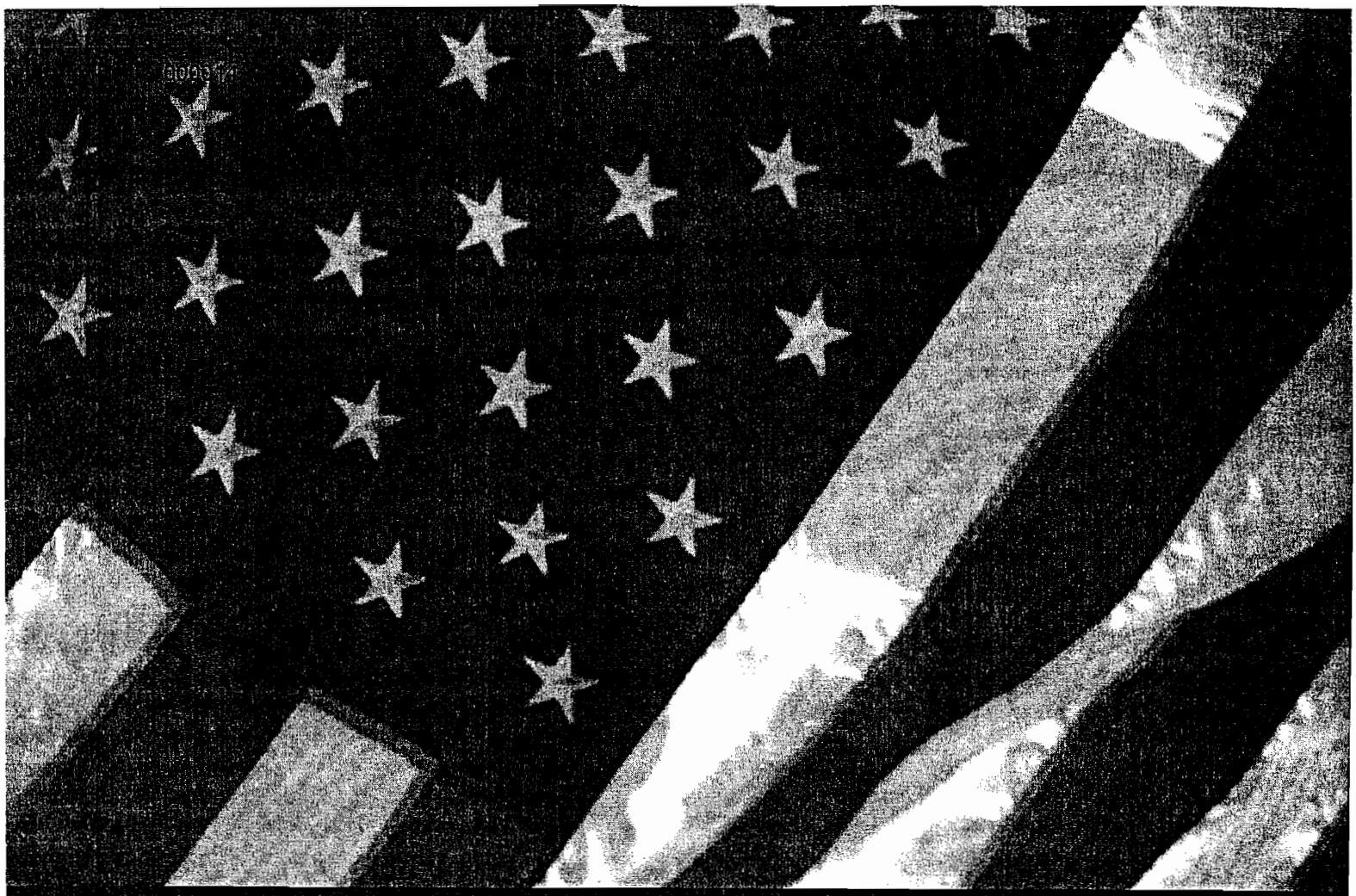

Personal Search Handbook

Office of Field Operations

CIS HB 3300-04B

July 2004

U.S. Customs and Border Protection

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A Message from the Commissioner

On March 1, 2003, for the first time in our country's history, one federal agency assumed responsibility for securing all of our country's borders both at and between the ports of entry. That agency is U.S. Customs and Border Protection (CBP). This reform of government could not have come at a more important time. In the wake of the 9/11 terrorist attacks, our priority mission is straightforward and daunting: keeping terrorists and terrorists weapons out of the United States.

This responsibility is immense, but we have broad legal authority and many tools at our disposal. Indeed, every person, every vehicle, every piece of cargo, everything that enters the United States from outside our country has to pass through U.S. Customs and Border Protection. As our mission statement proudly proclaims, "We are the guardians of our Nation's borders. We are America's Frontline."And we are.

One tool in our arsenal is the "personal" search—i.e., significantly intrusive searches of a person to determine whether he or she is carrying contraband close to or inside his or her body. This Handbook sets forth CBP policy on when such personal searches are appropriate, and the procedures our officers must follow in carrying them out.

In thinking about "personal" searches, it is important to remember what is **not** a personal search. Targeting particular individuals for greater scrutiny is **not** a personal search. Questioning individuals is *not* a personal search. Searching through bags, a wallet, or other personal effects is **not** a personal search. Nor is patting down an individual to ensure officer safety, or to otherwise determine whether an individual is carrying a weapon. None of those important CBP functions is covered or limited in any way by the Personal Search Handbook, which only governs searches for contraband close to or inside a person's body.

Indeed, in light of the continuing terrorist threat to our country, the exercise of these CBP border-related authorities—especially the authority to question those seeking entry into the United States—is as important to the defense of our nation as anything else in our government's arsenal against terror. To ascertain whether an individual may be a potential terrorist, a Customs and Border Protection Officer may have to question and, in some cases, conduct a border search to ascertain admissibility or potential terrorist activity. Usually, this will not involve a "personal" search.

Where a "personal" search is involved, CBP policy must be adhered to. In accordance with CBP policy, as outlined in the Personal Search Handbook, travelers may not be subjected to a "personal" search based upon their race, color, gender, religion, or ethnic background.

While performing our mission, it is very important to act professionally and courteously with the public that we come into contact with. The guidelines in this Personal Search Handbook provide you with a critical tool in performing one element of your many duties. These guidelines are not designed to be a deterrent in performing your priority mission of protecting our homeland against terrorists and terrorist weapons.

I encourage every one of you to perform your duty in the spirit of our mission statement. I have every confidence that, in guarding America from the threat of terrorism, the fine men and women of CBP will continue to maintain the highest degree of vigilance and will continue to exercise their sound judgement in performing their duties.

In closing, I want to say that you have all been doing a very difficult job under very difficult circumstances; and you have been doing it exceptionally well. I could not be more proud of the U.S. Customs and Border Protection team.

Commissioner
U.S. Customs and Border Protection

Introduction

This Personal Search Handbook sets forth U.S. Customs and Border Protection (CBP) policy for the conduct of searches of persons at the border by CBP officers using border search authority.

All CBP officers who perform searches and seizures of persons at the border, the functional equivalent of the border (FEB), or extended border shall adhere to the policy described in this Handbook. This policy shall pertain to border search authority on persons arriving in or departing from the United States. It shall not pertain to searches conducted away from the border (see generally chapter 2, Law Course for Customs Officers (LCCO)) and may not be applicable to U.S. Immigration and Customs Enforcement (ICE) agents during non-border search situations.

This Handbook does not limit the search authority of CBP officers. The goal is to assist CBP officers in performing their enforcement duties in a manner that will ensure personal integrity and will also permit officers to perform a professional service for the public. This Handbook is not intended to create or confer any rights, privileges, or benefits upon any private person, but is merely for internal guidance.

Supervisory CBP officers will ensure that the policy hereby established is thoroughly followed. Port directors and field managers must ensure that all CBP officers under their control receive a copy of this Handbook and acknowledge receipt by date and signature (Attachment 1). This requirement applies to full-time and part-time CBP officers with search authority. Such acknowledgments shall be retained at sites designated by the port directors.

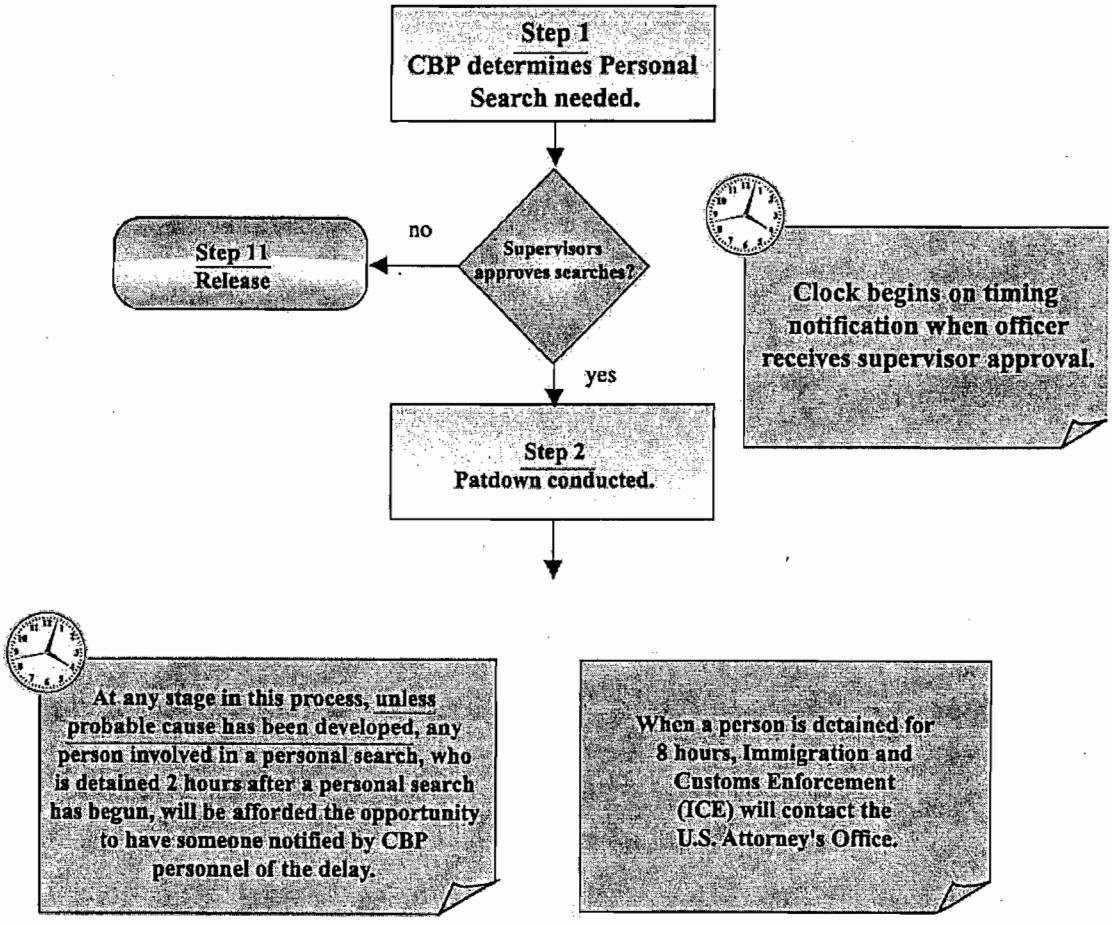
Disclosure of this Handbook and the materi al contained within may be made to the public without restriction, in accordance with the provisions of the Freedom of Information Act (Title 5 U.S.C. § 552), as amended.

Throughout this Handbook, male personal pronouns are used. They should be understood to refer to either males or females.

This Handbook supersedes HB 3300-04A, dated August 2001. Use of the previous Handbook should be discontinued.

