

2016 JCR RESPONSE

Report on the Department of Juvenile Services Use of Mechanical Restraints and Visual Body Search Policies

INTRODUCTION

In the Report on the State Operating Budget (SB 190) and the State Capital Budget (SB 191) and related Recommendations - Joint Chairmen's Report, 2016 Session, p. 148, the Maryland General Assembly requested the Department of Juvenile Services to provide information regarding the department's policies on the use of mechanical restraints and strip searching of youth in its custody.

RESPONSE

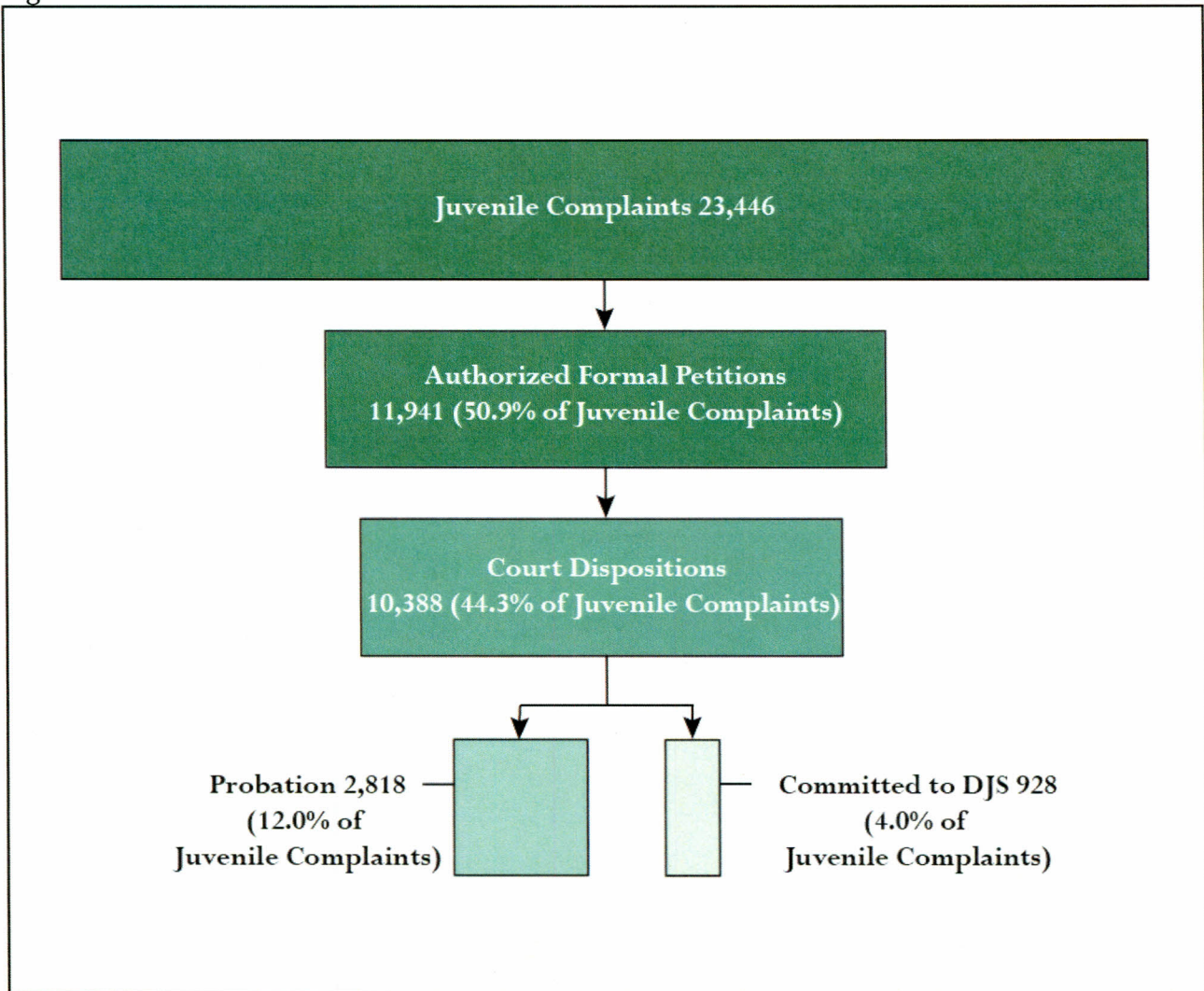
I. Overview of the Department of Juvenile Services

The Department of Juvenile Services (DJS or department) is a child-serving agency responsible for assessing the individual needs of referred youth and providing intake, detention, probation, commitment and after care services. Our mission is rooted in building safer communities by holding youth accountable and providing treatment to prevent re-offending. For this to be achieved, we must operate safe facilities that allow services to be accessed by the youth we serve.

