

10A NCAC 28C .0307 SEARCH AND SEIZURE

(a) In keeping with 10A NCAC 28A Section .0300, which requires all state facilities to have a plan for explaining rights to both clients and state facility employees, state facility employees shall notify the client and his legally responsible person of the policy on search and seizure, including the provisions of this Rule and Rules .0308 and .0309 of this Section at the time of admission.

(b) Authorized searches by state facility employees are as follows:

- (1) State facility employees may search the client and the client's possessions at the time of the client's admission to the state facility. At the time of admission, the client may place personal items in a storage area which is secure. The state facility employees shall record in the personal property inventory the items placed in storage which shall be counter-signed by the client. The original of the personal property inventory shall be maintained by the state facility, and a copy shall be given to the client or his legally responsible person.
- (2) State facility employees may search a client and the client's possessions when the client is returning to the state facility from an off-campus visit or after the client has received visitors, when it is reasonable to believe a client may have items in his possession that are dangerous, illegal or otherwise prohibited by the state facility.
- (3) State facility employees may search a client, the client's possessions or the client's living area if the state facility employees have good, substantial and reliable cause to believe that the client has been drinking or using drugs or has dangerous or stolen articles or substances. Situations justifying such a search may include, but are not necessarily limited to, the following:
 - (A) when drinking, drug abuse or possession of dangerous articles or substances has been witnessed by state facility employees, reported by another client or another reliable informant, or is clearly indicated by surrounding circumstances;
 - (B) when inappropriate changes in the client's behavior are observed or reported, such as slurred speech, ataxia, odor of alcohol, and disruptive behaviors, excluding expected changes due to prescribed psychotropic medication;
 - (C) when a breathalyzer test or urine drug screen results in a positive reading [A breathalyzer test or drug screen will be administered by nursing staff when appropriate as indicated by the circumstances in Subparagraphs (b)(3)(A) and (B) of this Rule or ordered by a licensed physician.]; or
 - (D) when a stolen item has been witnessed by state facility employees, reported by another client or other reliable informant or is clearly indicated by surrounding circumstances and no criminal charges are anticipated.

(c) Scope of Searches. Except as provided in Rule .0309 of this Section, the procedures outlined in this Rule and Rule .0308 of this Section are intended for internal security, to protect the state facility from civil liability, and to provide an inventory of client's personal property, and are not intended for purposes of criminal prosecution.

- (1) Searches by state facility employees shall be conducted only on the state facility premises and may include searching a client, a private or semi-private room and any surrounding area, closet, bed, chest of drawers, ceiling and personal effects of the client.
- (2) Searches by state facility employees may include state facility buildings and grounds.
- (3) Only physicians may perform body cavity searches if it is determined that there is probable cause to do so. Such a search shall be performed in the presence of a member of the nursing staff. The physician or member of the nursing staff shall be of the same sex as the client.

(d) Search Procedure.

- (1) All searches shall be authorized in writing by the State Facility Director or state facility employee in charge of the state facility at the time of the incident except:
 - (A) searches conducted pursuant to Subparagraph (b)(1) or (2) of this Rule; or
 - (B) searches performed when state facility employees have a reasonable suspicion that a client has in his possession a weapon or instrument making the client presently dangerous to himself or others, and this danger is imminent as to render prior written authorization impracticable.
- (2) At least two state facility employees shall be present during a search. An internal client advocate may be present during a search. A state facility employee of the same sex as the client shall be present during a search.
- (3) A client affected by a proposed search, other than those specified in Subparagraphs (b)(1) and (2) of this Rule, shall be notified before the search is conducted and shall be given the opportunity to

be present during the search. Individual locked storage spaces shall only be searched when the client is present unless there is an immediate danger of personal injury.

(4) Searches conducted in accordance with this Rule shall be documented in the client record.

(e) Disposition of Seized Property.

(1) If personal property seized in a search includes fire-arms or ammunition, the state facility employees shall contact the local law enforcement agency for advice regarding disposition of the property. The State Facility Director shall notify the appropriate deputy director regarding disposition of the personal property.

(2) If personal property seized in a search includes controlled substances illegally possessed (contraband), the substances shall be sent to the state facility pharmacy to be held for destruction under the supervision of the Department of Justice.

(3) If personal property seized in a search includes any alcoholic beverages, the beverages shall be sent to the State Facility Director for proper disposition.

(4) If personal property seized during a search includes prescription drugs in properly labeled containers; over-the-counter medications; dangerous items such as knives, scissors, razors, or glue; grooming aids that contain alcohol; or other items prohibited by the state facility, such items may be stored and returned to the client at the time of discharge. Such stored items shall be listed on the personal property inventory. A copy of the personal property inventory shall be given to the client or his legally responsible person.

(5) Items belonging to the minor client or minor's legally responsible person which are seized during a search of the minor or the minor's possessions, with the exception of the items specified in Subparagraph (e)(2) of this Rule, shall be given to the legally responsible person if he or she so desires.

(f) Use of the search procedure specified in this Rule shall be subject to review by the Human Rights Committee.

*History Note: Authority G.S. 90-101; 122C-58; 122C-62; 131E-67; 143B-147;
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Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.*