Authorities/References: *Title 19 U.S.C. §§ 482, 507, 1461, 1467, 1496, 1581, 1582, and 1589a. Title 8 U.S.C. 1357(c). Title 19 C.F.R. §§ 162.6, 162.7.* Chapters 2, 3, 4, 5, 6, 13, *LCCO. 8 C.F.R. 287.5(d)*; Customs Directives: *Firearms and Use of Force* Policy, 4510-017A dated December 17, 2001; *Restrictions on Importation of Seditious Matter*, 2210-001A dated July 27, 2001.

Chapter 1


Step 1
CBP determines Personal Search needed.
Supervisors approves searches?
no
Step 11
Release
yes
Step 2
Patdown conducted.
Clock begins on timing notification when officer receives supervisor approval.
At any stage in this process, unless probable cause has been developed, any person involved in a personal search, who is detained 2 hours after a personal search has begun, will be afforded the opportunity to have someone notified by CBP personnel of the delay.
When a person is detained for 8 hours, Immigration and Customs Enforcement (ICE) will contact the U.S. Attorney's Office.

Chapter 1
Determining the Need for a Personal Search

a. Constitutional Rights

In conducting any search, remember that the Constitution guarantees the protection of an individual's right against unreasonable searches and seizures. (The Fourth Amendment generally requires officers to have a warrant based on probable cause to conduct searches. However, Congress and the courts recognize CBP border searches as an exception to normal Fourth Amendment requirements.) Be diligent in your efforts to protect those rights while still accomplishing your enforcement mission. The CBP will not condone the abuse of constitutional or statutory authority by any officer. You must know the limits of CBP authority and must use this authority judiciously, conscientiously, and courteously.

Appendix A is a flowchart of the entire search procedure. Appendix B provides a matrix of the types of searches you may conduct and the requirements for each.

b. Some or Mere Suspicion Defined

Some or mere suspicion is the minimal level of suspicion required to conduct a patdown search. By policy, CBP requires at least one fact before conducting a patdown.

c. Reasonable Suspicion Defined

Reasonable suspicion is more than some or mere suspicion and is based on specific, articulable facts. These facts, when taken together with reasonable inferences from these facts, would lead a reasonable officer to suspect that a person may have a weapon, contraband, or evidence of a crime on or within his body.

Reasonable suspicion would arise during the course of a routine border inspection when articulable facts develop to indicate that the subject is inadmissible and that evidence of inadmissibility is being concealed on or within the body.

Reasonable suspicion is required for any search beyond a patdown search. You must be prepared to testify in court setting forth the specific facts that established reasonable suspicion.

You must consider all the circumstances, not just the initial facts, when making a decision to search. For example, if a person provides a plausible explanation for last-minute travel arrangements, which are subsequently verified through further questioning and a review of travel and other documents, then the last-minute travel alone should not be the only consideration in making the decision whether to conduct a personal search.

Use your training, experience, subject-matter expertise, knowledge of smuggling trends and methods, and intelligence information provided by other CBP officers or law enforcement sources, in making your decision.

A person's country of departure, transit, or destination are permissible factors to consider.

You should also consider results of name queries from available automated data systems, such as Treasury Enforcement Communications System (TECS), National Automated Immigration Lookout System (NAILS), Integrated Automated Fingerprint Identification System (IAFIS), National Crime Information Center—Information Identification Index (NCIC-III), Automated Bio-metric Identification System/Enforcement Case Tracking System (IDENT/ENFORCE), and Central Index System (CIS). Specific attention should be given to previous personal searches that did not result in a seizure or arrest.

d. Factors that May Not Be Used in the Decision Process

Never use a person's gender, race, color, religion, or ethnic background as a factor in determining any level of suspicion for a personal search (that is, a patdown, a partial or full body search, an x-ray, a detention for monitored bowel movement, or a body cavity search).

e. Basis for Search

There are seven primary categories CBP officers use to determine whether to conduct a personal search.

1. Behavioral Analysis

Behavioral analysis is the recognition of physiological signs of nervousness. Examples include shaking or trembling hands, rapid breathing for no apparent reason, cold sweats, pulsating carotid arteries, flushed face, and avoiding eye contact.

2. Observational Techniques

Observational techniques involve recognizing physical discrepancies in appearance. Examples include clothing that disguises body contours, unexplained bulges in clothing, thick-soled shoes, and unnatural gait.

3. Inconsistencies

Inconsistencies are conflicts identified in the interview and/or documentation. Examples include catching the person in a false statement, unreasonable explanation for travel, and unexplained irregularities in ticketing or reservations.

4. Intelligence

Intelligence is information developed by another officer, which may include the Passenger Analytical Unit, National Targeting Center (NTC), TECS, the Federal Bureau of Investigation (FBI), U.S. Immigration and Customs Enforcement (ICE), Drug Enforcement Administration (DEA), or other law enforcement or intelligence entities.

5. K-9

K-9 searches are those conducted in response to an alert by a CBP Positive or Passive Response Canine.

6. Incident to an Adverse Action related to a Seizure, an Arrest, or the Inadmissibility/Deportability of an Alien.

Incidental searches are those conducted in continuation of an enforcement action associated with previously discovered illegal or hidden merchandise, an arrest, or an inadmissibility/deportability issue. These may involve the search of a subject found in possession of contraband or prohibited merchandise; the arrest of a narcotics/alien smuggler; confirmation of a National Crime Information Center (NCIC) warrant; aliens being processed for removal; and persons being detained for other agencies where it will be recorded in the Search, Arrest, and Seizure (S/A/S) in TECS and/or IDENT/ENFORCE.

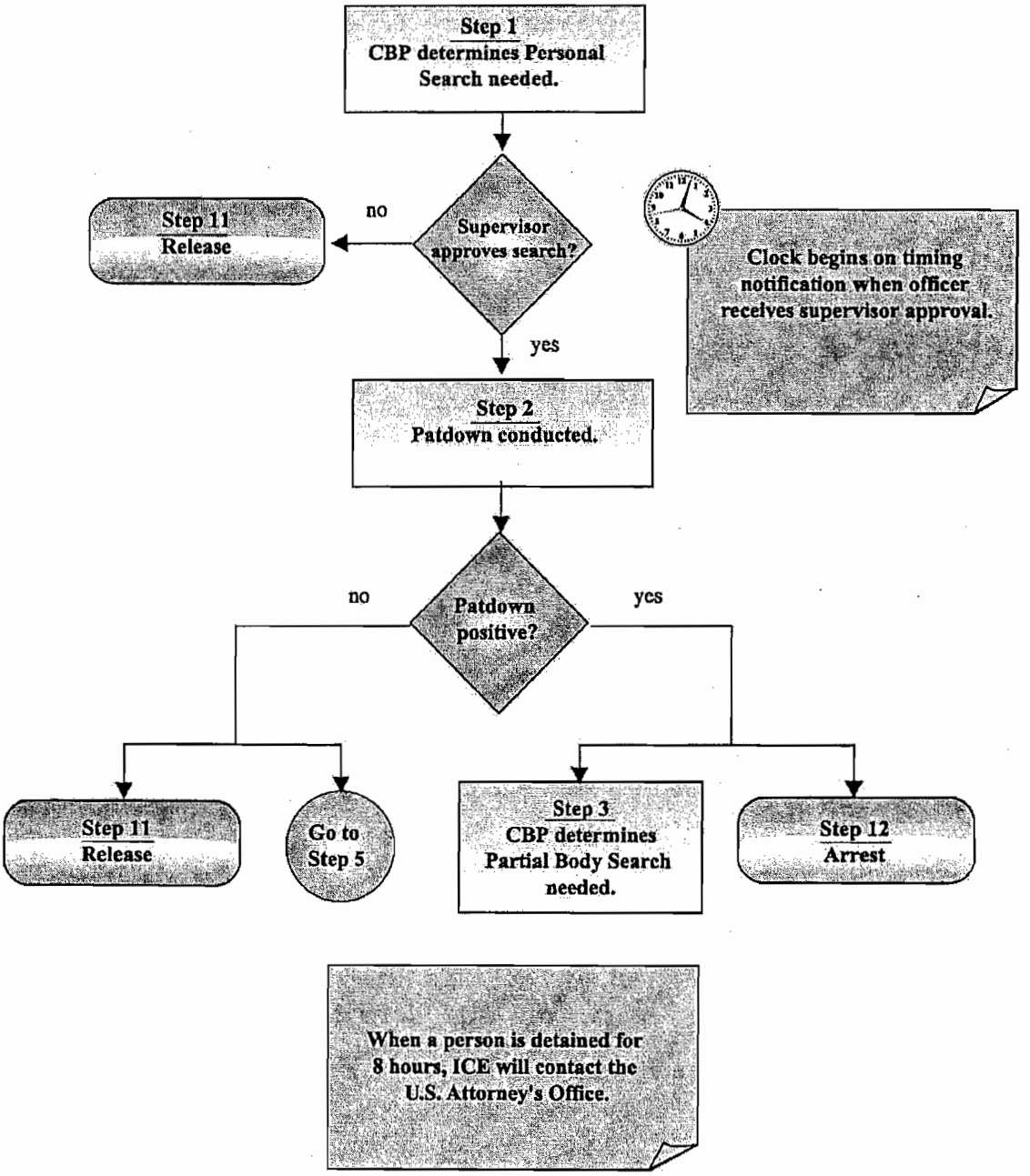
7. Officer Safety

To maintain a safe and secure work environment for officers and the traveling public. These searches are conducted to ensure a person is not carrying a weapon or dangerous object.

f. Explaining the Personal Search Process

The policy of CBP is to provide the *Personal Search What to Expect* brochure to all travelers before conducting a personal search, either inbound or outbound, with the exception of an immediate patdown. For safety reasons, explanation of an immediate patdown for weapons or dangerous objects (see chapter 3b) shall be conducted after the search. Additionally, the CBP officers will explain the personal search process, in general terms, as the search is initiated and progresses to more intrusive levels. The TECS information will NOT be revealed. The subject of the personal search will be informed of the 2-hour notification when the time occurs.

Chapter 2


Step 1
CBP determines Personal Search needed.
Supervisor approves search?
no
Step 11
Release
yes
Clock begins on timing notification when officer receives supervisor approval.
Step 2
Patdown conducted.
Patdown positive?
no
yes
Step 11
Release
Go to Step 5
Step 3
CBP determines Partial Body Search needed.
Step 12
Arrest
When a person is detained for 8 hours, ICE will contact the U.S. Attorney's Office.

Chapter 2
What You Need to Know for a Personal Search

The following procedures apply to all personal searches conducted by CBP officers at the border, functional equivalent of the border, or extended border. They do not apply to searches conducted away from the border or to searches by CBP officers incident to an arrest, pursuant to a warrant, or otherwise authorized by the Fourth Amendment, except for border searches.

a. Officer Safety

Take appropriate safety measures to protect yourself and others while conducting any personal search. Officers should be mindful of safety concerns when completing administrative processing in the presence of an applicant in a one on one situation.

When walking to a search room, security office, interview room, detention room, or detention cells to perform a patdown search, continually observe the person to be searched. If the officer(s) determine that the person poses a risk to himself or others, the use of handcuffs may be warranted.

If, at any time, you observe a weapon or dangerous object on a person (who is not known to be a law enforcement officer), or if you suspect that the person is armed, take appropriate action to determine if the person is armed, using reasonable force if necessary.

This action will be considered an immediate patdown search. It is an exception to the requirements in chapter 3a.

Upon securing the weapon or dangerous object, notify a supervisor immediately. As soon as possible after securing the weapon, or if no weapon or dangerous object is discovered, return to the normal patdown procedures.

b. Seeking Cooperation

Make every effort to secure the cooperation of the person being searched. You must ensure that the person's dignity and privacy are respected at all times. Maintain professional and courteous behavior throughout the entire personal search.

