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EXHIBIT 2  
DATE 3/15/2013  
SB 194

## *Sheriffs & Peace Officers Association*

March 15, 2013

To: Chairman Kerns and Members of House Judiciary Committee  
Fr: Jim Smith, MSPOA.

Re: SB 194. Opposition Testimony

Jim and Perry,

I'm not going to be able to make it up on Friday, March 15th, for the House Judiciary Committee meeting. If you are so inclined and in agreement with my statements below, I would appreciate it if you could distribute this to them for consideration to refer this Bill to the next Interim Committee.

Dennis McCave (Retired Captain/Commander, Yellowstone County Sheriff's Detention Facility)

I've reviewed the archival video on the Senate Committee hearing on SB 194 and the Floor vote on it.

The "impetus", if you will, for this Bill, as declared by Senator Blewett and the ACLU has to do with a recent U.S. Supreme Court decision, *Florence v. Board of Chosen Freeholders of the County of Burlington*. The text of the Bill, and the testimony refers to "A person arrested or detained for a traffic offense or an offense that is not a felony..." and references "...by a peace officer or law enforcement employee...". The thing about the *Florence* case is that it is **very limited** and **very specifically** dealing with "strip searches" of prisoners in "General Population Units" of a Jail only; it is not a case dealing with just being investigated, arrested, held or even being booked into Jails, it's about dealing with those who are in actual "Housing Units", but I don't think the Bill language or presentation comes across that way. The Bill sponsor and ACLU give the impression that everyone should be concerned about getting arbitrarily strip searched by Law Enforcement and what the case is really about is addressing the particular and unusual necessary safety and security functions of a local Detention Facility, Jail. (The Supreme Court ruled in "favor" of the Jail on this in *Florence*, as they say, "...defer(ing) to their (Law Enforcement's) expert judgment in such matters.", which is something they've done for over 30 years based on *Bell v Wolfish* (1979), *Block v Rutherford* (1984) and *Turner v Safley* (1987))

The current Montana Jail Standards (07.17 and 07-17.01) actually does already talk about "Reasonable Suspicion", relative to strip searches, and gives a list of

what that "reasonable suspicion" may be based on; which becomes my second concern with the SB 194. In his testimony, Senator Blewett gives a "general" definition of what "reasonable suspicion" is, not sure he would agree with the references in our Standards as to reasonable suspicion, especially one specific part of the Standards definition which is "Contact with the public or exposure to public areas". This is something that is critical in trying to maintain the safety and security of these Facilities and people in them, staff and inmates. I am concerned by enacting this Bill, it could create a basis for future litigation or cause Jails to "back off" of searches in maximum security areas, potentially creating a **HUGH** safety and security problem.

I believe what should happen is, since there was never any discussion or "networking" with Law Enforcement on this and because it could create a severe consequence, not only monetary, but with life and safety, I think the Bill should be tabled and referred to the Law and Justice Interim Committee for research and review. As was even mentioned in the hearing by Senator Augare, he questioned the real "need" for this Bill and actually talked about "...mudding the waters..." with this kind of legislation. This is a topic that has been dealt with and addressed for the last 30 years in the Federal Court and honestly, even from the testimony, it is not a problem in Montana now, so there really is no need to "push" this through.....the sky is not falling!

Respectfully,

Dennis McCave

(Retired Captain/Commander, Yellowstone County Sheriff's Detention Facility)

## CHAPTER 7

Security and ControlInmate Supervision and Management

**07.01 Facility employees observe all inmates at least every thirty (30) minutes on an irregular schedule and the time of all such checks is logged. More frequent checks are made of persons who are violent, suicidal, mentally ill, intoxicated, or who have other special problems or needs warranting closer observation.**

**07.02 All inmate movement from one area to another is controlled by staff.**

07.03 Inmates participating in work programs, except those on temporary release status, have supervision provided in keeping with their custody classification while outside the security perimeter of the facility. Minimum security custody inmates are periodically checked to assure appropriate accountability and security.

**07.04 Policy governing supervision of female inmates by male employees and male inmates by female employees is based on equal employment opportunity, working toward a professional cross-gender work force. When a female inmate is housed in a facility, at least one female staff member is on duty at all times.**

**07.05 The facility has a system for physically counting inmates. The system includes strict accountability for inmates assigned to work and educational release, furloughs, and other approved temporary absences. At least one formal count is conducted each shift, with no less than three (3) counts daily.**

**07.06 The facility has staff posts located in or adjacent to inmate housing areas to permit facility employees to hear and respond promptly to problems or emergency situations.**

07.07 Where staff posts are not located in or adjacent to inmate housing areas, an audio electronic surveillance and communication system is available.

