

Sample Criminal Justice Agency	
Unit: Searches - Arrestee	Directive Number: R -
Title: Search of Arrestee's Mouth for Contraband/Evidence, e.g. Drugs	Effective Date:
Index:	Revision Date:
Issued by: Department Executive	Issued On:
State Statutory References:	
CALEA Standard References: 1.2 Limits of Authority (1.2.3, 1.2.4); 1.3 Use of Force (1.3.1, 1.3.2, 1.3.4, 1.3.5, 1.3.6, 1.3.7, 1.3.8, 1.3.11, 1.3.12, 1.3.13); 71 Prisoner Transportation (71.1.1, 71.3.1, 71.3.3); 72.5 Detainee Processing (72.5.1) ; 72.6 Medical and Health Care Services (72.6.1, 72.6.2, 72.6.3)	
State/Other Accreditation References:	

This Directive is for internal use only, and other than as contraindicated here this Directive does not create or enlarge this Department's, governmental entity's, any of this Department's officers, and/or any other entities' civil, criminal, and/or other accountability in any way. This Directive is not to be construed as the creation of a standard of safety or care in any sense, with respect to any complaint, demand for settlement, or any other form of grievance, litigation, and/or other action. Deviations from this Directive, if substantiated, can only form the basis for intra-Departmental administrative action(s) (including discipline and/or termination).

Primary Objective - To assist in establishing and clarifying an officer's actions when the officer reasonably believes that an arrestee has secreted contraband within his/her mouth.

1. An officer may reasonably order an arrestee to disgorge that which the arrestee has within his/her mouth.
2. Before an officer may use physical force to search an arrestee's mouth for contraband the officer must first have (all of the following simultaneously present):
 - a. a lawful arrest of the person based upon probable cause;
 - b. probable cause to believe that the arrestee has secreted a "seizeable item" (e.g. illegal drugs) within his/her mouth;
 - c. a "clear indication" that a seizeable item will be found within the arrestee's mouth; and
 - d. either a warrant authorizing an intrusion into the arrestee's mouth, or exigent circumstances, such as:
 - i. imminent destruction of evidence¹ or

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1. If the officer reasonably believes that the seizeable item(s) in the arrestee's mouth would be susceptible to identification and recovery in supervised, nonviolent post-arrest settings then no emergency or exigency justifies the use of force to preserve the evidence that would be readily (if inconveniently) accessible through nonviolent means. This view of exigency assumes that the officer reasonably believe that the evidence would be seizeable at a later time and that the

(continued...)

- ii. a medical emergency².
3. Once all of the prerequisites listed in Subsection 2 above have been satisfied, then an officer may use objectively reasonable force to extract the contraband secreted in the arrestee's mouth.
- a. In determining whether an officer's force is objectively reasonable, the officer should reasonably consider (among other aspects under the totality of the circumstances):
 - i. the extent to which the officer's use of force may threaten the safety or health of the arrestee;
 - ii. the extent of the officer's intrusion upon the arrestee's dignitary interests in personal privacy and bodily integrity, and
 - iii. the community's interest in fairly and accurately determining the person's guilt or innocence.
 - b. In using force to extract items from an arrestee's mouth, an officer may consider (among other reasonable alternatives/approaches) reasonable use of:
 - i. the Heimlich maneuver.
 - ii. a pressure point to the hypoglossal nerve (which is underneath the exterior of the jaw on the bottom side) - this action may create pain and also places upward pressure on the base of the tongue.
 - iii. a pressure point to the mandibular angle (inward pressure at the base of the jaw under the earlobe) - this action may create pain that may cause the person to open his/her mouth and may inhibit the amount of pressure the person can use to keep his/her jaw closed.
 - iv. pressure to the sides of the arrestee's jaw to get his/her mouth open.
 - v. placing a hand on the back of the arrestee's head and compelling the person's chin to his/her chest to make swallowing difficult while not negatively affecting the person's ability to breathe.
 - c. In an officer's use of force to extract contraband from an arrestee's mouth it will virtually always be unreasonable to:
 - i. apply force to the arrestee's throat sufficient to prevent him/her from breathing or obstructing the person's blood supply to his/her head.³
 - ii. forcibly insert fingers into the arrestee's mouth.

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1. (...continued)
contraband in the arrestee's mouth is not causing a medical emergency.
2. An officer may reasonably believe that a medical emergency exists when an arrestee who the officer reasonably believes has secreted contraband within his/her mouth appears to become ill, lose consciousness, and/or exhibit other indices of bodily jeopardy.
3. With regard to a "lateral vascular neck restraint" or a "unilateral neck restraint" the law enforcement agency adopting this policy needs to carefully analyze whether officers will be allowed to use either technique to extract contraband from an arrestee's mouth. Again, legal counsel should be consulted before making decisions on this issue, as with the rest of any policy considered for adoption by an agency.

- iii. place a gun to the arrestee's head.
 - iv. threaten to shoot the arrestee.
 - v. drag the arrestee to the ground.
 - vi. strike the arrestee on the back of the head.
4. In the event an officer reasonably believes that an arrestee has swallowed contraband that could reasonably foreseeably have a negative effect upon his/her health, then the officer shall:
- a. as soon as reasonably immediately seek medical attention for the arrestee.
 - b. upon the arrestee being examined by medical personnel, the officer shall inform the medical personnel of the facts as known by the officer regarding the arrestee's ingestion of the contraband.
 - c. not advise, instruct, direct, request, and/or insinuate to the medical personnel as to any particular medical course of action or outcome or any medical procedure, therapy, and/or treatment.
 - d. while medical attention is being administered to a person in custody an officer shall remain readily available at the site of the person receiving medical attention.
5. If, at any time, the contents, that the officer reasonably believes to be contraband of the arrestee's mouth, stomach, etc. become outside of the arrestee's body the officer shall, to the extent reasonable, collect and preserve those contents as evidence.