Avoid confrontations with the person. Contact a supervisor **before** the situation deteriorates to the point that you are unable to accomplish the search process. If a confrontation occurs, record the details in the narrative of the search report, Incident Log Report (IOIL), in TECS.

c. Supervisory/Management Approvals for Personal Searches

Supervisory approval is required for all patdown and partial body searches, except immediate patdown for weapons or dangerous objects. Patdown searches conducted on juveniles will require supervisory approval. Supervisory approval is not required for Immediate Patdown searches (chapter 3b). Within the Office of Field Operations (OFO), acting supervisors, designated by the Port Director, may authorize patdown, body scan, and partial body searches. Port Director (GS-13 or above) or Deputy and/or Assistant Port Directors for Passenger Operations (GS-13 or

above) may also approve the search, detention, and transportation of a person to a medical facility for medical examinations, provided the Port Director delegates them. The local Associate/ Assistant Chief Counsel must be consulted for legal advice on medical examinations.

d. TECS Name Check

When initiating any personal search (except immediate patdowns for officer safety), conduct a TECS name check, including a check of the IOIL.

When TECS is unavailable (system is down), ask the person if he has ever undergone a personal search at the border, and, if so, under what circumstances. If you are located in an area where a TECS terminal is not available, contact your port of entry or Sector via phone/radio to request a TECS check.

Use the results of the TECS name check or the person's response in the decision process to determine if the search is warranted or if an increase in intrusiveness is warranted.

e. Conducting Searches in Private

Use private rooms or areas away from the view of the general public when conducting a personal search, **except** when conducting an immediate patdown for officer safety. Each port will examine the areas where a personal search may occur and take appropriate measures to ensure privacy. Privacy measures may include use of areas away from public view, privacy screens, or other methods. **The videotaping of personal searches beyond an immediate patdown is prohibited.**

f. Gender of Searching Officer

A CBP officer conducting a personal search or witnessing a medical examination must be of the same gender as the person being searched, **except** when the officer conducts an immediate patdown for officer safety.

In rare cases where personal searches will be conducted on transsexuals (including those undergoing treatment for a gender change operation, but not transvestites), the following shall apply. The CBP shall accommodate the traveler and provide different gender officers to search those areas of the body that are appropriate for the same gender.

g. Witnesses

A witness must be present for all personal searches, **except** immediate patdowns for officer safety.

The witness to a personal search or medical examination must be of the same gender as the person being searched. The only exception is when conducting an immediate patdown for officer safety.

h. Seeking Assistance

You may compel another person to act as a witness to a personal search (19 U.S.C. § 507).

Use this authority **only** when another CBP officer is unavailable as a witness and **only** after giving explicit instructions to the person who will act as the witness.

Instruct non-law enforcement officers witnessing a personal search not to intervene in any physical altercation that may occur, but to immediately notify law enforcement personnel in the area.

All witnesses should be prepared to record statements of any events that transpire during the search and to provide testimony and evidence in any future court proceedings.

You may compel another law enforcement officer or federal agency employee to conduct a personal search (19 U.S.C. § 507).

Only other law enforcement officers or federal agency employees may conduct a personal search for a CBP officer. Use this authority **only** when another CBP officer is unavailable to conduct a search and **only** after giving them explicit instructions on how to conduct a personal search in accordance with the policies and procedures outlined in this Handbook.

If another person (civilian or non-CBP officer) conducts or witnesses a personal search because of a difference in gender between the person and the officer, a CBP officer will remain immediately outside the search room to render assistance as appropriate.

A CBP officer or other law enforcement officer acting as a witness will be responsible for assisting you should any safety measures be necessary.

i. Searching Juveniles

A juvenile is defined as a person who has not reached his eighteenth birthday.

Current law pertaining to personal searches does not differentiate between searching adults and juveniles.

Although you have the same authority to search a juvenile as you have to search an adult, you should carefully weigh all factors before requesting authorization to search a juvenile. When a personal search involves a juvenile, prior supervisory approval will be obtained in all cases with the exception of the immediate patdown.

1. Verifying Age and Travel Status

Pay special attention to the juvenile's ability to understand your instructions and questions.

Whenever you determine that a person warrants a personal search and you suspect that the person may be a juvenile review the person's travel and/or identification documents to determine his age.

If the person is a juvenile, find out whether he is traveling alone, and, if so, whether an adult relative or legal guardian is waiting outside the CBP facility.

2. Bringing an Adult into the CBP Facility

If an adult relative or legal guardian is brought into a CBP facility from the outside to witness a search, the supervisor must obtain that person's consent for an immediate patdown as a condition of entry into the facility. Adults who refuse to be searched will be denied access to the CBP facility.

When an adult relative or legal guardian accompanies a juvenile, the supervisor should explain the circumstances surrounding the search.

In most cases, the adult should be allowed to be present during the search, unless special circumstances exist when the presence of the adult would exacerbate the situation rather than have a calming effect.

The supervisor, however, will make the final determination of whether the adult witnesses the search, considering the relationship of the adult to the juvenile, the age of the juvenile, and the type of search to be performed.

In exercising discretion to permit adults to be present during a search or at a medical facility, supervisors should consider such factors as the safety of the searching officers, whether the search room is large enough to accommodate additional people, and whether the adult may also be suspected of smuggling contraband.

When an adult is allowed to be present in a search room or medical facility, every effort should be made to have at least three CBP officers present or nearby to protect the officers.

3. Juvenile Traveling Alone

If a juvenile is traveling alone, a patdown, partial body search, or full body search can be authorized without notifying any waiting adult relative or legal guardian in advance.

Supervisors should take into consideration whether investigative activities might be affected if a waiting adult is notified of the search.

4. Conducting the Search

Searches of juveniles will be conducted in the same manner as any other personal search, with appropriate modifications as necessary considering the age of the juvenile involved.

5. The TECS or IDENT/ENFORCE Report

In addition to pertinent details normally entered for adult searches, the narratives of all TECS or IDENT/ENFORCE reports involving juveniles will include details on the emotional state of the juvenile and the identity of, and circumstances surrounding, any adult relative or legal guardian notified of or witnessing the search.

j. Removing Outer Garments and Emptying Pockets

You may direct a person to remove his outer garments (overcoat, suit jacket, and other such garments) and empty his pockets. Such actions, even if done at the direction of a CBP officer, do not constitute part of a patdown search.

k. Securing Personal Property

Safeguard baggage and other personal property of any person being searched at all times. Safeguarding can include having the person take the property with him, having another CBP officer maintain control of the property, or storing the property in a secure room.

All monetary instruments and high-value property will accompany the person. Verify the amount of money on a person at the time of the search.

l. Medical Emergencies

Be extremely careful when a person complains of injury or medical problems. If there is any indication that the person is injured or in any way may require medical treatment, seek medical assistance promptly.

When a person requests prescription drugs and a question arises about the contents and use of the prescription, seek the assistance of qualified medical personnel.

m. Using Technology

The CBP will continue to apply innovative technology to the personal search process in order to be more effective and efficient in our dealings with the traveling public. The CBP uses body scan imaging technology for non-intrusive patdowns. Each application of technology will include a Standard Operating Procedure (SOP) for use of the system. All SOPs for the use of new technology relating to personal searches must conform to the policies outlined in this Handbook.

n. Using Force

Once you have decided to conduct a personal search, make the search as thorough as is reasonably necessary.

In no case should any complaint, threat of complaint, or physical resistance result in a person not being searched, or being searched less thoroughly than is warranted by the circumstances.

Forcible resistance is a federal felony (18 U.S.C. §111 and § 2231). You have the authority to use reasonable force—*a force no greater than what is reasonably necessary for the authorized purpose*—to overcome resistance to a lawful search.

o. Detentions after 2 Hours

Any person detained 2 hours for a personal search will be given the opportunity to have CBP personnel notify someone, including an attorney, of their delay in CBP unless probable cause has been developed (see Attachment 2).

The 2-hour period for the notification requirement begins at the time the officer initiates the patdown, or when an officer receives permission from a supervisor for the personal search of a juvenile or a body scan examination. Annotate in the appropriate TECS and/or IDENT/ENFORCE report the time permission was requested for the personal search. **Time spent on prior interviews, baggage and vehicle examinations does not count toward the 2-hour notification period.** The 2-hour notification process is only used during a continuation of the personal search process, e.g., beginning with a patdown search and moving to a medical examination or monitored bowel movement.

When the 2-hour notification period has elapsed, immediately offer to notify someone of the delay on behalf of the detained person by telephone, or face-to-face if the contact is waiting outside the CBP area. Obtain a name, relationship, and telephone number (if the contact person is not waiting outside the CBP facility). The supervisor will notify the ICE duty agent and/or the CBP prosecution officer prior to the notification. **NOTE**: Although a detainee may request that

the 2-hour notification be made to an attorney, the detainee will not be given an opportunity to consult with counsel at any time before Miranda warnings are given by CBP officers and invoked by the detainee (see chapter 10, part II).

A CBP officer shall make the notification on behalf of the detainee. This should be accomplished by the supervisor or a passenger service representative (see Attachment 2).

The narrative of the TECS and/or IDENT/ENFORCE report shall include information on the person notified (friend or relative), what time the notification was made, and phone number of the person contacted. Should the detained person decide not to have someone contacted by CBP, the TECS and/or IDENT/ENFORCE report will note that decision.

p. Prolonged Detentions for Medical Examinations

Prolonged detentions are those lasting 8 hours or longer. You must notify the Port Director in all cases of prolonged detentions.

Prior to the enactment of actions which will result in a prolonged detention, the local Associate/ Assistant Chief Counsel must be consulted for legal advice by the Port Director (GS-13 or above), acting Port Director, or the Director, Field Operations during normal working hours. After normal working hours, the Port Director will contact the Situation Room (SITROOM) (1-877-748-7666). The SITROOM will provide the Port Director with an on-call attorney from the Office of Chief Counsel. Port directors are not required to consult with counsel prior to moving a traveler to a medical facility if that traveler has confessed to carrying narcotics internally.

In all circumstances, when a person has been detained 8 hours from the time that supervisory approval was first given for any personal search or that a personal search was initiated, the ICE duty agent and/or the CBP prosecution officer will contact the U.S. Attorney's office.

The ICE duty agent and/or the CBP prosecution officer shall advise the U.S. Attorney's Office of the detention. If the Assistant U.S. Attorney (AUSA) believes that probable cause has been established, the ICE duty agent and/or the CBP prosecution officer will work with the AUSA to obtain an arrest or search warrant before a magistrate. If the AUSA determines that probable cause does not yet exist but believes that reasonable suspicion exists, he will so advise CBP. In such situations, it is the sole responsibility of CBP to determine whether the detention will be continued. If the AUSA believes that reasonable suspicion does not exist, CBP will release the detained person. The ICE duty agent and/or the CBP prosecution officer shall document on the TECS and/or IDENT/ENFORCE report any decision or guidance provided by the AUSA. The CBP may continue to detain a person while awaiting a response from the AUSA and/or the magistrate if reasonable suspicion is not dispelled. **NOTE:** Where certain judicial circuits, such as the Second and Fifth, require different time frames, CBP and the local U.S. Attorney's Office will ensure that those time frames are met in addition to the requirements set forth in this Handbook.

q. Written Reports

The written reports, either IDENT/ENFORCE, IOIL, or the SEACATS Incident Menu Selection (IOAA) will include both required data (indicated by an asterisk in TECS) and detailed narratives regarding the circumstances surrounding the search and/or detention.