The department has implemented developmentally-appropriate reforms to remove low-level offenders, including those who are incarcerated for technical violations from deeper system involvement. We have collaborated with system stakeholders, including the Maryland Judiciary, Office of the Public Defender, State's Attorneys and Law Enforcement Agencies, to drive down the use of secure confinement. The majority of the youth we serve are either diverted from system involvement or they are served in the community. Even among the youth that are sentenced to commitment with the department, two-thirds are placed in non-secure facilities, which are prohibited from using mechanical restraints and searches.

Please refer below to figure 1, which illustrates the FY 2015 case referrals.

Figure 1



Additionally, the department is required¹ to hold the overwhelming majority of youth charged as adults in juvenile detention facilities. Youth charged as adults bring with them their own set of needs and security requirements. Youth charged as adults are generally 16 -17 year-olds charged with a crime of violence, and are held in juvenile detention pending a transfer hearing to determine if jurisdiction should remain in the adult court or be transferred to the juvenile court. Currently, 56%² of the entire juvenile detention population is youth charged as adults.

To meet the diverse needs of the population the department serves, it is imperative that that safety and security policies are implemented in the facilities operated by the department to keep our youth, our staff and our communities safe. The department does not indiscriminately employ mechanical restraints or visual body search procedures. The department has issued narrowly tailored and specific safety and

¹ In October 2015, legislation went into effect (SB172/ HB618) that requires eligible youth charged as adults requiring detention to be held in DJS facilities pending transfer determination, unless the court specifically rules otherwise.

²The percentage represents the youth charged as adult population on July 15, 2016.

security procedures to limit the use of safety and security protocols to situations where safety of the youth, staff and community could be compromised. Narrowly tailored, objective policies and procedures control for potential bias that would result from the use of more subjective standards.

The department utilizes mechanical restraints and visual body searches terminology when describing safety and security procedures. A mechanical restraint is a device that restricts movement, and visual body search is a visual inspection to ensure a youth is not concealing contraband.

The department implements mechanical restraint and search procedures in the facilities we operate. The department's policies and procedures are in-line national standards and have been reviewed by Department of Justice auditors to be in compliance with the Prison Rape Elimination Act (PREA). The department operates seven³ secure detention facilities, and six facilities for youth committed to the care and custody of the department for treatment and rehabilitation. The committed facilities consist of four youth camps that operate at a staff-secure level of care for male youth, and two facilities that operate at a hardware-secure level of care. Each facility type has specific safety and security policies and procedures related to the use of mechanical restraints and searches to ensure the safety of youth, staff and community.

Secure Detention

Secure detention is a temporary, short term, physically secure facility for youth who have been found by a court to be a risk to public safety or themselves, or a risk of flight. MD Code, Courts and Judicial Proceedings, §3-8A-15. The population of secure detention facilities consists of youth awaiting an adjudication or disposition hearing, youth charged as adults awaiting an adult court transfer hearing to determine jurisdiction, and youth the court has determined shall remain in detention while pending placement into a treatment program.

Committed Facilities

Committed facilities provide rehabilitation and treatment in an out-of-home residential setting. Generally, youth are ordered by the court to a specific level of security, depending on their needs and risk, to receive treatment services.

- **Hardware Secure**

Hardware secure facilities are the most secure residential programs for youth requiring treatment services in an out-of-home setting. Hardware secure facilities are reserved for youth the court has identified as posing the most risk to public safety and rely primarily on the use of construction and hardware such as locks, bars and fences to restrict youth movement. The department operates two hardware secure facilities in the State: the Victor Cullen Center for male youth and the Carter Center for female youth.

- **Staff Secure**

Staff secure facilities are residential programs where youth movement and security is controlled by staff supervision rather than by restrictive architectural features. Youth placed in staff secure facilities have been ordered by the court to be placed out of the home to receive treatment services, but not at the most restrictive level of security. The department operates four staff secure placements in the state for male youth: Backbone Mountain Youth Camp, Green Ridge Youth Camp, Meadow Mountain Youth Camp, and Savage Mountain Youth Camp.

