

**PETITION BY THE CITY OF NEW YORK FOR APPROVAL OF AN  
ALTERNATE METHOD FOR IMPLEMENTING REGULATORY MANDATES**

1. The recently enacted Close to Home (CTH) legislation authorizes New York City to provide a juvenile justice system that ensures public safety and improves short term and long term outcomes for youth and their families. (Part G of Chapter 57 of the Laws of 2012, p. 41). Under the Social Services Law (SSL ) §404, New York City is authorized, upon approval by the New York State Office of Children and Family Services (OCFS) of its plan for non-secure placement of adjudicated juvenile delinquents, to provide juvenile justice services to all adjudicated juvenile delinquents determined by a family court as needing placement in a non-secure facility. SSL §404 (2)(j) and 10(b), along with the legislative intent section of CTH, clearly mandate that ensuring both public safety and program safety are an important part of the implementation of the legislation.
2. Under the New York City Charter, the Commissioner of the Administration for Children's Services (ACS) has the powers and duties of a commissioner of social services, and has the power to perform functions related to the care and protection of children, including providing suitable and appropriate care for children who are in the care, custody or guardianship of the commissioner (New York City Charter §617).
3. New York City's Administration for Children's Services (ACS) submitted the final plan for the non-secure phase of the Juvenile Justice CTH initiative to OCFS on June 8, 2012. On July 5, 2012, OCFS granted approval to ACS to implement the non-secure phase of the Juvenile Justice Close to Home Initiative, effective September 1, 2012. The approval letter is attached as an addendum to this petition.
4. Pursuant to Family Court Act §353.3 (2-a) (a)(i), effective September 1, 2012, in New York City, adjudicated juvenile delinquents needing non-secure placement may only be placed in the custody of the Commissioner of ACS.
5. Section 7 of the New York City Charter authorizes the Mayor to appoint deputy mayors and to determine their duties and responsibilities. Pursuant to Executive Order No. 111 (dated February 20, 2008), the

Mayor of the City of New York has designated that the Deputy Mayor for Health and Human Services shall supervise and coordinate the operations of ACS.

6. Under SSL §404 (10), the Close to Home initiative shall be implemented in accordance with all applicable federal and state laws and regulations, including the New York State Social Services Regulations. 18 NYCRR 441.18 addresses searches (highlighted immediately below), and the City seeks an alternative method of implementing the search of person and property while conforming to the regulatory mandate:

§441.18 (d) (1) Searches of a child's property may be made only when there is reasonable cause to suspect that the child has in his possession one or more of the following: an item(s) which does not belong to him; items, the possession of which by either an adult and/or a child is a crime or offense (e.g. weapons, firearms, controlled substances and marijuana) or articles which the authorized agency, or foster parent subject to the supervision of the authorized agency, may consider to be dangerous or harmful to the child, other children in the home or agency or to the physical structure. A search may include having a child empty out his/her pockets when there is reasonable cause to believe that a stolen or illegal item may be concealed there.

(2) Only in instances when the conditions of paragraph (1) of this subdivision are present, and in addition, there is reasonable cause to believe that the child or other persons in the facility or home are in imminent danger of serious harm due to the child's intent to use or distribute an object(s) or substance(s) in his/her possession may the child's person be searched. In such situations a search may include asking a child to empty such personal effects as a wallet or purse; removing outer garments such as a coat, hat or shoes; garments may be searched carefully (frisked) including pant cuffs, sleeve cuffs and waist bands; and a visual inspection of the mouth, nose and ears may be done. This type of search should be done by a person of the same sex as the child. Strip searches are not permissible.

7. Some of the non-secure population is currently placed in OCFS facilities. OCFS has acknowledged the importance of maintaining a contraband-free program, and in doing so has promulgated policies and procedures regarding the use of searches within its own facilities. These policies work towards ensuring the safety of residents, staff and the public. OCFS' personal search policy for non-secure placement facilities housing adjudicated juvenile delinquents amplifies and amends what is allowable under the above mentioned state regulations, and in doing so, helps

maintain a contraband-free program and thereby protects the safety of NSP residents and staff, and the public. (See attached OCFS PPM).

- (a) OCFS Policy and Procedure Manual (PPM) 3247.18 (F)(5) allows pat searches after a youth is interviewed by officials, enters the visiting room, goes to or returns from housing areas and outside work details, when the entire facility is searched, goes to or from program or recreation areas, or under the direction of supervisory staff.
  - (b) PPM 3247.18 (F)(7)(b) mandates strip searches upon the admission to an OCFS non-secure facility, return from an unsupervised home visit, transfer from an OCFS facility and return from off grounds trip if not under constant staff supervision, upon completion of group visitation or family days unless constantly supervised by staff, or if there is reasonable cause for the search.
8. OCFS has acknowledged the importance of ensuring public safety as part of the CTH non-secure placement plan.
9. Ensuring public safety is mandated by the CTH legislation. Under SSL § 404 (10)(b), the social services district is required to provide each juvenile delinquent with an appropriate level of services designed to meet his or her individual needs and to enhance public safety.
10. Ensuring program safety is mandated by the CTH legislation in SSL § 404 (2)(j). Under the legislation, the CTH Plan was required to address how the social services district will develop and implement programs and policies to ensure program safety.
11. Pursuant to Section 204-a of the New York State Administrative Procedure Act (SAPA), New York City, through ACS, seeks approval of an alternate method for implementing the requirements of 18 NYCRR Part 441 in order to conform to the program and public safety requirements of the CTH legislation and SSL 404 (2)(j) and (10)(b). The proposed alternate methods would allow ACS to issue policies that will conform to the OCFS PPMs, and ensure the safety of non-secure placement (NSP) facility residents, staff, and the public.

The protection of NSP residents, NSP staff and the public are of utmost concern to ACS. The ability to search youth for contraband is necessary to ensure both program and public safety. To this end, ACS' alternative method for implementing the requirements of 18 NYCRR Part 441 adopts many of the same safety-driven policies and procedures already in place in non-secure facilities run by OCFS:

- (a) Pat-frisk searches (similar to OCFS' "pat search") may be conducted as part of a routine procedure when residents enter or leave the facility or school, or after receiving a visit at the facility, or at the discretion of staff when they suspect youth may possess contraband. Pat-frisk searches are defined in the ACS policy as "a visual or manual inspection of a youth's body that consists of physically patting down his/her clothing. The youth may be required to remove his/her outer clothing such as a coat, hat or shoes. A pat-frisk search may be part of the routine operation of all non-secure facilities. Pat-frisk searches may also include the use of a hand-held metal detector to detect metal objects on a youth or his/her property."
  