The Personal Search Worksheet (Appendix D) is required when you are not able to input search results into TECS and/or IDENT/ENFORCE on the spot. Appendix D is **not** required if the results of the search are input immediately. When the search results in a seizure and/or arrest, the worksheet, if used, becomes part of the seizure documentation. When no enforcement action results, the worksheet, if used, must be retained locally, along with consent forms and other pertinent documents, in chronological order, for 2 years and 3 months from the date of the search.

When recording personal search types performed on individuals, indicate in IOIL all levels of searches performed, and in IOAA include the **most intrusive** type of search conducted.

Ensure that times are recorded accurately, including specific start-stop times for completing various steps or types of searches (i.e., immediate patdown, patdown, partial body) and start-stop drive time to and from the medical facility.

The TECS reports must contain the objective, articulable facts that support the particular search or detention in the narrative. It is important to complete as much information as possible concerning the description of the person and circumstances surrounding each type of personal search used. This includes recording from the least intrusive to the most intrusive search performed. The reports are Jencks material and could be used by a defense attorney to cross-examine the testifying officer (*see § 1.630, LCCO*).

Additional mandatory details that must be contained in the reports can be found in each chapter of this Handbook.

r. Supervisory Approval of TECS or IDENT/ENFORCE Reports

When operationally possible, the same supervisor initially involved with the personal search should approve the TECS and/or IDENT/ENFORCE report.

By approving a TECS and/or IDENT/ENFORCE report, a supervisor is certifying that the required information is present in the report and that sufficient details exist regarding the circumstances surrounding the search.

When the supervisor who approved the search approves the TECS and/or IDENT/ENFORCE report, he is certifying that he reviewed the factors that led him to approve the search in accordance with CBP policy.

All supervisors will ensure that reports are detailed and accurate. When details are missing or unclear, the supervisor will work with the officer to correct the report. A supervisor may add additional comments at the end of a report if needed, but not change the context of the originating officer's comments, unless the reporting officer has agreed with the changes.

The Negative Personal Search—Supervisor's Check Sheet (Appendix C) is attached to the IOIL TECS record and will be displayed for the approving supervisor when a negative personal search has been conducted. This page must be completed before the record can be closed out. In the event TECS is unavailable, complete the form manually and enter the information once TECS is available.

s. Port Director Review of TECS and IDENT/ENFORCE Reports

Port directors will periodically review TECS and IDENT/ENFORCE reports pertaining to personal searches to determine the effectiveness of personal searches at the port, including whether there may be any improprieties in the conduct of these searches.

When reports indicate that effectiveness has decreased or that improprieties exist in the conduct of searches, the Port Director will ensure that corrective actions are taken.

t. Corrective Action

Any supervisor who notes deficiencies in the TECS and/or IDENT/ENFORCE report or becomes aware that the search was performed contrary to this Handbook (including in an inappropriate, unreasonable, discourteous, or unprofessional manner) or contrary to supervisory approval, will ensure that appropriate corrective action is taken in accordance with CBP policy. If supervisors note deficiencies or become aware that the search was performed contrary to this Handbook, they shall annotate the information at the end of the report in the narrative section.

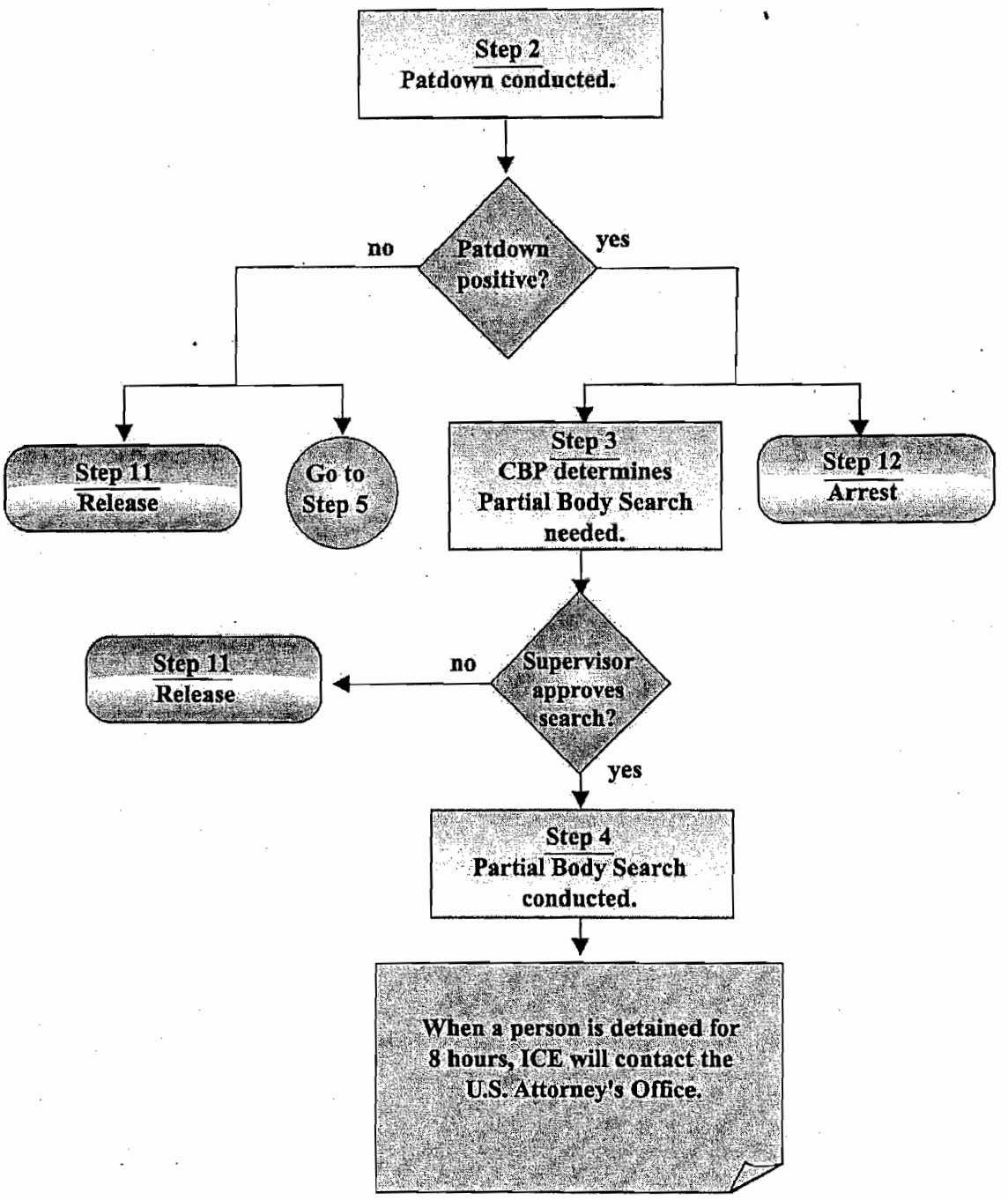
u. Coordination and Responsibilities of Field Operations and ICE

The Office of Field Operations will have operational control over and responsibility for the person until probable cause of a crime has been developed. A positive field test is one method of determining probable cause; other factors can also be considered in probable cause determinations. In the case of suspected controlled substances, a positive field test will supply probable cause.

Once probable cause has been developed, a determination will be made as to whether-a CBP prosecution officer or an ICE agent will assume operational control of the person. If federal prosecution is declined, CBP will retain control of the person until he is turned over to state or local authorities.

Field Operations and ICE should develop a joint local policy regarding notifications, security of the person and evidence, processing of evidence and release of the person to state or local authorities. The local Associate/Assistant Chief Counsel should be included in the policy development process.

Chapter 3


Step 2
Patdown conducted.
Patdown positive?
no
yes
Step 11
Release
Go to Step 5
Step 3
CBP determines Partial Body Search needed.
Step 12
Arrest
Supervisor approves search?
no
Step 11
Release
yes
Step 4
Partial Body Search conducted.
When a person is detained for 8 hours, ICE will contact the U.S. Attorney's Office.

Chapter 3
Patdown Searches

a. Supervisory Approval

A supervisor must approve all body scan examinations, patdown, and body searches, except immediate patdowns for weapons or dangerous objects. When the personal search involves a juvenile, prior supervisory approval will be obtained in all cases with the exception of the immediate patdown. In locations where technology such as the body scan is available, and if the passenger chooses this option, supervisory approval will be obtained prior to conducting the body scan.

When possible, approvals should be granted in person, so the supervisor can review observational factors that are used to justify the search. However, approval may be granted by telephone or radio if necessary. When a personal search is required on a juvenile, the approving supervisor **must** be present to grant authority except in exigent circumstances, such as when a supervisor is several hours away, as can happen at remote locations between the ports of entry. Supervisors of the opposite gender **may not** witness the personal search.

The supervisor must make an independent assessment and decide whether the objective, articulable facts warrant the level of search contemplated. You must notify the supervisor of the results of the search.

b. Immediate Patdown Defined

An immediate patdown is a search necessary to ensure officer safety. The scope of an immediate patdown shall be limited to those areas on a person where an officer suspects a weapon or dangerous object may be concealed. There may be cases where it is necessary to search the entire person to ensure a weapon and/or dangerous object is not present. This may include the removal of a person's shoes or boots to ensure there is no weapon present, but **not** the removal for the purpose of checking for merchandise (including contraband). The search is justified based on the need to protect the officer and public from dangerous weapons and/or objects.

You should limit the use of the immediate patdown to situations in which a weapon and/or dangerous object may be present. For reasons of safety, when you see or suspect that a person may be armed, you are authorized to conduct an immediate patdown search to secure a weapon and/or dangerous object. It is not directed at uncovering the evidence of a crime.

You may conduct an immediate patdown for officer safety without prior supervisory approval, and you may perform it on a person of the opposite gender. If a weapon or dangerous object is discovered, immediately contact your supervisor after the immediate patdown is conducted.

Record immediate patdown searches as Code "I" in the appropriate TECS report. Officers must ensure that the appropriate code is used, in the corresponding reporting system (i.e.: IOIL, S/A/S, or IDENT/ENFORCE). Ensure the Reason for Search code "007" (Officer Safety), at minimum, is used whenever an immediate patdown search is performed. Other Reason for Search codes may also apply for an immediate patdown.

c. Patdown Search Defined

A patdown is a law enforcement tool used to search for merchandise (including contraband) hidden on a person's body. A patdown is also used to search for material evidence hidden on a person's body.

A patdown search may also apply to persons being detained and placed into a secure area (see Customs and Border Protection Directive 3340-030A, Secure Detention Procedures, dated March 9, 2004). Ensure the Reason for Search code "008 - Detention" is used whenever a patdown search is performed because of a detention.

Before conducting a body scan or the patdown search of a juvenile, supervisory approval is required.

If, after the body scan, you continue to have reasonable suspicion that the person has contraband, documents, or other merchandise concealed on his body, you may conduct a patdown search, with supervisory approval.

If, after the patdown, you continue to have reasonable suspicion that the person has contraband, documents, or other merchandise concealed on his body, you may conduct a partial body search, with supervisory approval.

d. Patdown Requirements

The CBP policy is that all patdown searches require that at least one articulable fact be present before conducting the search. The articulable fact may be a TECS and/or IDENT/ENFORCE subject record for a previous violation.

An alternative to a patdown search may be offered to the traveler if a patdown search is to be conducted. This alternative is only available if a Body Scan Imaging System is available at the port of entry. The Body Scan Imaging System is not afforded to travelers when:

1. Merchandise (including contraband) is discovered in privately owned vehicles (POVs).
2. Merchandise (including contraband) is found in baggage or luggage.
3. Merchandise (including contraband) is found during the course of an immediate patdown.
4. The traveler admits to transporting narcotics/contraband on the body, POV, or in their luggage/baggage.
5. A female traveler knows or suspects that she may be pregnant.

e. Scope of a Patdown Search

A patdown search consists of one or more of the following actions:

1. Patting the hands over the person's clothed body.
2. Removing the person's shoes.
3. Lifting the pant leg or hem of a skirt a few inches.
4. Removing a belt.

