incarcerated population. The MPC is located at Las Colinas Detention and Reentry Facility (LCDRF) and is staffed by a team of Detentions-Courts Deputy Sheriffs. This team reviews all incoming mail and approved packages for contraband, including controlled substances. In addition to daily, routine mail inspections, the team also uses actionable intelligence to monitor individuals in the community who are known to or believed to be smuggling narcotics into the jails through the mail system. These individuals employ a variety of techniques to try and mask the controlled substance in the incoming letters and cards. Some individuals manufacture false legal mail, containing a controlled substance, in the hope that they avoid scrutiny and detection.

The MPC uses the following equipment:

- **Three Air Science Mobile Forensic Evidence Benches (Model EVB-72) with M5 HEPA filters.** These benches provide down draft suction to create a safer environment should a powdery substance be inside the envelope or folded into the mail.
- **Three CAMAG UV Cabinet 4, Ultra-Violet (UV) light stations.** These are attached to each of the above-mentioned evidence benches. The UV light stations help MPC deputies detect liquid stains on paper that are not always visible. This machine can switch between two different UV frequencies. Individuals attempt to dilute narcotics and coat the paper with the dilution before writing on it. This UV system helps deputies identify abnormalities in the paper for further testing.
- **NIK Public Safety type "A" and type "U" test kits.** Used for presumptive testing of suspected narcotics.
- **Thermo-Fischer TruNarc handheld narcotics analyzer.** This device examines the chemical compound of the substance being tested, giving a presumptive identification of the tested substance with the NIK test kit.

A detection x-ray machine is located at the MPC. This device is used for detecting metal or abnormal voids in packages. Currently, this device is inoperable pending maintenance. Although

we used this device frequently when it was functioning, our ability to detect narcotics and contraband has not been noticeably reduced without it. The machine detects voids rather than actual narcotics, so deputies use it to detect possible abnormalities on certain types of mail or books. Books are only accepted from an approved, third-party vendor. Since deputies open all mail, other than legal mail, at the MPC, this device is more of an investigative redundancy for the MPC. The Department intends on replacing or repairing the current x-ray device. The Sheriff's Department recognizes the need to reinvest in x-ray technology at all of our facilities. Each facility did have x-ray machines when mail was routed to the specific incarcerated person at each jail. These machines were used to scan social and professional visitor personal affects, mail, prosthetic devices and anything else that might have been brought into the facility. The service contract on these machines has since expired and they have not been used since then. The Department is looking at reinstating these contracts and using these x-ray devices on a regular basis. Deputies still physically and visually search all items entering jail facilities. Sheriff canines trained in narcotic detection are also deployed in all facilities, including areas only occupied by Sheriff staff, for the presence of controlled substances.

The Sheriff's Department is looking at what type of scanning equipment would be appropriate to scan items we accept at our facilities such as food deliveries, laundry services, commissary items, and other administrative supplies. We are in the early stages of this review and agree there may be some devices we could use to further secure and police our facilities for contraband and narcotics.

We have been reviewing industry best practices regarding the use of tablets for the incarcerated person population and scanning mail to their tablet versus providing physical mail to the incarcerated person. The physical mail would be placed into the incarcerated person's jail property which is provided to them at time of release. Excess mail would be released to an individual of their choice in the community. Books, magazines, and legal mail would also be accessed by the tablets. We will be considering the feasibility of implementing this program in the future.

Below are the San Diego Sheriff's Department's responses to the Grand Jury recommendations.

Recommendation 23-83

Add one whole-body x-ray scanner at the East Mesa Reentry Center, and one whole-body scanner at the South Bay Detention Center.

Response: The recommendation has been implemented.

Before the Grand Jury toured the facilities, DSB leadership was already in the process of purchasing additional body scanners. As of June 2023, there is a body scanner at every facility, including East Mesa Detention and Reentry Facility (EMDRF) and South Bay Detention Facility (SBDF). San Diego Central Jail (SDCJ), our busiest booking facility, has two scanners, which provides redundancy should one scanner be down for maintenance and maximizes our ability to scan individuals being booked along with those already in housing. Two scanners were transferred from the jails to our Court Services Bureau so incarcerated persons can be scanned while in court holding areas.

Recommendation 23-84

Consider scanning all incarcerated persons returning to the jail who have been out of the secure areas.

Response: The recommendation has been implemented.