- (b) Security searches (more thorough personal searches) may be conducted upon admission to the NSP facility and upon readmission as a result of revocation of aftercare status as a part of routine procedure. Security searches are also permissible based on individualized reasonable suspicion that the youth may possess contraband in the following situations: returns from any outside appointment or contact where constant NSP facility staff supervision was not maintained; returns from a home visit; after a visit from an authorized visitor; or under any other circumstances where NSP provider staff has an individualized reasonable suspicion that the youth may possess contraband. Security searches are defined as "an inspection to check for contraband, conducted to maintain the safety and security of staff and youth, that requires the youth to wear a medical gown or robe after removing his/her upper garments, then subsequently removing all of his/her undergarments. Security searches shall also include the use of a hand-held metal detector to detect metal objects on a youth and in his/her property."

The fact that the residents are adjudicated juvenile delinquents, combined with the need to protect the other residents and the community, gives ACS the reasonable cause required by the social service regulations and PPMs to conduct personal searches in the limited scenarios detailed above. ACS' proposed NSP Personal Youth Search Policy is attached as an addendum to this petition.

12. Pursuant to SAPA §204-a(2)(a), this alternative method for implementing the requirements of 18 NYCRR Part 441 has been approved by the Deputy Mayor for Health and Human Services of the City of New York. (Attached is a copy of said approval).

13. This petition has not been submitted to authorized agents of any certified or recognized employee organizations representing employees who would be affected by implementation of the alternate method, as ACS has determined that the proposed alternate method would not affect any City employees.
14. The implementation of this proposed alternate method would be cost neutral. There should be no fiscal impact on OCFS nor would there be any return to the State of New York from savings by implementing this alternative method.
15. Ronald E. Richter, Commissioner of New York City's Administration for Children's Services, 150 William Street, New York, New York 10038, is the representative/contact who will coordinate requests for any additional information required to approve this petition.

Dated: July 26, 2012

Respectfully submitted by:



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Ronald E. Richter, Commissioner



**APPROVAL BY THE DEPUTY MAYOR FOR HEALTH AND HUMAN SERVICES OF THE CITY OF NEW YORK OF AN ALTERNATE METHOD FOR IMPLEMENTING REGULATORY MANDATES**

§ 7 of the New York City Charter authorizes the Mayor of the City of New York to appoint deputy mayors and to determine their duties and responsibilities. Pursuant to Executive Order No. 111 (dated February 20, 2008), the Mayor has designated that the Deputy Mayor for Health and Human Services shall supervise and coordinate the operations of Administration for Children's Services.

Under the New York City Charter, the Commissioner of the Administration for Children's Services (ACS) has the powers and duties of a commissioner of social services, and has the power to perform functions related to the care and protection of children, including providing suitable and appropriate care for children who are in the care, custody or guardianship of the commissioner (New York City Charter §617).

The recently enacted Close to Home (CTH) legislation authorizes New York City to provide a juvenile justice system that ensures public safety and improves short term and long term outcomes for youth and their families. (Part G of Chapter 57 of the Laws of 2012, p. 41). Under the Social Services Law (SSL §404), New York City, upon approval of its non-secure placement plan by New York State's Office of Children and Family Services (OCFS), is authorized to provide juvenile justice services to all adjudicated juvenile delinquents determined by a family court as needing placement in a non-secure facility.

ACS submitted the final plan for the non-secure phase of the Juvenile Justice CTH Initiative to OCFS on June 8, 2012. On July 5, 2012, OCFS granted approval to ACS to implement the non-secure phase of the Juvenile Justice CTH Initiative, effective September 1, 2012.

Pursuant to Family Court Act §353.3 (2-a) (a)(i), effective September 1, 2012, in New York City, adjudicated juvenile delinquents needing non-secure placement may only be placed in the custody of the Commissioner of ACS.

Both SSL § 404 (10)(b) and the legislative intent section of the CTH legislation require ACS to ensure the safety of the public while caring for children placed in non secure placement (NSP) facilities. Under those provisions, ACS is required to provide each juvenile delinquent with an appropriate level of services designed to meet his or her individual needs and to enhance public safety.

Ensuring program safety is mandated by the CTH legislation in SSL § 404 (2)(j). Under the legislation, the CTH Plan was required to address how the social services district will develop and implement programs and policies to ensure program safety.

Under SSL §404 (10), the Close to Home initiative shall be implemented in accordance with all applicable federal and state laws and regulations, including the New York State Social Services Regulations. 18NYCRR 441.18 is the section of the New York State Social Services regulations which addresses searches.

Most of the non-secure population is currently placed in OCFS facilities. OCFS has promulgated policies and procedures regarding the use of searches within their own facilities. These policies help maintain a contraband-free facility, thereby ensuring the safety of residents, staff and the public.

OCFS has policies and procedures for OCFS non-secure facilities, housing adjudicated juvenile delinquents which amplify and amend what is allowable under the state regulations, and in doing so, protect the safety of NSP residents, staff, and the public.

The CTH legislation and SSL § 404 (10)(b) and (2)(j) mandate that ACS ensures both public and program safety. New York City, through ACS, seeks approval of an alternate method for implementing requirements of 18 NYCRR Part 441 in order to conform to the requirements of the CTH legislation and SSL§ 404, pursuant to Section 204-a of the New York State Administrative Procedure Act (SAPA), in a manner which will carry out the objectives of the regulatory mandate and ensure the safety of non secure placement (NSP) facility residents and staff, and the public.

The protection of NSP residents, NSP staff and the public are of utmost concern to ACS. To this end, ACS' alternative method for implementing the requirements of 18 NYCRR Part 441 adopts many of the same safety-driven policies, practices, and procedures already in place in non-secure facilities run by OCFS:

- (a) Pat/frisk searches are permitted every time residents enter or leave the facility or school, after receiving a visit at the facility, or at the

discretion of staff when they suspect youth may possess contraband.