5. Examining or reaching into pockets.
6. Rolling up shirtsleeves.
7. Removing a wig or hairpiece.

The person being searched should remove his own clothing unless he refuses to cooperate (see chapter 4.c.4).

f. A Patdown Precedes More Intrusive Searches

A patdown search must precede all more intrusive searches, **except** when you reasonably suspect that a person might have dangerous articles concealed, such as needles or razor blades, that might harm an officer during a patdown. In such cases, you may do a partial body search for any such dangerous articles.

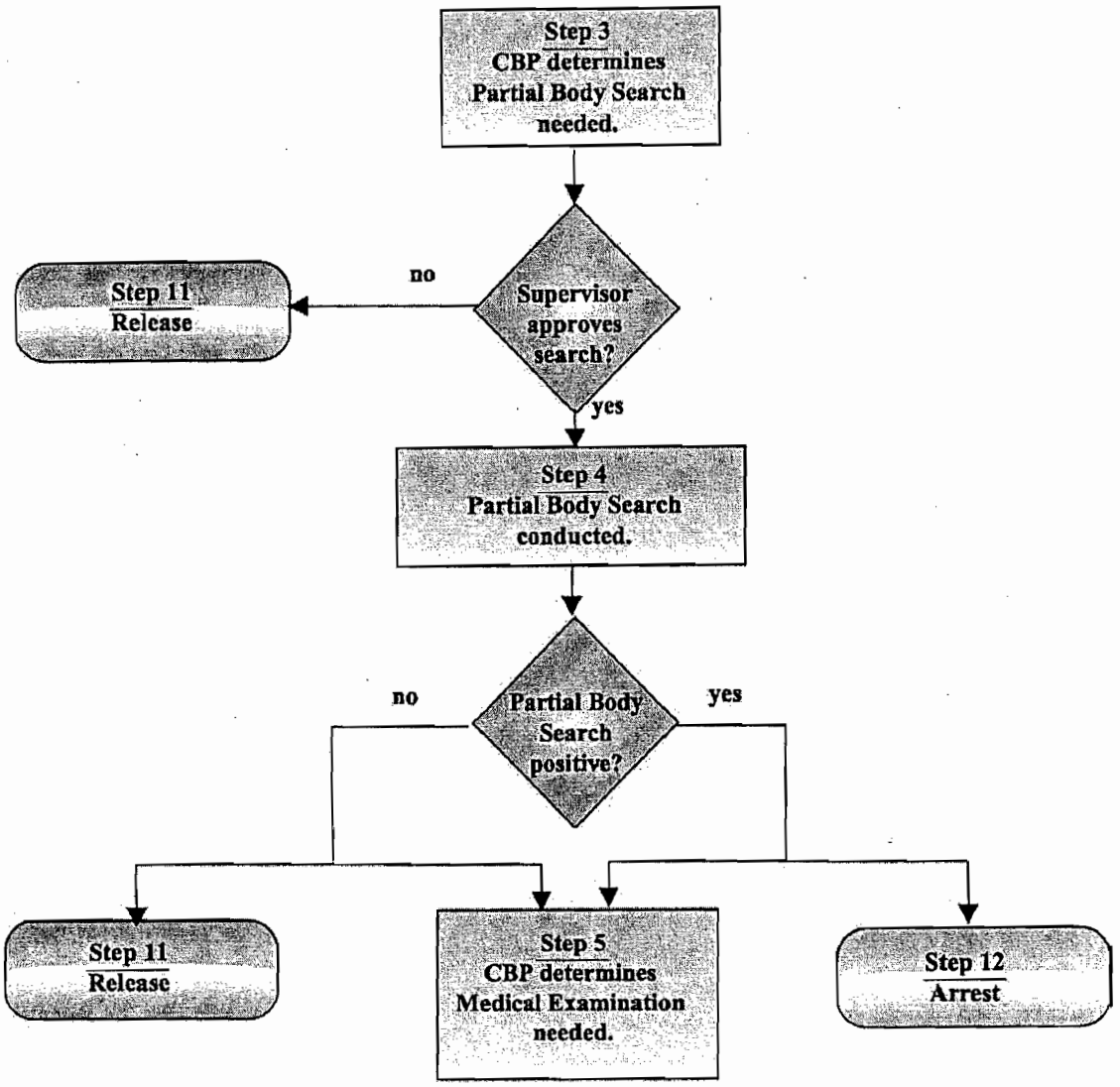
g. Safeguarding Property

When conducting a patdown, ensure that both the person being searched and the witness can observe all aspects of the search, especially the examination of wallets, money containers, or other valuables. All monetary instruments and high-value property must remain with the person.

All bills, receipts, price lists, tags, papers, notes, or other articles pertinent to the examination should be separated and detained, if necessary, pending further action.

Inform the person if any articles are seized or detained. Give the person a receipt covering each item being seized or detained. Mark any article held as evidence with your initials, along with the date and time seized, so that you can identify them at a later time.

Chapter 4



When a person is detained for 8 hours, ICE will contact the U.S. Attorney's Office.

Chapter 4
Partial Body Searches

If you have reasonable suspicion that a person has contraband, other merchandise (including material evidence concealed on his body), you should first conduct a patdown search as defined in chapter 3; you must then obtain authorization from a supervisor. Partial body searches are to be conducted in a private area out of the public view.

a. Supervisory Approval

Once a patdown search has been conducted and reasonable suspicion exists that material evidence is being concealed, you must request approval from your supervisor before conducting a partial body search.

However, you may take appropriate actions to protect yourself and others if the patdown reveals what you suspect to be a weapon or dangerous object concealed on the person (see chapter 2.a).

b. Partial Body Search Defined

A *partial body search* is the removal of some of the clothing by a person to recover material evidence reasonably suspected to be concealed on the body. Except as provided for in chapter 3.e.

Only clothing covering the particular area of the body under suspicion may be removed. Under most circumstances, it will be **unnecessary** to conduct a full body search.

The allowable extent of a partial body search depends on the reasons for conducting the search. For example, if you are conducting a search because a bulge on the person's abdomen was detected during the patdown, then you should limit the partial body search to the abdominal area, unless reasonable suspicion exists that the person may have concealed something elsewhere on the body or in a body cavity.

c. Conducting the Partial Body Search

1. Removing Clothing

Removal of some clothing (except outer garments—see chapter 2.j) constitutes a partial body search. As an example, this would include removal of socks. Unless the person being searched refuses to cooperate, the person must remove his own clothing.

2. Searching Clothing

Thoroughly search each article of clothing that is removed.

3. Visual Exam

You may visually examine the unclothed portion of the body of the person being searched.

You may ask the person being searched to manipulate his own body as required to permit adequate visual examination. The mere visual examination of the exterior skin area around the anus or vagina is not considered a cavity search.

You may ask a person to bend forward and spread the buttocks, solely for the purpose of viewing the area around the anus. You may **not** ask a woman to spread her labia (the folds of skin bordering the vagina), as such a request would constitute a body cavity search.

4. Touching the Person

Do **not** touch the person during a partial body search unless the person refuses to remove any article of clothing or otherwise impedes you in the performance of your duties.

If you think the person may resist the search, you may warn him that forcible resistance to a search violates federal law *(18 U.S.C. § 111)*. A great degree of caution must be exercised in those rare instances when reasonable force may be necessary *(U.S. Customs Firearms and Use of Force Policy, Customs Directive 4510-017A dated December 17, 2001)*.

5. Removing Prosthetic Devices and Casts

Removal of prosthetic devices such as an artificial limb is considered to be part of a partial body search and is permitted if there is reasonable suspicion that material evidence is contained within the device.

The person being searched should remove the device if he can do so without medical assistance. If medical assistance is required, seek the assistance of a physician.

Removal of a cast is considered to be part of a partial body search. If there is reasonable suspicion that material evidence is contained within a cast, the person will be taken to a medical facility to have the cast X-rayed and/or removed. Under no circumstances will a cast be probed while it is attached to a person's body. The Port Director or acting Port Director as defined in chapter 5.a must approve transporting the person to a medical facility for a medical examination.

6. Objects in the Rectal Cavity

Do **not** ask a person to remove an object from the rectal cavity because of the risk that an object will rupture and cause serious harm. If there is reasonable suspicion that the person is carrying material evidence in the rectal cavity, proceed to a medical facility for a body cavity search (see chapter 8). Record this situation as a body cavity search in the appropriate TECS and/or IDENT/ENFORCE report.

7. Objects in the Vaginal Cavity

If you detect an object in the vaginal cavity and reasonably suspect that the object may contain contraband, merchandise, and/or documents, **stop** the search and consult your supervisor. If the supervisor concurs that reasonable suspicion exists, he may authorize you to ask the person to voluntarily remove the object.

If you find what appears to be a personal hygiene product, **stop** the search and consult your supervisor. The supervisor may authorize you to ask the person to voluntarily remove the item. If the person agrees to remove the item, this type of body search does not constitute a body cavity search and does not require the port director's approval. Record the incident in the appropriate TECS and/or IDENT/ENFORCE record.

If the person refuses to voluntarily remove the personal hygiene product, proceed to a medical facility for a body cavity search (see chapter 8). You must obtain port director approval for a body cavity search or medical examination to be performed at a medical facility (see chapter 8).

Record this situation as a body cavity search in the appropriate TECS and/or IDENT/ ENFORCE report.

d. Searching a Juvenile

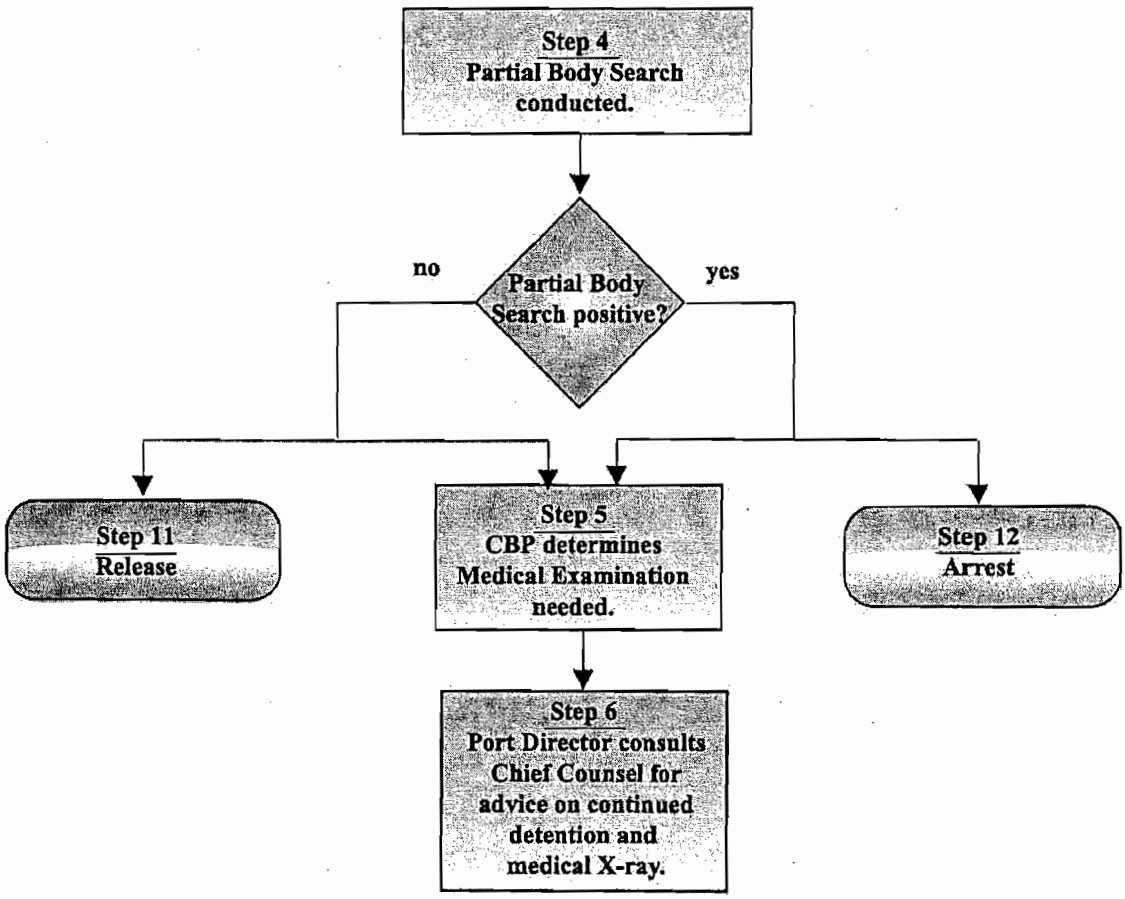
If a juvenile is traveling alone, a patdown or partial body search may be authorized without notifying any waiting adult relative or legal guardian in advance.