³ Attachment A lists all the Department of Juvenile Services owned and operated detention, and hardware secure and staff secure facilities.

II. Requested Information

- a. **All written policies regarding the use of mechanical restraints on youth in DJS custody, including the policies for the use of mechanical restraints within DJS facilities and at off-site locations (e.g., during transport, medical visits, court hearings, etc.)**

The department's written policies regarding the use of mechanical restraints on youth in DJS custody, including the policies for the use of mechanical restraints within department's facilities and at off-site locations are attached⁴. The department does not make security procedures related to the use of mechanical restraints in DJS facilities, off-site locations, or during transportation available to the public. However, this response will provide a general overview of transportation procedures and facility procedures.

General Transportation Provisions

The department implements procedures to guide the transport of youth while admitted to a DJS facility, transports involving pregnant youth, and transports required for off-site medical visits. All secure transports are completed by staff designated as transportation officers. Secure transports are transports that require the youth to be placed in mechanical restraints. Transportation officers are required to complete specific training related to secure transports on a regular basis.

The department, in policy and procedures, specifically address the use of mechanical restraints on pregnant girls. The department is in complete compliance with Maryland Law regarding the use of mechanical restraints on individuals known to be pregnant. Specifically, Maryland law prohibits the use of mechanical restraints on an individual known to be in the third trimester of pregnancy or during labor, delivery, or postpartum recovery, including during all transports, unless a facility superintendent or the facility superintendent's designee determines that a mechanical restraint is necessary to protect the individual from harming herself or others or to prevent the individual's escape from custody. See Md. Code, Human Services, §9-237(c)(11). The department's procedures exceed Maryland law and prohibits the use of waist chains, leg irons, or any other approved device other than handcuffs to limit the movement of a youth's body during the first and second trimester of youth. Additionally, at all times when a youth is known to be pregnant, two staff are required to escort the youth to ensure safety during transport.

The department makes every effort to provide on-site medical and treatment services to youth placed in our facilities. It is an infrequent occurrence when a youth requires transportation to an off-site location to receive medical or treatment services. The department employs a strategy to limit the need to transport youth in DJS facilities by providing access to physicians, nurses, psychiatrist, psychologists, behavioral health specialists and drug counselors inside the facilities operated by the department. In the case when it is necessary to transport a youth to an off-site location in the community for a treatment need, the department collaborates with the service provider to balance the public safety impact, access to contraband and the dignity of the youth.

The department expressly prohibits the use of mechanical restraints when a youth requires emergency medical transport, unless the facility superintendent determines mechanical restraints are necessary due to a security risk, or to protect the youth or others.

⁴ See attachment B.

Specific Facility Transportation Procedures – Based on Facility Type

- Secure Detention and Hardware Secure Facilities

When you are court ordered into secure detention or a hardware secure facility all transports are secure transports.

- Staff Secure

Generally, transports of youth placed in staff secure placements after the first thirty days of placement are not secure transports and do not require mechanical restraints, unless the youth poses a safety, security or escape risk and requires secure transport.

General Facilities Provisions

The department utilizes crisis prevention management (CPM) techniques in departmental facilities to protect or prevent a youth from imminent injury to self and others or to prevent overt attempts to escape. DJS policy expressly prohibits the use of CPM techniques, including mechanical restraints, as a means of punishment, sanction, infliction of pain or harm, demonstration of authority, or enforcing compliance with directions.

Restraints are only used as a last resort to protect or prevent a youth from imminent injury to self and others, or to prevent overt attempts at escape. DJS employees may not use restraints as a means of punishment or for the purposes of inflicting pain, demonstrating authority or enforcing compliance with directions. When it is necessary for a staff to employ a CPM technique to respond to a situation, the staff is expressly directed through very detailed procedures to attempt to incrementally exhaust all preventative measures and intervention levels to de-escalate and defuse a potential crisis. The use of mechanical restraints is only permitted when, after all interventions have been exhausted, the youth remains an imminent threat to self or others and the youth's behavior has escalated.