- (b) Security searches (more thorough personal searches) are permitted upon admission to the NSP facility and upon re-admission into any NSP facility as a result of revocation of aftercare status as a part of routine procedure. Security searches are also permissible based on individualized reasonable suspicion that the youth may possess contraband in the following situations: returns from any outside appointment or contact where constant NSP facility staff supervision was not maintained, returns from a home visit, after a visit from an authorized visitor, or under any other circumstances where NSP provider staff has an individualized reasonable suspicion that the youth may possess contraband.

The fact that the residents are adjudicated juvenile delinquents, combined with the need to protect the other residents, staff, and the community, gives ACS the reasonable cause required by the social service regulations to conduct resident searches in the limited scenarios detailed above, and in accordance with the procedures detailed in our NSP Personal Youth Search Policy.

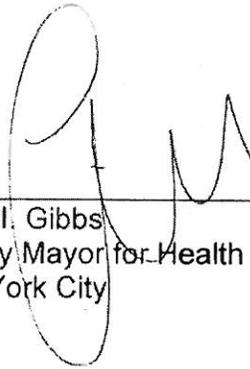
The proposed alternative method of implementing 18 NYCRR 441 is consistent with and will effectively carry out the mandates of the CTH legislation and SSL § 404 in ensuring the safety of the public and the program.

The implementation of this proposed alternative method would be cost neutral.

There should be no fiscal impact on the New York State Office of Children and Family Services (OCFS) nor would there be any return to the State of New York from savings by implementing this alternative method.

Dated: July 24, 2012

Respectfully submitted by:



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Linda I. Gibbs  
Deputy Mayor for Health and Human Services,  
New York City

R. Barbieri  
© 201202536



July 5, 2012

New York State  
Office of  
Children &  
Family  
Services

Ronald E. Richter  
Commissioner  
Administration for Children's Services  
150 William Street, 18<sup>th</sup> Floor  
New York, NY 10038

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Dear Commissioner Richter:

Andrew M. Cuomo  
Governor

Gladys Carrión, Esq.  
Commissioner

This letter responds to your requests that the New York State Office of Children and Family Services (OCFS) approve the final New York City Administration for Children's Services' (ACS') plan for the non-secure phase of the Juvenile Justice Close to Home Initiative, dated June 8, 2012 (final plan).

OCFS applauds ACS for the thoroughness of the final plan and commends ACS for the changes incorporated into the final plan in response to public feedback, including comments received from OCFS.

Capital View Office Park  
52 Washington Street  
Rensselaer, NY  
12144-2834

Given the complexity of the Juvenile Justice Close to Home Initiative, there is an agreement between OCFS and ACS to continue to work collaboratively to clarify or develop policies and practices regarding certain programmatic issues relating to implementation of the non-secure phase of the Close to Home initiative. OCFS will reach out to ACS to arrange meeting times to continue discussing these matters.

Therefore, it is with great pleasure that I inform you, that, as authorized by Social Services Law § 404(2) and (5), OCFS, after consultation with OMH and OASAS, hereby grants approval to ACS to implement the non-secure phase of the Juvenile Justice Close to Home Initiative effective September 1, 2012 in accordance with the final plan submitted on June 8, 2012 and any additional policies and practices approved by the State.

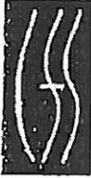
I look forward to OCFS and ACS' continued partnerships as our agencies endeavor to create a juvenile justice system that enhances public safety and improves short and long term outcomes for youth and their families.

Sincerely,

Gladys Carrión, Esq.,  
Commissioner



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New York State  
Office of  
Children &  
Family  
Services

**MEMORANDUM**

**To:** Facility Directors

**From:** Joyce Burrell; Deputy Commissioner *Joyce Burrell*  
Division of Juvenile Justice and Opportunities for Youth

**Subject:** Modification of OCFS PPM No. 3247.18  
Contraband, Inspection and Searches within OCFS  
Programs

**Date:** September 16, 2008

David A. Paterson  
Governor

Gladys Carrión, Esq.  
Commissioner

This is to provide further clarification of revisions to the OCFS Policy 3247.18 "Contraband, Inspections and Searches within OCFS Facilities" and supercedes the memorandum dated July 16, 2008.

Capital View Office Park:

52 Washington Street  
Rensselaer, NY  
12144-2796

Please be advised that, effective immediately the provisions of the aforementioned policy pertaining to strip searches of residents (section F.7), is replaced with the provisions for strip searches stated below. Please be sure that all of your key staff are familiarized with these provisions. If you have any questions, please contact Merle Brandwene.

7. Strip Search

a. Application. Strip searches shall be conducted in the following circumstances:

1. Where a resident is newly admitted to direct OCFS supervision to (1) a secure facility (2) a reception program; (3) a limited secure facility; or (4) a non-community based non-secure facility.
2. Upon a transfer from a non-OCFS facility, return from Community Partnerships Bureau involvement or return from an unsupervised home visit to: (1) a secure facility; (2) a limited secure facility; (3) a reception program; or (4) a non-community based non-secure facility.
3. Upon a transfer from an OCFS facility or return from an off grounds trip to: (1) a secure facility; (2) a limited secure facility; (3) a reception program; or (4) a non-community based non-secure facility, only if the resident has not been under constant staff supervision during the transfer or off grounds trip. It is expected that sufficient supervision will be provided to permit constant supervision and that supervision will be interrupted only in unusual circumstances or where it is necessary for reasons associated with an off grounds trip.



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Employer

4. Upon completion of group visitation or family days at a secure facility, a limited secure facility, a reception program or a non-community based non-secure facility. Strip searches shall not occur after individual visits that are continuously supervised by staff unless there is reasonable cause for the search [see 5, below].

5. Where there is reasonable cause to believe that a resident is hiding contraband on his/her body and the contraband has not been detected by means of a pat search or metal detector search. A Youth Counselor 2 or above must authorize the strip search.

b. Procedure

1. In all cases a strip search shall entail the following without touching of the resident by the staff unless touching is necessitated by a need to use physical restraint (see PPM 3247.13):

a. a search of a resident's clothing once removed

b. a visual inspection of the resident's naked body

c. a visual examination of the mouth, nose and ears

d. visual examination of hair by requiring the resident to run hands through hair;

e. visual examination of exposed armpits, bottoms of feet separated fingers, toes and skin folds with the resident being directed to move to permit inspection;

f. visual inspection of the buttocks area after the resident has been directed to separate the buttocks while standing;

g. (1) for males, visual inspection of the penis/scrotum areas with the resident being directed to lift the penis and to roll back the foreskin if uncircumcised;

(2) for females, visual inspection of the area underneath the breasts with the resident being directed to lift the breasts.