Supervisors should take into consideration whether investigative activities might be affected if a waiting adult is notified of the search. (See chapter 2.i for additional details on searching a juvenile.)

If an adult relative or legal guardian accompanies the juvenile, the supervisor should explain the circumstances surrounding the search. In most cases, the supervisor should allow the adult to be present during the search, unless the presence of the adult would exacerbate the situation rather than having a calming effect.

If the adult is of a different gender than the juvenile, and the juvenile does not want the adult present when a partial body search is to be performed, the adult should wait immediately outside the search room in order to afford the juvenile as much privacy as possible.

Chapter 5



When a person is detained for 8 hours, ICE will contact the U.S. Attorney's Office.

Chapter 5
Determining the Need for a Medical Examination

Reasonable suspicion that material evidence may be concealed inside the body is required to conduct a medical examination.

a. Port Director Approval

Body cavity searches, X-ray searches, and detentions for a Monitored Bowel Movement (MBM) require the approval of the Port Director (GS-13 or above). The local Associate/Assistant Chief Counsel must be consulted for legal advice by the Port Director (GS-13 or above); acting Port Director; or the Director, Field Operations.

The approval requirement **cannot** be further delegated unless the Port Director is away on leave or on a temporary duty assignment. Then the acting Port Director may approve the search/ detention, provided he is grade GS-13 or above. Port Directors or acting Port Directors below grade GS-13 must seek the approval of a GS-13 Area or Service Port Director, or Director, Field Operations, in their chain of command.

Deputy and/or Assistant Port Directors for Passenger Operations in grade GS-14 or above may also approve the search/detention for medical examinations, provided the Port Director delegates them.

Record the name of the CBP official approving the search/detention in TECS.

Give the person an explanation of the process (see Attachment 3).

b. Transporting Persons to a Medical Facility

The Port Director or acting Port Director as defined in paragraph (a) must approve transporting the person to a medical facility for a medical examination. Deputy and/or Assistant Port Directors for Passenger Operations in grade GS-14 or above may also approve the transportation of a person to a medical facility, provided the Port Director delegates them.

When transporting persons to a medical facility for continuation of the personal search process, a minimum of two CBP officers, or one CBP officer and another law enforcement officer, will be used.

At least one of the officers should be of the same gender as the person being transported.

Take appropriate precautions, consistent with each situation, to ensure that the person is safely transported to the medical facility. Such precautions can include taping pants legs to prevent disposal of evidence and may include handcuffing if necessary for officer and/or subject safety. Special vehicles designed for secure personnel transport should be used when available.

Maintain contact with SECTOR radio at all times and provide departure and arrival times and mileage to SECTOR.

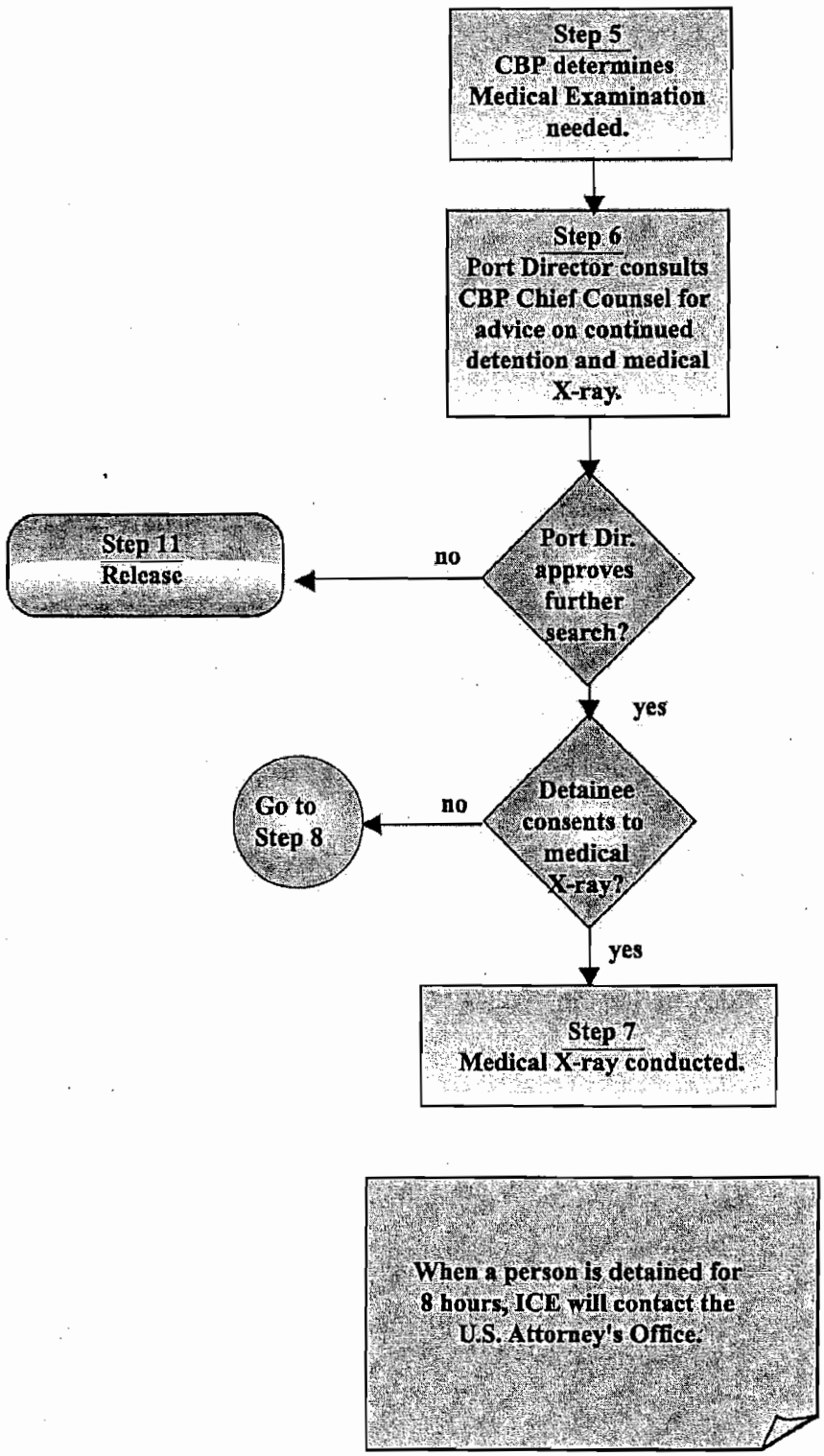
c. Transporting a Juvenile Traveling Alone to a Medical Facility

Before transporting a juvenile to a medical facility for an X-ray search, body cavity search, or MBM, a supervisor will notify any adult relative or legal guardian who is accompanying the juvenile or is waiting for the juvenile outside the CBP facility.

In addition, such person will be allowed to be present at the medical facility (see chapter 2.i.2), if the supervisor believes it would be constructive. The supervisor should offer to arrange transportation for the adult to the medical facility, but it is left to the discretion of the supervisor whether the adult travels in the same vehicle as the juvenile.

If there is no adult relative or legal guardian accompanying or waiting for a juvenile at the CBP facility, best efforts will be made to contact them via telephone, pager, etc., prior to taking the juvenile to a medical facility. If no contact was made with an adult relative or legal guardian, document the results in the appropriate TECS and/or IDENT/ENFORCE record.

Chapter 6


Step 5
CBP determines Medical Examination needed.
Step 6
Port Director consults CBP Chief Counsel for advice on continued detention and medical X-ray.
Port Dir. approves further search?
no
Step 11
Release
yes
Detainee consents to medical X-ray?
no
Go to Step 8
yes
Step 7
Medical X-ray conducted.
When a person is detained for 8 hours, ICE will contact the U.S. Attorney's Office.

Chapter 6
Medical X-Rays

a. X-Ray Search Defined

An X-*ray search* is the use of a medical X-ray by medical personnel to determine the presence of material evidence within the body.

b. Port Director Approval

An X-ray search requires the approval of the Port Director (GS-13 or above).

The approval requirement **cannot** be further delegated unless the Port Director is away on leave or on a temporary duty assignment. Acting port directors may approve the X-ray search, provided they are grade GS-13 or above. Personnel below grade GS-13 must seek the approval of a GS-13 Area or Service Port Director; or Director, Field Operations, in their chain of command.

The Port Director's approval or disapproval will be recorded in the IOIL, S/A/S, or IDENT/ENFORCE, regardless of the outcome of the search.

c. Voluntary X-Rays

You may offer the traveler the option of consenting to a medical X-ray. Medical personnel will conduct the medical X-ray at a medical facility or hospital. Ports of entry that have the optional Mobile X-ray System (MXRS) shall comply with their SOP for this type of search. Under no circumstances shall an X-ray search be conducted on pregnant women or women who refuse a pregnancy test. If the person does not give consent, but the required degree of suspicion exists, detain the person for a medical examination. The Port Director must determine whether to seek an order for an involuntary X-ray, body cavity search, or to detain for an MBM.

d. Consent

Consent to search must be freely and voluntarily given. Voluntary consent is a question of fact, which must be determined from all the surrounding circumstances. For example, the fact that a person has signed a consent form is just one circumstance that a court will consider in determining voluntary consent. The court will examine all of the facts surrounding the signing of the consent form.

Juveniles can sign consent forms if no adult relative or legal guardian is present. There is no fixed rule regarding at what age the juvenile must be to sign the consent form. The court will weigh all factors (i.e., age, intelligence, and whether the juvenile had the capacity to appreciate and understand the consequences of giving consent).

If you have questions concerning consent issues with juveniles, consult the Associate/Assistant Chief Counsel for legal advice.

If the juvenile is traveling alone and cannot provide consent, the Port Director shall coordinate with the Associate/Assistant Chief Counsel, U.S. Attorney, and any appropriate state agencies (usually Child Welfare or Social Services) to determine the appropriate course of action.

Obtaining consent by coercion, through word or deed, is strictly prohibited.

Document your observations concerning the person's maturity, intelligence, education, and training in the TECS or IDENT/ENFORCE report. They are important to the issue of voluntariness of consent.

e. Procedures to Obtain Consent

1. The Person Must Be Informed of the Nature of the Examination

Explain the nature of an X-ray examination, when it will be done, and who will do it.

2. The Person Must Understand the Explanation

Ensure that the explanation is in a language the person understands. Document any use of a translator for court purposes. When a language barrier exists or the person is in doubt or confused, then consent may be in question.