In the event mechanical restraints are used the incident shall be documented and recorded, on-site health and behavioral health care must be notified, the youth's condition must be constantly monitored, and mechanical restraints must be removed once the situation has been brought under control.

b. The department's rationale for determining who, when, and for what purpose mechanical restraints are used on a youth in DJS custody;

The department implements safety and security policies and procedures in the secure facilities we operate that are designed to keep our youth, our staff and our communities safe. The majority of the youth we serve are either diverted from system involvement or are served in the community, meaning they are not subject to facility safety and security policies.

The department has implemented narrowly tailored policies and procedures that are consistent with national juvenile correctional standards and have been reviewed as fully compliant with the Prison Rape Elimination Act by federal Department of Justice auditors. Additionally, the department makes every effort to employ safety and security procedures that do not invite bias through subjective application.

Policy and procedures that direct the use of mechanical restraints are tied to the security level of the youth. The youth that are the highest risk are generally placed in secure settings with more restrictive safety and security procedures. Likewise, lower security placements are not as restrictive.

c. The expressed policies or rules established by each court jurisdiction regarding the use of mechanical restraints;

Chief Judge Barbera issued a resolution on September 21, 2015 that presumes mechanical restraints should not be used in the courtroom. The department has issued policy, guidance, and directives to support the implementation of the Court’s resolution and the presumption of not restraining youth in the courtroom.

d. The number of incidences in fiscal 2015 and 2016 when mechanical restraints were used on a youth in DJS custody and the age range;

The department does not have data related to frequency of the use of mechanical restraints during secure transport, or the age range of youth. It is a policy-based decision, rather than an incident, as to when mechanical restraints are utilized during secure transport to ensure the safety of the youth, staff and community.

The department can provide data related to the use of mechanical restraints in a DJS operated facility in response to a serious incident. Mechanical restraints may be used in a facility, after all other interventions have failed, to keep youth, staff and the community safe. The graph bellow depicts the total number of restraints used by type; physical or mechanical. Physical restraints encompass a broad range of conduct from staff using a guided touch to staff having to use their body to restrict a youth’s movement. Mechanical restraints encompass the use of a device to restrict bodily movement. In FY 2015 over 80% of all restraints used where physical restraints. The department does not yet have the data available for FY 2016. That data will be available in December 2016.

FY 2015 Restraint Count for DJS-Operated Facilities

	Age at time of incident								Total
	11 and under	12	13	14	15	16	17	18-20	
Physical Restraint Total	2	37	127	273	454	690	646	239	2,468
Mechanical Restraint Total	0	4	16	42	133	183	153	73	604
Restraint Used Total	2	41	143	315	587	873	799	312	3,072

e. All written policies regarding the use of visual body searches of youth in DJS custody;

The department’s written policies regarding the use of visual body searches of youth in DJS custody are attached⁵. The department does not make security procedures related to the use of visual body searches in DJS facilities available to the public.

The visual body search policy and procedure is developed to be compliant with the Federal Prison Rape Elimination Act (PREA) and is guided by the standards issued by the Department of Justice. To monitor compliance, the Department of Justice audits DJS facilities and completes a review of policy and

⁵ See attachment B.

procedures that related to visual body searches. All DJS facilities that have been audited by the DOJ have been found to be in 100% compliance with the PREA standards.

General Visual Body Search Provisions

A visual body search is conducted whenever a youth is admitted to a facility and after visitation.

All staff who conduct searches much successfully complete regularly offered training on visual body search procedures. The procedures require that visual body searches shall be conducted by two staff that are the same gender as the youth in an area to ensure privacy. A staff person is at no time permitted to physically touch a youth, and if contraband is detected the youth shall be taken to the local hospital.

f. The department's rationale for determining who, when, and for what purpose a youth in DJS custody is strip searched;

The department has implemented narrowly tailored policies and procedures that are consistent with national juvenile correctional standards and have been reviewed as fully compliant with the Prison Rape Elimination Act by federal Department of Justice auditors. Additionally, the department makes every effort to employ safety and security procedures that do not invite bias through subjective application.

Policy and procedures that direct the use of visual body searches are used to ensure the youth, staff and community safety. Visual body searches are used in limited circumstances to ensure that youth are not concealing contraband when either admitted to a facility or when in contact with the public. The introduction of contraband does not only jeopardize the safety of individuals through physical harm, but can threaten safety in the facility by creating an underground economy. An underground marketplace can be established when contraband can be traded to carry out a violent act. Additionally, contraband in the form of controlled dangerous substances can put youth at a substantial risk and undermine any drug treatment program we provide.