2. In addition, residents will be required to squat, cough deeply, bend over and spread the buttocks to permit visual examination of the anus and vagina if female in the following circumstances:

a. Where a youth is newly admitted to direct OCFS supervision to (1) a secure facility; (2) a reception program; (3) a limited secure facility; (4) a non-community based non-secure facility; (5) transferred to OCFS from a non OCFS facility; or (6) returned from community supervision or a home visit

b. Where there is reasonable cause to believe that a resident is hiding contraband in a body cavity after the contraband has not been detected by means of a pat search metal detector search or other strip search procedures. A staff supervisor of grade 21 or above must authorize the inspection.

Cc: T. Hough  
I. Nieves  
F. Franco  
V. Abbitt  
E. Lopez  
B. Burns  
S. Norsby-Ovenshire  
B. Sowersby  
K. Pfisterer  
M. Brandwene  
M. Galarza  
K. Kelley

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 PPM 3247.18 - Contraband, Inspections & Searches  
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NEW YORK STATE - OFFICE OF CHILDREN & FAMILY SERVICES

P O L I C Y M A N U A L

TITLE: Contraband, Inspections & Searches Within OCFS Programs		ITEM No.: 3247.18
APPROVED BY:  (signed) John A. Johnson, Commissioner		DATE: 11/01/98
RELATED LAWS:	APPENDIX PAGES:	PAGE: 1 of 12
SUPPORTING REGULATIONS:	CONTACT UNIT: ORS Management Support	
REGULATORY BULLETINS & DIRECTIVES:	ACA STANDARDS: 3-JTS-3A-19, 3A-21, 2E-03 3-JTS-5A-01, 5G-03, 5H-07 3-JCRF-3A-12, 5G-03	
SUPERSEDES: Item Number            Date	RELATED POLICIES: Item Number    Title	
3247.18                7/07/87	3247.25    Screen & Inspect Employees Visitors 3247.70    Security, Perimeter & Gate Areas 3422.00    Resident Mail	

SUMMARY: This policy identifies procedures to prevent introduction of contraband into residential programs.  
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A. POLICY

It is the policy of the New York State Office of Children and Family Services (OCFS) to operate contraband free programs through extensive use of contraband control functions including, but not limited to, searches of visitors and residents; searches of resident living, program and recreational areas; the proper training of staff in the conduct of searches; the appropriate use of disciplinary sanctions to deter possession or use of contraband and/or the preference of criminal charges, where necessary to enforce OCFS policy.

B. INTRODUCTION

The purpose of this policy is to define contraband and describe various methods of preventing the introduction of contraband into our residential programs, including the conduct of searches and the circumstances under which they may be conducted within OCFS facilities.

C. SCOPE

This policy pertains to contraband as it applies to the Office of Children and Family Services, its facilities, offices and grounds as well as the vehicular transport of residents. It is understood that many items, not considered contraband to the general public, shall be considered contraband for residents (examples: cash, credit cards, cigarettes, matches).

D. DEFINITIONS

1. Contraband means those articles:
  - a. the possession of which is prohibited under any law applicable to the general public;
  - b. which are readily capable of being used to cause death or serious physical injury including, but not limited to, firearms, cartridges, knives, explosives, or illegal drugs;
  - c. which are prohibited by the regulations and policies of the OCFS and rules of the facility;
  - d. which are possessed by a resident without authorization when such authorization is required by regulations and policies of the OCFS and rules of the facility.
2. Inspection. A routine close examination (visual) to ensure that standards of cleanliness, orderliness, safety and security are being maintained, and to detect and report any deficiencies or exceptions.
3. Search. An organized process or processes conducted specifically to look for and/or to engage in an active, concise method of seeking out contraband and utilized for the express purpose of preventing the introduction of contraband. See Section F for further definition.
4. Personal Search. Searching of a resident's person, which is a sound security practice and a necessary element of contraband control. The employee(s) conducting the search must assure its thoroughness and still maintain the dignity of the resident being searched.  
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5. Staff Supervisor. For purposes of this policy, an employee at grade level 18 or above, except in facilities of 25 beds or less where the employee may be at grade level 14 or above, designated by the facility director to authorize or supervise the conduct of searches according to provisions of this policy.

E. INSPECTIONS

1. Regular inspections help to maintain efficient facility operations and permit assessment of resident behavior, staff effectiveness in the performance of duties, and overall facility morale.

a. The facility director or facility assistant director shall visit and inspect each living and activity area at least once per week.

b. Unit managers shall inspect each area under their supervision daily.

c. Supervisory staff shall inspect each area under their supervision daily.

d. Line staff shall inspect their respective areas on each tour of duty.

2. The purpose of inspections is to ensure a clean, orderly, safe and secure environment for residents and staff. Said inspections shall include, but are not limited to, the following:

a. All security devices (e.g., locks, doors, windows/screens, fences, gates).

b. All safety devices/procedures (e.g., fire extinguishers, smoke/heat detectors, sprinkler heads, fire hoses, evacuation plans, first aid kits, lighting, heat, toxic and flammable controls).

c. Logs - To ensure consistency with the provisions of Policy #3247.09, "Facility Logs".

d. Resident rooms - To ensure conformity with the provisions of the Youth Development System.

e. Resident attire - To ensure conformity with resident uniform standards.

f. Resident attitude and behavior - To ensure conformance with provisions of the Youth Development System.

g. Furniture and equipment - To ensure safety, security and appropriate appearance.

h. Posted materials - To detect tampering or damage, e.g., graffiti.

3. Deficiencies identified during any inspection shall be entered in the unit/area log. They must also be reported immediately, or as soon as practical, to the administrator on duty and followed by a written report, through appropriate channels, to the facility director/designee prior to the end of the shift.

a. Corrective action shall be promptly initiated when necessary.