3. The Person Must Know that He Has the Right to Refuse

Advise the person of the right to refuse the X-ray. Giving this information helps to prove that any consent given is voluntary.

f. Use of Consent Form

Thoroughly and carefully explain to the person all the language in the consent form. The circumstances surrounding the signing of the consent form can become extremely important if the person claims that the consent was coerced or was the result of duress. It is very important to document what any CBP officer said to the person and what the person said during this critical time. Use the appropriate consent form in the language the person understands.

The supervisor (if on-site) must review the consent form to ensure that it is properly signed. If there is any question as to the validity of the signed consent, contact the Associate/Assistant Chief Counsel for legal advice.

If the person consents to the X-ray, use the consent form (Appendix E) to document consent.

g. Revoking Consent

Even though a person signs a consent form, he may revoke consent at any time, even at the medical facility.

The revocation may be by words or actions, such as indicating a desire not to go freely to the medical facility. Refusal to sign a medical consent form (Appendix E or F) is considered a revocation.

If the person revokes his consent, immediately **stop** all searches based on the consent and notify your supervisor.

The supervisor will notify the Port Director of the revocation. The Port Director (see 6.b) will consult with the local Associate/Assistant Chief Counsel and the duty ICE agent or CBP prosecution officer to determine whether to release the person, detain the person for an MBM, or request authorization for an involuntary X-ray from a federal magistrate.

h. Involuntary X-Rays

Involuntary searches require a court order.

Involuntary X-ray searches will be conducted **only** under the most extraordinary circumstances, and **never** on a pregnant woman or a woman who refuses a pregnancy test.

Port directors will consult with the local Associate/Assistant Chief Counsel and the duty ICE agent or CBP prosecution officer to determine whether to seek a court order for an involuntary X-ray search. If it is determined to proceed with such an X-ray search, and the duty ICE agent or CBP prosecution officer will contact the U.S. Attorney and request that a warrant be obtained to authorize the X-ray search.

i. Pregnancy Checks

Under no circumstances will a pregnant woman or a woman who refuses a pregnancy test be subjected to an X-ray search, either voluntarily or involuntarily.

When a woman is taken to the medical facility, be sure to advise medical personnel that a pregnancy check **must** be performed prior to an X-ray.

If a woman is pregnant or refuses a pregnancy check, a decision must be made by the Port Director after obtaining legal advice from CBP counsel as to whether or not to continue to detain the woman for a medical examination, which may include an MBM (see chapter 8).

j. Reading the X-Ray

Only medical personnel may read the X-ray and interpret whether it indicates the presence of foreign objects that may be merchandise. The CBP officers may **not** render an opinion regarding the interpretation of the X-ray.

If the on-duty physician is uncertain whether the person has a foreign object in his body following the reading of the X-ray, you may seek a radiologist to read the X-ray, if one is reasonably available. Record the conclusion of the medical person in the S/A/S, IOIL, or IDENT/ENFORCE report.

k. Foreign Objects Not Found

When medical personnel have determined that foreign objects are not present in the body, release the person and immediately transport him back to the CBP facility, **unless** medical personnel determine that a medical condition requires the person to remain at the medical facility **and** the person consents to remain. Document these circumstances in the narrative of the search report. Also, you must advise the person that he is responsible for the costs of additional medical treatment.

l. Inconclusive X-Ray

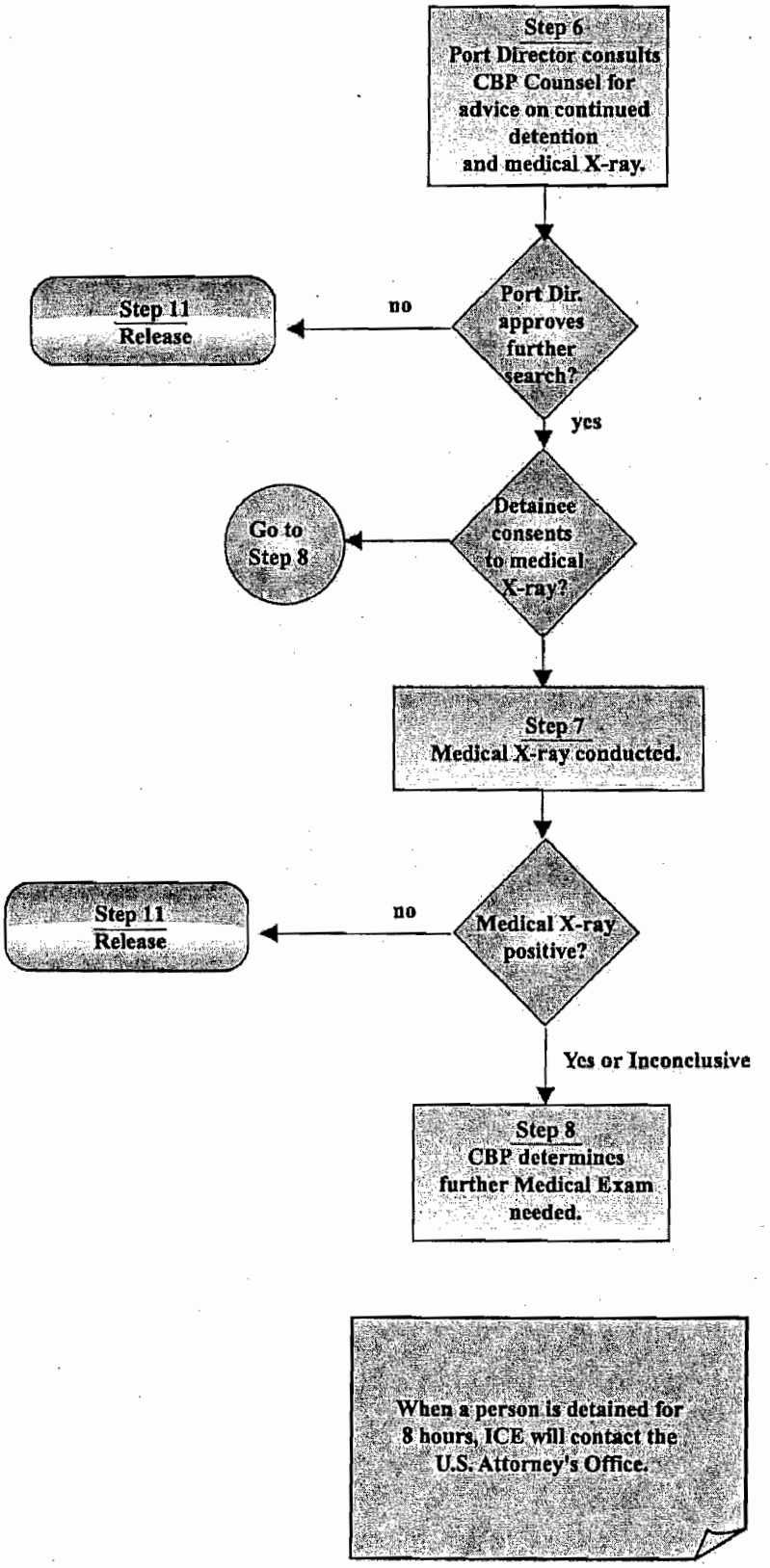
If medical personnel deem the X-ray inconclusive, a decision must be made by the port director after obtaining legal advice from CBP counsel as to whether to continue to detain the person for an MBM.

m. Foreign Objects Indicated by X-Ray

If medical personnel believe that the X-ray indicates the presence of foreign objects, and suspicion remains that the foreign objects may be contraband or other material evidence, the Port Director must be notified to decide whether to continue to detain the person for a medical examination, which may include a body cavity search or an MBM (see chapter 8). It is not CBP policy to arrest a person solely on the basis of a positive X-ray reading by medical personnel. For the purposes of this Handbook, probable cause to arrest will not be established until the suspected foreign objects have tested positive for narcotics. The 2-hour notification rule continues to apply until probable cause has been established (see chapter 2).

An internal search is permitted **only** under body cavity search guidelines and procedures or if determined medically necessary by the physician (see chapter 8.II.g).

Chapter 7


Step 6
Port Director consults CBP Counsel for advice on continued detention and medical X-ray.
Port Dir. approves further search?
no
Step 11
Release
yes
Detainee consents to medical X-ray?
Go to Step 8
Step 7
Medical X-ray conducted.
Medical X-ray positive?
no
Step 11
Release
Yes or Inconclusive
Step 8
CBP determines further Medical Exam needed.
When a person is detained for 8 hours, ICE will contact the U.S. Attorney's Office.

Chapter 7
Determining the Need for Further Medical Examination

a. Foreign Objects Indicated by X-Ray

If medical personnel believe that the X-ray indicates the presence of foreign objects, and suspicion remains that the foreign objects may be contraband or other material evidence, the Port Director must be notified to decide whether to continue to detain the person for a further medical examination, which may include a body cavity search or an MBM. Local protocol may require that the local Associate/Assistant Chief Counsel be consulted for legal advice.

b. Reasonable Suspicion

A body cavity search **must** be based on a reasonable suspicion that a person is concealing contraband or other material evidence within a body cavity.

The following are examples of how reasonable suspicion may be developed.

1. Specific Information

You have received specific information indicating that the person may be concealing contraband or other material evidence within a body cavity.

2. Foreign Object Observed

You have observed a foreign object protruding from a body cavity during an earlier stage of inspection or search.

3. Totality of Factors

The totality of factors justifies a partial body search or X-ray search, and there are factors (e.g., grease or other lubricant present in the anal area, redness, and inability to sit) that reasonably indicate that the person may be concealing contraband or other material evidence within a body cavity.

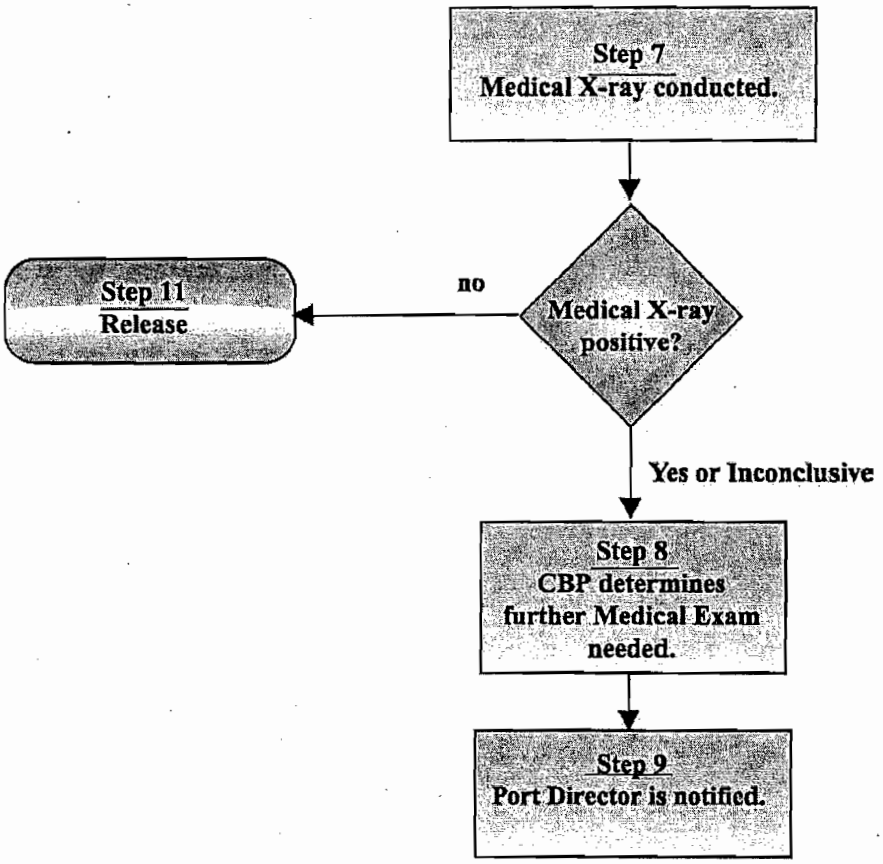
c. Port Director Approval

Conducting a body cavity search requires the approval of the Port Director (GS-13 or above). The Port Director will review the articulable factors and consult with Associate/Assistant Chief Counsel prior to approving personal searches beyond partial body searches.