07.08 Visual electronic surveillance equipment, where available, is used primarily to monitor hallways, stairwells, points of access through the security perimeter,

and common areas. If inmate living areas are visually monitored with electronic equipment, provisions are made to shield shower and toilet areas to protect inmate privacy.

07.08.01 When it is not possible or practical to shield inmates for privacy, any surveillance by an employee of the opposite sex is conducted only for a legitimate reason and only on an infrequent and casual basis or at a distance so as to protect inmate privacy to the maximum extent possible.

**07.09 The use of physical force is restricted to instances of justifiable self-defense, protection of others, protection of property, and prevention of escapes, and then only as a last resort and in accordance with appropriate statutory authority. In no event is physical force used as punishment. (45-3-102 M.C.A.)**

07.09.01 Restraint devices are never applied as punishment. There are defined circumstances under which supervisory approval is needed prior to application.

**07.10 Four/five point restraints (both arms and legs, or both arms, legs, and head secured) are used only in extreme instances and only when other types of restraints have proven ineffective. Advance approval is secured from the facility administrator/designee before an inmate is placed in a four/five point restraint. Subsequently, the health authority or designee must be notified to assess the inmate's medical and mental health condition, and to advise whether, on the basis of serious danger to self or others, the inmate should be in a medical/mental health unit for emergency involuntary treatment with sedation and/or other medical management, as appropriate. If the inmate is not transferred to a medical/mental health unit and is restrained in a four/five point position, the following minimum procedures are followed;**

- Direct visual observation by staff is continuous prior to obtaining approval from the health authority or designee
- Subsequent visual observation is made at least every 15 minutes
- Restraint procedures are in accordance with guidelines approved by the designated health authority.

**All decisions and actions are documented.**

07.10.01 Restraint equipment is used only as a precaution against escape during transfer, for medical reasons under the direction of the facility

physician, or as prevention against inmate self-injury, injury to others, or damage to property.

07.10.02 Restraint equipment is applied only for the amount of time absolutely necessary.

07.10.03 The use of restraint equipment, other than for routine use during transfer, is approved by the facility administrator or designee and documented in a report prepared for review by the facility administrator or designee. Restraint devices are never applied as punishment. There are defined circumstances under which supervisory approval is needed prior to application.

### **Security**

07.11 The facility has a security perimeter to prevent access to the facility by unauthorized personnel.

07.12 All security perimeter entrances, cell block doors, and doors opening into a corridor within the security perimeter are kept secured except when in use. Doors to vacant and unoccupied cells in housing units, and in storage units are secured at all times.

**07.13 The facility's security, life safety, and communications systems are monitored continuously from a secure location.**

07.14 The facility administrator or designee conducts at least weekly inspections of all living and activity areas as well as other security equipment. The date, time, and results of these inspections are recorded on a checklist or log. The facility administrator promptly corrects any identified problems.

### **Searches and Contraband Control**

**07.15 Procedures guide searches of facilities and inmates to control contraband and provide for its disposition.**

**07.16 Procedures govern the circumstances in which canine units may be used in the facility for security and control.**

**07.17 A strip search of an arrestee at intake is only to be conducted when there is reasonable belief or suspicion that he/she may be in possession of an item of contraband. The least invasive form of search is conducted.**

**Reasonable belief may be based on:**

- **Current charges or previous convictions for escape, possession of drugs or weapons, or crimes of violence**
- **Current or historical institutional behaviors of contraband possession or refusals to be searched, or**
- **Contact with the public or exposure to public areas**

07.17.01 A strip search of general population inmates is conducted when there is reasonable belief that the inmate may be in possession of an item of contraband or when the inmate leaves the confines of the facility.

07.18 Manual or instrument inspection of body cavities is conducted only when there is reasonable belief that the inmate is concealing contraband and when authorized by the facility administrator or designee. Health care personnel conduct the inspection in private.