Lastly, it must be noted that security level or risk level is not indicative of a youth's desire to conceal contraband when entering a facility. There are many documented instances of low-level youth exhibiting violent or self-injurious behavior. Moreover, the United States Supreme Court acknowledged the importance of deference to correctional officials in maintaining safety and order in secure facilities, even in the case of minor offenses.⁶ The Court in that case found no Constitutional violations where an adult minor offender was subjected to routine facility visual body search procedures and found unworkable a rule that allowed for visual body searches of certain offenders only upon providing a particular reason for suspecting contraband.⁷

⁶ See *Florence v. Board of Chosen Freeholders*, 132 S. Ct. 1510 (2012). "The difficulties of operating a detention center must not be underestimated by the courts. . . . Maintaining safety and order at these institutions requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to the problems they face." *Id.* at 1515.

⁷ *Id.* at 1520.

g. The number of incidences in fiscal 2015 and 2016 when a visual body search was used and the age range of youth;

DJS does not have data related to the number of incidences, or the age range of youth, for when a visual body searches was performed. It is the policy-based decision, rather than an incident, as to when visual body searches are utilized to ensure the safety of the youth, staff and community.

h. The department's plans for addressing the General Assembly's expressed concerns with the existing shackling and strip search policies.

The Department of Juveniles Services' highest priority is to keep the youth we serve safe, keep the staff that provide supervision and care to our youth safe, and to keep the communities we share safe while maintaining the dignity of the youth and providing quality treatment and care. To that end, the department is committed to routinely reviewing our policy, procedures and practices to implement methods to that best fit the diverse needs of the youth we serve.

The department has engaged in reviewing the policies and procedures that proscribe the use of mechanical restraints and visual body searches. The department's plan for addressing the General Assembly's express concerns includes:

- Issuing new facility standards that are in-line with recognized national juvenile justice standards to further enhance staff knowledge and department auditing functions;
- Reviewing the standard as to when a visual body search can be utilized to generally limit the application when a youth is out of the control and custody of the department;
- Reviewing the use of secure transports when you are transported on an earned "home pass";
- Participation in the legislatively convened Task Force⁸; and
- Continue to support legislative efforts to establish a minimum age for detention⁹.

⁸ During the 2016 session of the Maryland General Assembly the legislature passed a bill to convene a Task Force to review the department's safety and security policies. (Chapter 655, 2016 Laws of Maryland)

⁹ During the 2013 session of the Maryland General Assembly the department supported legislative efforts (HB711) to prohibit continued detention of youth under the age of 12.



Detention Facilities

Baltimore City Juvenile Justice Center

300 North Gay Street
Baltimore, MD 21202

Charles H. Hickey, Jr. School

9700 Old Harford Road
Parkville, MD 21234

Western Maryland Children's Center

18420 Roxbury Road
Hagerstown, MD 21740

Lower Eastern Shore Children's Center

405 Naylor Mill Road
Salisbury, MD 21801

Thomas J. S. Waxter Children's Center

375 Red Clay Rd.
Laurel, MD 20724

Alfred D. Noyes Children's Center

9925 Blackwell Rd.
Rockville, MD 20850

Cheltenham Youth Facility

11001 Frank Tippet Rd.
Cheltenham, MD 20623

Hardware Secure Committed Programs

Victor Cullen Center

6000 Cullen Dr.
Sabillasville, MD 21780

J. DeWeese Carter Center

300 Scheeler Rd.
Chesterstown, MD 21620

Staff Secure Committed Programs

Backbone Mountain Youth Center

Route 1, 124 Camp 4 Road
Swanton, MD 21562

Green Ridge Youth Center

0700 Fifteen Mile Creek Road
Flintstone, MD 21530

Meadow Mountain Youth Center

234 Recovery Road
Grantsville, MD 21535

Savage Mountain Youth Center

164 Freedom Lane
Lonaconing, MD 21539



Successful Youth • Strong Leaders • Safer Communities

POLICY

SUBJECT: Use of Crisis Prevention Management (CPM) Techniques Policy

NUMBER: RF-02-07 (Residential Facilities)