4. All inspections conducted by administrative personnel shall be entered in the unit/area log in red ink.

#### F. PERSONAL SEARCHES

1. Purpose - To determine whether or not a resident has concealed contraband on his/her person or in his/her clothing.

2. Application - These guidelines apply specifically to personal searches of OCFS residents at all levels.

3. General Guidelines:

a. Personal searches shall be conducted only to search for contraband. They shall not be conducted to punish, harass or embarrass.

b. ~~PERSONAL SEARCHES SHALL BE CONDUCTED BY STAFF OF THE SAME GENDER AS THE RESIDENT BEING SEARCHED. An exception may be made in an emergency, or~~ when no staff of the same gender are on duty, with prior approval of the Facility Director, or person acting in that capacity. Metal detector and mouth searches may be conducted by any available staff member.

c. A record of all strip searches must be duly entered in the unit or facility log book. Body cavity and radiological searches must be entered in the facility log and reported to the Unusual Incident Reporting (UIR) system. The information must include:

- (1) Type of search
- (2) The date and time
- (3) The name of the resident subjected to the search
- (4) The name of the staff conducting the search
- (5) The name of the supervisor authorizing the search
- (6) The specific facts and reasons underlying the authorization for the search
- (7) An itemization of any article(s) of contraband confiscated during the search
- (8) Any other information related to the search

d. Where a body cavity and/or radiological search is conducted, a report containing the information listed in F.3.c. above shall be sent to the Deputy Commissioner for Rehabilitative Services or designee, within five (5) business days of the time of the search.

e. Strip searches must be conducted in an area or location which provides privacy and reasonable comfort and does not permit other residents and persons not involved in the search to observe the undressed resident.

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f. Body cavity searches shall be conducted in a medical room, except in an emergency. In an emergency, where a medical room is not readily available, an area or location may be used which provides privacy and reasonable comfort and does not permit other residents and persons not involved in the search to observe the undressed resident. If the resident shall be undressed, a covering such as a robe, gown or sheet shall be provided.

4. Metal Detector Search - A search in which a resident is passed through a metal detector or in which a hand-held metal detector is passed over a

resident's body to determine whether there are metal objects in clothing or otherwise concealed on the body.

Application. A metal detector search may be made of residents:

- going to and from work, housing, and program areas;
- entering and leaving the facility on outside work details;
- attending facility affairs where family and visitors are present;
- in conjunction with a pat search (as described below);
- meeting with or in the presence of OCFS officials or visitors; and
- as directed or authorized by supervisory staff.

5. Pat Search - A search by hand of a resident's person and his/her clothes while the resident is clothed, except that the resident may be required to remove coat, hat and shoes. The resident shall be required to run fingers through his/her hair and spread fingers for visual inspection.

The search shall include searching into the resident's clothing, checking seams, cuffs, and linings.

Application. A pat search may be made of residents:

- to be interviewed by officials, the Board of Parole, or official visitors;
- entering the visiting room;
- going to and returning from housing areas and/or outside work details;
- when the entire or an individual area of the facility or living quarters are searched;
- enroute to and from program and recreation areas;
- where there are reasonable grounds to believe a resident is in possession of contraband; or
- as directed or authorized by supervisory staff.

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Note: Use of a hand-held metal detector is always appropriate to supplement the pat search.

6. Mouth Search - A visual inspecting of a resident's mouth. A resident shall be required to open his/her mouth, remove any dentures, move the tongue up and down and from side to side and using (the resident's) fingers pull down the lower lip and then pull the upper lip exposing the gums.

A mouth search may be used in conjunction with any other type of personal search. When used in conjunction with a strip search, the mouth search shall be conducted first.

7. Strip Search - A search of a resident's clothing once it is removed and a visual inspection of the resident's naked body. In addition, a visual inspection of body cavities shall be conducted. Staff shall not touch a resident at any time for the purpose of conducting a strip search, unless it becomes necessary to use physical force to gain compliance.

a. For a male resident, the strip search includes the following procedures:

- visual examination of mouth (See F.6., Mouth Search);
- visual examination of nose and ears;

- resident runs fingers through his hair and staff visually examines;
- resident lifts arms to expose armpits to visual examination;
- visual examination of hands, between fingers, bottoms of feet and between toes;
- resident lifts penis and scrotum and, if uncircumcised, rolls back foreskin to expose areas to visual examination;
- resident separates body folds or creases to expose areas to visual examination;
- resident squats and coughs deeply to dislodge any articles concealed in anus;
- resident bends over and spreads the buttocks to expose the anus to visual examination;
- staff search of each article of clothing.

b. For a female resident, the procedures include the following:

- visual examination of mouth (See F.6., Mouth Search);
- ~~visual examination of nose and ears;~~
- resident runs fingers through her hair and staff visually examines;
- resident lifts arms to expose armpits to visual examination;
- visual examination of hands, between fingers, bottoms of feet and between toes;
- resident lifts breasts to expose areas to visual examination;
- resident separates body folds or creases to expose areas to visual examination;
- resident removes any sanitary articles from body or clothing, i.e. tampon, sanitary napkin;
- resident squats and coughs deeply to dislodge any articles concealed in the anus or vagina;
- resident bends over and spreads the buttocks to expose the anus and vagina to visual examination;
- staff search of each article of clothing.

Application. A strip search shall be conducted after a visit, community visit (including funeral and death bed visits) medical visit, court trip, upon receiving a resident on transfer from detention, a voluntary agency or another OCFS facility, or admission to a Special Housing Unit, at all secure, limited secure and non-secure/non-community based facilities.

A strip search may be conducted for any of the above reasons at a community-based program, upon authorization of a staff supervisor.

A strip search may be conducted, upon authorization of a staff supervisor, when staff believe that a resident is hiding contraband on his/her body and/or in a body cavity, and the contraband cannot be detected via a metal detector or pat search.

8. Body Cavity Search - A physical examination of a resident's anal and/or genital cavities by a Physician, Physician's Assistant or Nurse Practitioner.

Application. May only be conducted after all other methods of search have been employed and the facility director, or person acting in that capacity, still believes that the resident has contraband secreted within a body cavity. The facility director shall consult with the OCFS Director of Health

Services and the Deputy Commissioner for Rehabilitative Services before employing this method of search. Prior approval of the Deputy Commissioner is required.

When a body cavity search is conducted, it shall be reported as an Unusual Incident.