The Sheriff's Department already has a policy in place regarding the use of body scanners and x-rays. Policy I.50 states that the scanning of incarcerated persons "returning from unsecured areas should be considered." Sheriff sworn staff already use body scanners as well as other means of searching individuals when they return to the facility from unsecured locations. Due to restrictive facility infrastructure, the staff needs for large-scale body scans, and the repeated exposure to radiation, SDSA does not agree with the need to modify current policy with more restrictive language mandating all individuals are body scanned when returning from court, external hospital visits, work assignments or other unsecured areas. Deputies are able to make the determination to opt for a body scan based on the information presented to them, weighing in consideration the health and safety of the incarcerated person, operational needs, staffing and overall facility security.

Recommendation 23-85

Assemble an in-house team to determine the safest and most effective scanning devices, and how to staff the equipment in ways to ensure effectiveness so there are no delays for employees about to begin their shift.

Response: The recommendation requires further analysis.

This recommendation was interpreted as the Grand Jury addressing the desire to have all Sheriff staff "scanned" before entering a jail facility. There are many potential ways to ensure everyone entering a detention facility are searched or scanned prior to entry. We continue to explore all possibilities and agree with everyone's interest in an effective and efficient way to make sure there are no gaps in our security measures.

We are actively exploring processes, technology, practical application, and operational efficiencies related to locating potential contraband that could be brought in via staff, contractors, and visitors to our facilities. We are sensitive to protecting the security of our facilities and our staff when revealing publicly too much of our methods regarding all screening processes. We do have practices in place that actively work to identify and address employee and/or staff misconduct in this area.

Recommendation 23-86

If the above noted in-house team is assembled, consider the feasibility, legality, and cost/benefits to scanning all persons including employees entering a detention facility.

Response: The recommendation requires further analysis

Recommendation 23-85 is responsive to this recommendation. Please refer above for details.

Recommendation 23-87

Hire and train non-sworn staff to exclusively operate the scanners.

Response: The recommendation will not be implemented.

The Sheriff's Department has instituted a Narcotics Interdiction Team (NIT) at each intake facility. These trained deputies conduct body scans, collect actionable intelligence, identify individuals who should be on contraband watch and conduct searches of all intake areas. Since the incorporation of these teams, narcotic interdiction has increased at the time of intake and the number of overdoses within housing units has decreased. The program, which came about as a result of the DSB Interdiction working group, has been successful in identifying body carriers and increasing facility safety.

Due to the unpredictability of individuals being booked into custody and facility safety concerns, a deputy sheriff must be present at all times during any interaction between incarcerated persons and non-sworn professional staff. Additionally, the knowledge base and experience deputies have dealing with known body carriers is invaluable to the entire intake process, including the use and interpretation of body scans. Including a lay person, who still needs deputy protection, into this process would be inefficient, potentially unsafe, and add staff to our operations unnecessarily.

Recommendation 23-88

Purchase high-volume mail scanning equipment and scan all mail and incoming packages before delivery to an incarcerated person or secure location.

Response: The recommendation requires further analysis.

In addition to existing equipment used for mail scanning, the Mail Processing Center (MPC) was created, and all mail is routed to one location for more efficient screening. The Sheriff's Department agrees that high volume mail scanners, capable of detecting illicit substances, would be beneficial to facility security and efficiency of operations.

The Sheriff's Department recognizes incoming mail is a common method for people to smuggle contraband into the jails. To that end, we have been reviewing industry best practices regarding the use of tablets for the incarcerated person population and scanning mail to their tablet versus providing the physical mail to the incarcerated person. The physical mail would be placed into the incarcerated person's jail property which is provided to them at time of release. Excess mail would be released to an individual of their choice in the community. Books, magazines, and legal mail would also be accessed by the tablets. We will be considering the feasibility of implementing this program in the future.

Recommendation 23-89

Purchase x-ray cargo scanners capable of searching/scanning larger institutional deliveries and scan all incoming deliveries.

Response: The recommendation requires further analysis.

The Sheriff's Department is currently in the process of researching cargo scanners and other devices that could be used at our Central Production Center (CPC) where food, laundry and commissary deliveries are received as well as the receiving docks of all jail facilities. A team was put together at the beginning of 2023 to review current processes and identify gaps or new

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processes with respect to narcotic interdiction within DSB. This team was advised to consider technology responsive to this recommendation as well.

In closing, I would like to thank the Grand Jury for their efforts in working with the Sheriff's Department in their review and recommendations to provide quality care and service to our incarcerated population.

Sincerely,

A handwritten signature in black ink that reads "Kelly A. Martinez". The signature is written in a cursive style with a large, stylized initial "K".

Kelly A. Martinez, Sheriff

KAM:TMAH:aeb

cc: Members, Board of Supervisors
Helen Robbins-Meyer, CAO
Andrew Potter, Executive Officer, Clerk of the Board
Ed Lopatin, Foreman, San Diego Grand Jury