07.19 All contraband items found during facility or inmate searches are seized. The seizure and disposition of the contraband is documented,

### **Preservation of Physical Evidence**

07.20 Procedures govern the preservation, control, and disposition of all physical evidence obtained in connection with a violation of law and/or institutional regulation. At a minimum, the procedures address the following:

- Chain of custody
- Evidence handling
- Location and storage requirements
- Manner of disposition

### **Key Control**

07.21 All facility employees are familiar with the locking system of the jail and shall be able to release inmates immediately in the event of a fire or other emergency.

**07.22 The use of keys is controlled.**

## Tool Control

**07.23** The use of tools and culinary equipment is controlled. Medical and dental instruments, equipment, and supplies (syringes, needles, and other sharps) are controlled and inventoried.

## Control of Firearms, Chemical Agents, Stun Guns and Other Weapons

**07.24** Procedures govern the availability, control, and use of firearms, less lethal devices, and related security devices, and specify the level of authority required for their access and use. Chemical agents and electrical disablers are used only with the authorization of the facility administrator or designee.

**07.24.01** Weapons storage is restricted to authorized persons and inaccessible to unauthorized persons.

07.22.02 The facility maintains a written record of routine and emergency distribution of security equipment.

07.24.03 Firearms, chemical agents, and related security equipment are inventoried at least monthly to determine their condition and expiration dates.

07.24.04 Facility employees use only those firearms or other security equipment issued through or approved by the facility administrator and only when authorized by the facility administrator. Facility employees use only those weapons for which they have received training and are qualified to use.

07.24.05 The facility provides a weapons locker or similar arrangement at security perimeter entrances for the temporary storage of weapons belonging to law enforcement officers who must enter the facility.

07.25 Written reports are submitted to the facility administrator or designee no later than the conclusion of the tour of duty (unless delay is authorized by the supervisor) when any of the following occur:

- Discharge of a firearm or other weapon
- Use of less lethal devices to control inmates
- Use of force to control inmates
- Inmate remaining in restraints at the end of shift
- Routine and emergency distribution of security equipment

**07.26 The use of firearms complies with the following requirements:**

- **Weapons are subjected to stringent safety regulations and inspections**
- **A secure weapons locker is located outside the secure perimeter of the facility**
- **Except in emergency situations, firearms and authorized weapons are permitted only in designated areas to which inmates have no access**
- **Employees supervising inmates outside the facility perimeter follow procedures for the security of weapons**
- **Employees are instructed to use deadly force only after other actions have been tried and found ineffective, unless the employee believes that a person's life is immediately threatened**
- **Employees on duty use only firearms or other security equipment that have been approved by the facility administrator**
- **Appropriate equipment is provided to facilitate safe unloading and loading of firearms**

## CHAPTER 15

Admission and ReleaseAdmission

**15.01** The facility has written policy and procedure to govern records on admission, processing and orientation of new inmates and release of inmates from the facility.

**15-02** Prior to accepting custody of an inmate, staff determine that the inmate is legally committed to the facility, and that the inmate is not in need of immediate medical attention.

15.03 The admitting officer conducts a complete and thorough search of the inmate being admitted. Written policies and procedures regarding searches upon admission are consistent with the following provisions:

15.03.01 All searches are the least intrusive type necessary to satisfy the safety and security needs of the facility.

15.03.02 The pat search is considered the initial method of searching inmates upon admission.

15.03.03 A strip search of a new admission at intake is only be conducted when there is reasonable belief or suspicion that he/she may be in possession of an item of contraband. The least invasive form of search is conducted. Reasonable belief may be based on:

- Current charges or previous convictions for escape, possession of drugs or weapons, or crimes of violence.
- Current or historical institutional behaviors of contraband possession or refusals to be searched or
- Contact with the public or exposure to public areas
- On the recommendation of the arresting officer

15.03.04 Manual or instrument inspection of body cavities is conducted only when there is reasonable belief that the inmate is concealing contraband and when authorized by the facility administrator or designee. Health care personnel conduct the inspection in private.

**15.03.05** A written record is made of any strip search or body cavity search of an inmate conducted during admission. Such record shall include:

- a. The name of the inmate being searched

**b. Name of the facility employee or medical person conducting the search and other persons present during the search**

**c. Time, date, and place of the search**

**d. Statement of the results of the search along with any unauthorized items or health conditions discovered**

**e. Statement of the facts which led facility employees to believe there was reasonable suspicion or probable cause to conduct the search**