9. Radiological Search - An internal search of the resident's person via use of x-ray equipment.

Application. May only be conducted after all other methods of search (except body cavity search) have been employed and the Facility Director, or person acting in that capacity, still believes that the resident has contraband secreted within his/her body.

A radiological search requires approval of the facility director, or person acting in that capacity, and only after consultation with the OCFS Director of Health Services to ensure that such a search will not be injurious to the resident's health, and with the Deputy Commissioner for Rehabilitative Services. Prior approval of the Deputy Commissioner is required.

When a radiological search is conducted, it shall be reported as an Unusual Incident.

#### G. SEARCHES OF FACILITY SPACES

1. Routine Unit Search - A routine unit search is when a resident's living quarters (unit) is periodically searched in accordance with a directive issued by the facility director or designee. This shall include a thorough search of each resident's room/bed area.

a. A routine search of each living unit shall be conducted at a minimum of once per month.

b. During a routine unit search, each resident present may be strip searched, including a mouth search.

c. Routine unit searches shall be conducted under direct supervision of a staff supervisor.

d. The facility director shall report the results of the monthly living unit searches in the monthly report to the Deputy Commissioner for Rehabilitative Services or designee, and shall maintain a record of such searches at the facility.

2. Routine Room Search - A thorough and orderly search of a resident's room and its contents. Room searches may be scheduled or performed on a random basis if staff suspect that contraband is secreted within.

Note: The room search applies to the bed area in a dormitory setting.

a. Each resident's room shall be searched a minimum of twice per month. (The resident room search completed as part of the required monthly living unit search may count as one of the two monthly room searches.)

b. A resident should be present during a routine room search, when feasible. However, a room search may be conducted without the resident there. If the resident is not present, he/she shall be notified that the room has been searched in his/her absence. Notification shall be made prior to or upon the resident's return to the room.

c. If a resident is present during a room search, the resident shall exit the room, be pat searched and may observe the search from across the corridor, provided that the resident's conduct remains appropriate. If the resident's behavior is inappropriate, the resident shall be removed to a more secure location.

d. Residents shall be provided written notification of any articles confiscated during a room search.

e. Care must be taken to avoid damage or destruction of property. If property is damaged, the employee conducting the search shall report the damage to the supervisor, in writing, before the end of the shift.

f. Reasonable effort shall be made to return the room as it was prior to the search.

3. Area Search - A search of a specified area of the facility or facility grounds (but not a living unit), as directed by the facility director or designee. This may include areas such as classrooms, vocational shops, recreation areas, and food service areas.

a. Every non-living unit area shall be searched a minimum of once per calendar quarter.

b. When an area search is authorized, the facility director shall ensure that it is carried out by designated personnel under close supervision of a staff supervisor.

Note: When an area such as a vocational shop, classroom or chapel is searched, it is always appropriate to have the regular assigned staff present to open lockers, doors, drawers, and to answer questions related to conditions in that area.

c. For any resident present in the area being searched, a pat search and mouth search shall be conducted and the resident shall be scanned with a hand-held metal detector as he/she exit(s) the area.

d. The facility director shall report the results of the quarterly non-living unit area searches in the monthly report to the Deputy Commissioner for Rehabilitative Services or designee.

4. Overall Facility Search - A thorough search of the entire facility. This type of search requires authorization of the Deputy Commissioner for Rehabilitative Services or higher authority. The reason(s) for this search must be clearly delineated by the facility director and must be directly related to the facility safety, security and operations.

In response to a major threat to the safety and security of the facility, the OCFS Commissioner, Executive Deputy Commissioner or Deputy Commissioner for Rehabilitative Services may authorize or direct an overall facility search.

H. GUIDELINES FOR THE HANDLING, SAFEGUARDING AND DISPOSITION OF CONTRABAND

1. The only articles authorized for possession by residents are:

a. Those articles issued by OCFS staff for use by residents, such as clothing, furniture, bed linen, mattress, pillow, blanket.

b. Those articles approved for the resident's possession in the living area according to the appropriate stage of the Youth Development System (See Youth Development System Manual).

c. Those articles approved by the facility director for the resident's use in program under direct staff supervision, e.g., scissors, a compass, a tool used in a vocational area.

All contraband found in the possession of residents, other than ~~those approved items referred to above, shall be immediately confiscated.~~

Any contraband mailed to the resident shall be returned to sender, at the resident's expense, except as noted below.

Note: If contraband is received via mail, the possession of which would constitute a crime under the Penal Law, the matter shall be reported to the New York State Police, and the contraband shall be held as evidence.

2. The following procedures must be utilized in establishing a chain of custody for contraband evidence acquired from any source:

a. Once contraband is seized, the party seizing it must place it in a sealed container, tag it with a description as to the time, manner and location surrounding the seizure, and sign the evidence container.

b. The item of contraband must be physically carried to a central location within the facility, which shall be a locked storage box or similar receptacle in a secured area.

c. A record must be kept of all transfers of custody of the item of contraband in question and any person to whom the property is transferred must initial and place the time of transfer and date of his/her reception on the container in which the item of contraband is being transmitted.

d. The number of people handling contraband must be restricted to as few as possible.

e. A local procedure shall be developed with law enforcement agencies for turning over items of illegal contraband seized by OCFS staff. Receipts must be obtained when such a transfer occurs. Such receipts shall be retained for a period of two (2) years or whenever a criminal case is satisfied, whichever is earlier.

f. In appropriate cases involving situations in which a particular item of contraband is not seized, it may be essential to safeguard the item of contraband for the purpose of preserving fingerprints or some other identifying data. With this in mind, staff should not touch or move an item of suspected contraband without taking into consideration the preservation of

fingerprints or other identifying material. Use of surgical gloves, tweezers, pencils (for example), should be considered in moving this type of contraband. In addition, some situations may warrant the taking of still photographs of a scene without moving or disturbing any articles present. The OCFS Special Investigations Unit is available for consultation in such situations.