APPLICABLE TO: Residential Services

APPROVED: _____ /s/signature on original copy

Donald W. DeVore, Secretary

DATE: _____ March 27, 2007

I. POLICY

Employees of the Department of Juvenile Services (DJS) and DJS-licensed private residential facilities shall establish and maintain a safe and orderly environment within each facility. Crisis Prevention Management (CPM) techniques may be used only by staff who have completed a DJS-approved training program and who provide documentation of completion of semi-annual refresher training. Crisis Prevention Management techniques may be utilized only to: protect or prevent a youth from imminent injury to self and others, or to prevent overt attempts at escape. In the event that a youth remains an imminent threat to self or others and the youth's behavior has escalated, restraints or seclusion may be used as a last resort. Employees may not use CPM techniques, including restraints or seclusion, as a means of punishment, sanction, infliction of pain or harm, demonstration of authority, or program maintenance (enforcing compliance with directions).

II. AUTHORITY

- A. Annotated Code of Maryland, Article 83C, §§2-102; 2-104; 2-118; 2-135.
- B. COMAR 14.31.05.07.
- C. American Correctional Association, Standards for Juvenile Detention Facilities, 3- JDF-3A-16; 3-JDF-3A-17; 3-JDA-3A-18; 3-JDF-3A-27; 3-JDA-28; 3-JDA-3A- 29; 3-JDF-3A-30.
- D. COMAR 16.05.02.
- E. Maryland Standards for Juvenile Detention Facilities.
- F. National Commission on Correctional Health Care, Standards for Health Services in Juvenile Detention and Confinement Facilities, Y-1-01, Use of Mechanical Restraint

III. DIRECTIVES/POLICIES RESCINDED



POLICY

SUBJECT: Transportation of Youth – Residential & Community

NUMBER: RF-707-14

APPLICABLE TO: Transportation Officers and Residential and Community Services Staff

APPROVED: _____ /s/ signature on original
Sam Abed, Secretary

EFFECTIVE DATE: _____ 7/15/14

- I. POLICY**
The Department of Juvenile Services shall establish procedures for transporting youth under supervision in a safe and secure manner. Procedures shall define the proper use of restraints.
- II. AUTHORITY**
- A. Md. Code Ann., Human Services, §9-203, §9-204 and §9-227 (2) (i)
 - B. COMAR 16.18.02.04
 - C. DBM Policies and Procedures for Drivers of State Vehicles (July 2010)
 - D. DBM Policies and Procedures for Vehicle Fleet Management, (July 2010)
 - E. Executive Order 01.01.2009.08 - Be a Driving Force for Safety Program
 - F. DBM Hands-free Cell Phone Use Policy (October 1, 2009)
- III. DIRECTIVES/POLICIES RESCINDED**
- A. Youth Transportation Policy - Transportation Employees, RF-1-05 (Residential Facilities)
 - B. Use of Restraints on Pregnant Youth Directive (OP-03-13)
- IV. FAILURE TO COMPLY**
Failure to comply with the Department's Policy and Procedures shall be grounds for disciplinary action up to and including termination of employment.
- V. STANDARD OPERATING PROCEDURES**
Standard operating procedures have been developed and are attached to the policy.



POLICY

SUBJECT: Searches of Youth, Employees, and Visitors
NUMBER: RF-712-14
APPLICABLE TO: Employees of DJS Owned and Operated Residential Facilities and DJS Transportation Employees

APPROVED: _____ /signature on original/
Sam Abed, Secretary
DATE: _____ 11/5/14

I. POLICY

Employees responsible for the direct supervision of youth committed to a Department of Juvenile Services' (DJS) owned and operated residential facility shall conduct searches of youth, employees, and visitors to ensure safety and security. Employees shall conduct searches in a professional manner to avoid harassment, indignity, embarrassment and unnecessary force.

II. AUTHORITY

- A. Md. Code Ann., Human Services, §9-203 and §9-204
- B. American Correctional Association, Standards for Juvenile Detention Facilities, 3-JDF-3A-19 through 3-JDF-3A-21
- C. DJS Standards for Residential Facilities

III. DIRECTIVES/POLICIES RESCINDED

Searches Policy, RF-06-07

IV. FAILURE TO COMPLY

Failure to comply with the Department's policies and procedures shall be grounds for disciplinary action up to and including termination of employment.

V. STANDARD OPERATING PROCEDURES

Standard operating procedures have been developed.