### 3. Disposition of Contraband

a. Articles, the possession of which are prohibited under any law or OCFS policy and which may be used as evidence in a criminal or civil action, shall be turned over to the police or district attorney in accordance with guidelines for safeguarding the evidence of contraband as cited in H.2.e. above.

b. Articles which eventually may be returned to the resident may either be sent or given to the appropriate relative or returned to the resident at the appropriate time (i.e., release or discharge). When returned, the resident shall sign a receipt for them. A copy of the receipt shall be included in the case record.

c. Articles which cannot be returned to the resident and are not evidence in a criminal or civil action (i.e., hand-crafted weapons) shall be disposed of at the discretion of the facility director or designee. The disposition of such articles shall be duly recorded and witnessed.

### I. CONTROL OF EATING UTENSILS

1. Eating utensils are a source of weapons and contraband if not appropriately inventoried and controlled. Eating utensils must be controlled to provide a safe and secure environment where residents will not do harm to other residents, staff or themselves.

a. Eating utensils must be inventoried before and after use by residents. Assigned staff must inventory eating utensils prior to their distribution to residents and then again after use by residents and prior to residents leaving an eating area.

- (1) Staff must wear sanitized latex gloves when distributing and collecting eating utensils.

- (2) Assigned staff shall distribute plastic ware to residents prior to their meal, counting the number of forks, spoons and knives that are distributed. At the end of the meal, staff must count the utensils to ensure they have collected the same number of plastic ware as was distributed at the beginning of the meal. This plastic ware shall then be placed in a container and put in the area of the kitchen where it will be washed.

- (3) Residents shall not count, distribute or collect plastic ware or take it to the washing area in the kitchen. Only staff shall handle plastic ware.

- (4) If the count after the meal is not equal to the count at the beginning of the meal, all residents must remain in the kitchen/dining area. A search of the area must be done and residents shall be pat searched. If the utensil is not found, then each resident shall be taken to an appropriate area and strip searched.

b. When residents who are being fed outside of the dining area, the utensils must also be inventoried prior to giving them to residents and inventoried upon completion of the meal. Assigned staff must collect and account for all utensils and secure them for return to the kitchen area.

2. Plastic Ware Log

a. There shall be a log in each dining area in which staff must record that they have counted the plastic ware and that all the plastic ware is accounted for.

b. The log entry must be completed at the end of each meal prior to residents leaving the dining area.

J. INSPECTION AND SEARCH OF RESIDENT MAIL

All mail received at a facility for a resident, shall be inspected in accord with the procedures outlined in PPM 3422.00, "Resident Mail", and PPM 3424.00, "Resident Privileged Mail". Contraband found in mail or packages shall be handled in accord with Section G. of this policy.

K. SCREENING OF VISITORS

Screening of employees and visitors shall be carried out in accord with PPM 3247.70, "Security of Perimeter and Gate Areas".

**Non-Secure Placement Personal Youth Search Policy**

<b>Approved By:</b> Ronald E. Richter, Commissioner	<b>Date Issued:</b> 07/20/2012	<b>Number of Pages:</b> 5	<b>Number of Appendices:</b> 0
<b>Related Laws:</b> <ul style="list-style-type: none"> <li>• SSL 404 (13)</li> </ul>	<b>Children's Services Divisions/Provider Agency:</b> Children's Services Divisions of: Youth and Family Development; and Program Development Policy and Planning	<b>Contact Office/Unit:</b> For additional information on this policy please contact: Sarah Bass at <a href="mailto:Sarah.Bass@dfa.state.ny.us">Sarah.Bass@dfa.state.ny.us</a>	
<b>Supporting Case Law:</b>	<b>Supporting Regulations/Standards:</b>		
<b>Regulatory Bulletins &amp; Directives:</b>	<b>Related Policies:</b>	<b>Supersedes:</b> N/A	
<b>Related Forms/Links/Sources:</b>			
<p><b>SUMMARY:</b>                  The purpose of this policy is to provide guidelines and procedures for staff to follow with respect to personal resident searches; Non-Secure Placement (NSP) providers are required to implement search policies and practices designed to maintain contraband-free programs throughout the NSP system. The primary purpose of any personal search is to protect the safety of youth and staff of the NSP facility, the community, and others who may be present, within a context that respects and promotes dignity and healthy relationships with youth including employing effective communication, making empathetic connections, and establishing a structured, consistent environment. NSP provider search policies must make clear to staff the circumstances under which personal searches described in this policy are mandatory and the circumstances under which such searches are to be conducted at the discretion of facility staff. NSP providers are expected to make determinations regarding the need for personal searches based on ongoing assessments of the level of trust and open communication with individual youth and to conduct searches within the broader context of a conversation about personal responsibility, safety and trust.</p>			
<p><b>SCOPE:</b>                  The following personal resident search policy is to be implemented in the context of residential programs informed by core principles, beliefs and values that guide the non-secure placement (NSP) system. As a whole, the system is premised on the assumption that youth who are placed in residential confinement should be placed close to home and that programming should be youth-centered and strive to provide youth with individual support they need to succeed. Families and communities should be integrated into programming and treatment throughout placement and aftercare, to the maximum extent possible. Further, the primary responsibility of all NSP system participants is to protect the safety and security of communities and of youth in care. Placement of youth in residential facilities is to be limited to circumstances where youth pose a risk to community safety; youth will be placed in the least restrictive environment necessary under the circumstances.</p>			

## I. DEFINITIONS

A. Personal search – Searching of a youth's person to determine whether or not a youth has concealed contraband on his/her person or in his/her clothing. The employee(s) conducting the search must assure its thoroughness and maintain the dignity of the youth being searched. Personal searches consist of Pat-Frisk Searches and Security Searches. All searches shall be conducted in the presence of a supervisor and a child care staff member. In the absence of a supervisor, another child care staff member shall be present. All searches shall be conducted by personnel of the same gender or gender identity as the youth, except in emergency situations.

1. Pat-Frisk Search – A visual or manual inspection of a youth's body that consists of physically patting down his/her clothing. The youth may be required to remove his/her outer clothing such as a coat, hat and shoes. A pat-frisk search may be part of the routine operation of all non-secure facilities. Pat-frisk searches may also include the use of a hand-held metal detector to detect metal objects on a youth and his/her property.

2. Security Search – An inspection to check for contraband, conducted to maintain the safety and security of staff and youth, that requires the youth to wear a medical gown or robe after removing his/her upper garments, and then subsequently removing all of his/her under garments. Security searches shall also include the use of a hand-held metal detector to detect metal objects on a youth and in his/her property.

B. Contraband is defined to include:

1. Those articles:

- a. The possession of which is prohibited under any law applicable to the general public; or
- b. Which are readily capable of being used to cause injury including, but not limited to: firearms, cartridges, knives, razor blades, explosives, or sharpened objects;

2. Illegal drugs;

3. Prescription medications that are not lawfully issued to the bearer;

4. Other unauthorized items such as:

- a. Alcohol or alcoholic beverages
- b. Tobacco products (e.g., cigarettes, chewing tobacco)
- c. Hazardous material (e.g., gasoline, poisons, unapproved cleaning fluids, acids)
- d. Sexually explicit materials
- e. Needles
- f. Mace,
- g. Matches,
- h. Lighters, or
- i. Any other item that is prohibited by the regulations and policies of the DYFD and/or rules of the individual facility.

C. Reasonable Suspicion: A rational inference, based on specific objective facts, that a youth has engaged in conduct that is in violation of law, DYFD policy or regulations, or policy or regulations of the NSP facility, including possessing contraband or having engaged in behavior that poses a risk to the youth or others. The standard does not require absolute certainty, but rather a reasonable, articulable basis for the suspicion.

## II. GUIDELINES AND PROCEDURE

### A. Pat Frisk Searches:

1. Circumstances under which pat-frisk searches may be conducted. Pat frisk searches may be conducted on a youth as part of routine procedure and do not require individualized reasonable suspicion to believe that a specific youth is in possession of contraband.
2. Youth may be pat frisk searched every time they enter or leave the facility or school, after receiving a visit at the facility, or at the discretion of staff when they suspect youth may possess contraband.
3. Pat frisk searches shall be conducted by personnel of the same gender or gender identity as the youth and in the presence of a witness, except in emergency situations. Youth may be required to remove any clothing covering their head, hands and feet, as well as outer garments such as scarves and coats.
4. Pat frisks shall be conducted in the following manner:
  - a. The search is conducted by patting the outer clothing over the entire length of the youth's body and examining the seams and pockets of the youth's clothing. Except as provided for in paragraph b below, the youth's skin shall be touched only at the shirtsleeves and collar. The search shall require the youth to run his/her fingers through his/her hair under the observation of a child care worker in order to ensure that weapons or other contraband are not secreted in the hair. The youth may be required to open his/her mouth as part of the contraband search. At the discretion of the employee and a supervisor, a hand held metal detector may be used to check for contraband in a youth's hair or other parts of the body.
  - b. To perform a pat frisk search, the employee conducting the search stands behind the youth and asks the youth to raise his/her arms. Special attention shall be paid to visual inspection of the area to be searched, prior to actually touching the area. The employee places his/her thumbs under the youth's collar, pats his/her hands across the top of the youth's arms; comes back under the youth's arms to the armpits and down the youth's sides to the waist. The employee then passes his/her finger around the youth's waistband (if wearing pants or shorts), pats his/her hands down the outside of the youth's legs and up the inside of the youth's legs to and including the crotch. The employee then reaches around and pats the youth's chest and back and checks any pockets. In conducting a pat frisk, employees shall strive to preserve the dignity of the youth being searched.

### B. Security Searches:

1. Circumstances under which security searches may be conducted:
  - a. All youth may be subjected to a security search upon admission into any NSP facility and upon readmission as a result of revocation of aftercare status as part of routine procedure and without any individualized reasonable suspicion that a particular youth is in possession of contraband.
  - b. After admission to a facility, a youth may be subject to a security search based on individualized reasonable suspicion that the youth may possess contraband in the following situations:
    - i. Returns from any outside appointment or contact where constant NSP facility staff supervision was not maintained;
    - ii. Returns from a home visit;

- iii. After a visit from an authorized visitor; and
  - iv. Under any other circumstances where NSP provider staff has an individualized reasonable suspicion that the youth may possess contraband.
- c. All security searches must be documented in the facility logbook. The reasons for all searches conducted based on reasonable suspicion that a youth is in possession of contraband must be documented in the facility logbook.
2. Security Searches shall be conducted in the following manner:
- a. Youth shall be directed to a private area equipped with a privacy screen, curtain, or door and free of all youth and staff. Youth shall be directed to:
    - i. Remove their upper garments (e.g., shirt, sweater, undershirt, bra);
    - ii. Don a medical gown or a robe; and
    - iii. Remove all of their remaining articles of clothing, including undergarments.
  - b. Security searches will be conducted by personnel of the same gender or gender identity as the youth and in the presence of a witness, except in emergency situations.
  - c. Prior to commencement of the search, the youth shall be informed of the consequences of a contraband finding and be given an opportunity to surrender any contraband prior to undergoing an electronic search procedure that includes a handheld metal detector
  - d. Youth shall then be required to surrender all items of personal property or contraband to the staff member conducting the search.
  - e. The youth shall then be directed to close his or her robe and step out from behind the curtain.
  - f. Staff shall put on gloves prior to commencing the search.
  - g. Staff shall ask the youth to turn around so that the youth's back is facing staff and the staff member shall run his/her hand down the back of the youth's torso to ensure that the youth removed all of his/her clothing. If all the clothing has not been removed, the youth shall be asked to step back inside the private area and remove the remaining clothing item(s). If all clothing has been removed, the youth shall then turn around and face the staff.
  - h. Staff shall inquire if the youth has any sharp objects on his/her person or in his/her clothes, prior to searching and/or reaching into a youth's pockets.
  - i. A staff member shall perform a thorough examination of all of the youth's personal property in front of the youth, including the youth's clothing, any personal items and eyeglasses. Staff shall run a handheld metal detector over the clothing items as well. Any contraband identified during the search shall be confiscated in accordance with the NSP Policy on Contraband, and if appropriate, be logged and stored with the youth's personal valuable property or returned to the youth's parent.
  - j. The youth shall be asked to hold out his/her arms, and the staff member of the same gender or gender identity shall pass a handheld metal detector up and down the outline of the youth's body and over the youth's body without touching the youth.

- k. All permissible items shall be returned to the youth upon the youth clearing the security search.
- l. Prior to letting the youth back into the privacy area, staff members shall inspect the area for contraband.
- m. Youth who have cleared the security search shall be given their clothing back and be permitted to put on their clothing with the same level of privacy indicated above.

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