The approval requirement **cannot** be further delegated unless the Port Director is away on leave or on a temporary duty assignment. The acting Port Director may approve the detention, provided he is grade GS-13 or above. Personnel below grade GS-13 must seek the approval of a GS-13 Area or Service Port Director; or Director, Field Operations, in their chain of command.

The Port Director's approval or disapproval will be recorded in the IOIL, S/A/S, or IDENT/ENFORCE, regardless of the outcome of the search.

Chapter 8



When a person is detained for 8 hours, ICE contact the U.S. Attorney's Office.

Chapter 8
Further Medical Examinations

Further medical examinations include body cavity searches and monitored bowel movements.

I. BODY CAVITY SEARCH

a. Body Cavity Search Defined

A *body cavity search* is any visual or physical intrusion into the rectal or vaginal cavity.

Body cavity searches shall be made **only** under the most exceptional circumstances.

b. Who May Conduct a Body Cavity Search

Only medical personnel may conduct a body cavity search. The CBP officers are prohibited from conducting body cavity searches themselves, or from causing a body cavity search to be conducted at a CBP facility.

c. Consent

If the person consents to the body cavity search or a pelvic examination, use the consent form (Appendix F) to document consent.

Thoroughly and carefully explain the language in the form. If the person writes anything on the form other than a signature, the consent may not be voluntary. The supervisor must review the consent form to ensure that it is properly signed. If there is any question as to the validity of the signed consent, contact the Associate/Assistant Chief Counsel for legal advice.

You must document your observations concerning the person's maturity, intelligence, education, and training in the TECS or IDENT/ENFORCE report. This information is important in proving that consent was voluntary.

d. Court-Ordered Involuntary Body Cavity Searches

Involuntary body cavity searches require a court order.

Port Directors (GS-13 or above) will consult with the local Associate/Assistant Chief Counsel and the duty ICE agent or CBP prosecution officer to determine whether to seek a court order for an involuntary body cavity search. If it is determined to proceed with a body cavity search, the duty ICE agent or CBP prosecution officer will contact the U.S. Attorney's office and request that a warrant be obtained to authorize the body cavity search.

II. MONITORED BOWEL MOVEMENT

a. Monitored Bowel Movement (MBM) Defined

An *MBM* is the detention of a person for the purpose of determining whether contraband or other material evidence is concealed in the alimentary canal.

b. Consent Not Required

Detention for an MBM does **not** require the consent of the person being detained. However, it is important to ensure that any person detained for an MBM is treated in a courteous, professional manner and with as much dignity as possible, given the situation.

c. MBMs at Medical Facilities

Because of the danger that concealed drug containers may rupture, the person **must** be taken as soon as possible to a medical facility and placed under medical supervision (with appropriate security) to minimize possible injury.

The CBP officers may **not** conduct MBMs at CBP facilities.

d. Consent for X-Ray Search during Detention for MBM

Explain the person's options at the beginning of the process. Refrain from repeatedly asking the person to consent to an X-ray while being detained for an MBM. Doing so could affect the person's subsequent voluntary consent.

If, during a detention for an MBM, the person voluntarily consents to an X-ray search, have the consent form signed and follow the procedures applicable to an X-ray search (see chapter 6).

e. Detentions after 2 Hours

During the process of waiting for a subject to pass a foreign object during an MBM, if probable cause has not been established based upon a positive field test, the person will be afforded the opportunity to have someone notified on their behalf at the 2-hour period (see chapter 2), which begins at the time permission is received from a supervisor to conduct the personal search.

f. Extended Detentions

The Port Director **must** reapprove any detention longer than 8 hours (from the previous approval) when probable cause of a crime has not been developed but the AUSA believes reasonable suspicion exists.

The reapproval requirement shall continue for each 8-hour period until (a) probable cause has been developed, and a Federal magistrate issues a warrant, or (b) the person is released.

The Port Director will consult with the duty ICE agent or CBP prosecution officer and the Associate/Assistant Chief Counsel before rendering a decision. Record reapprovals in the appropriate TECS and/or IDENT/ENFORCE report.

g. Medical Treatment

Once a person is at a medical facility, medical personnel make all medical decisions. The CBP officers have no authority over the person's medical treatment. No CBP officer is authorized to request, advise, or encourage medical treatment.

Extraordinary medical techniques, such as inducement of nausea, forced regurgitation, or use of emetics, will be used **only** at the direction of a licensed physician to preserve the person's health or life.

Under no circumstances will a CBP officer administer medical techniques, medicines, or preparations, even at the request of medical personnel. However, the CBP officer is still responsible for all enforcement decisions regarding the person while at a medical facility.

This does not preclude an officer from providing lifesaving emergency medical care prior to arriving at the medical facility.

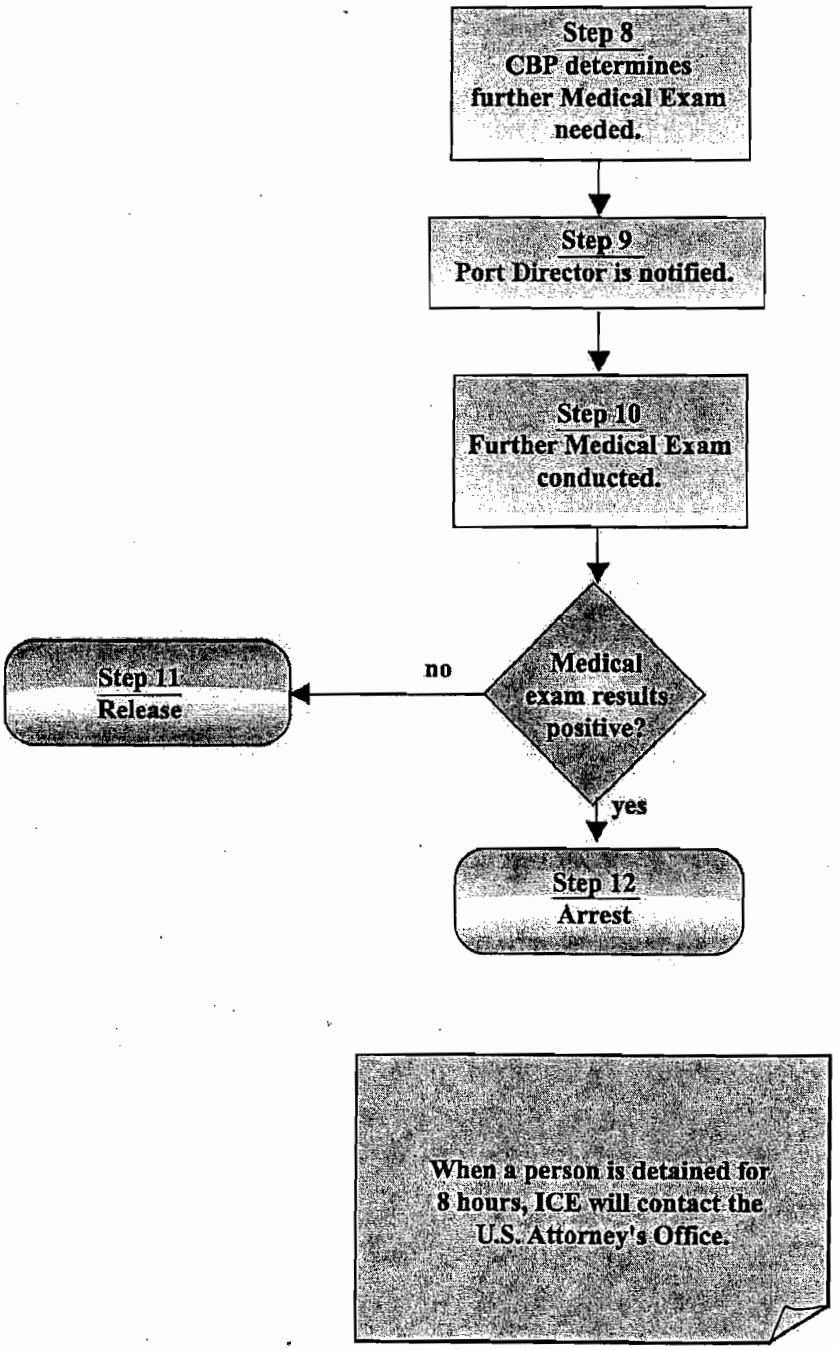
h. Physician-Directed Medical Treatment

Procedures deemed necessary for medical management of the patient, such as surgically removing balloons, are not acts of the Government for Fourth Amendment purposes, as long as the decision to employ such procedures is not based on any request, advice, or encouragement by any law enforcement officer.

You must, however, retain any evidence discovered by the medical personnel.

Whenever possible, obtain from medical personnel any documentation that may be available concerning statements the person may have made to the physician, observations by the physician, etc.

Chapter 9


Step 8
CBP determines further Medical Exam needed.
Step 9
Port Director is notified.
Step 10
Further Medical Exam conducted.
Medical exam results positive?
no
Step 11
Release
yes
Step 12
Arrest
When a person is detained for 8 hours, ICE will contact the U.S. Attorney's Office.

Chapter 9
Release

a. Completion of the CBP Examination

When a person has undergone an enforcement examination and/or personal search that has resulted in no seizure, administrative penalty, immigration adverse action, or arrest, and all CBP and other inspection agency regulatory processing has been completed, immediately advise the person that CBP processing has been completed and he may leave the facility.

You must ensure that appropriate professional courtesies are extended to the person. Examples include thanking him for cooperating in the process and offering to address any questions.

You, your supervisor, or a passenger service representative should address any immediate questions concerning the process, including, if appropriate, advising the person in general terms why he was selected for the search.

As part of the CBP policy to provide quality service to the traveling community while accomplishing enforcement responsibilities, CBP will provide payment on behalf of international travelers for reasonable expenses incurred as a result of a detention for a medical examination that produces negative results. The Detained Traveler Purchase Card and/or convenience checks (separately or in combination) shall be used to provide payment on behalf of these international travelers (*see Customs Directive 5220-035 dated September 13, 2000 Detained Traveler Purchase Card Program*).

The supervisor will make every effort to assist the person in his departure as workload and mission permit. Examples include offering assistance in repacking vehicles or baggage, and obtaining assistance from local transportation officials with baggage handling or onward travel.

Pay special attention to persons who have been delayed for extended periods of time and who may have missed onward travel or are leaving the CBP facility during late hours, when outside facilities are closed. Arrange to obtain assistance from transportation officials or traveler's aid organizations.

Document efforts to assist the person in the TECS and/or IDENT/ENFORCE report.

Do **not** advise outside persons regarding the specific reasons for the delay, other than saying that *the person was delayed completing CBP formalities.*

b. Returning Persons to the CBP Facility

When a person has undergone an examination and/or personal search away from the CBP facility (e.g., at a medical facility) that has resulted in no seizure or arrest, the person must be returned to the CBP facility as promptly as possible. The person has the option to depart from the medical facility if they choose. Document their request in the TECS and/or IDENT/ENFORCE report.

Two CBP officers, or one CBP officer and another law enforcement officer must accompany the person. At least one of the officers should be of the same gender as the person being transported.

Unless specific facts indicate danger to the officers on the return trip, handcuffing is **not** permitted.

Handcuffing on the return trip, without circumstances justifying such an action, may subject an officer to a personal lawsuit for an unreasonable seizure. Record any instance where a person was handcuffed on the return trip, including the circumstances that warranted that action, in the TECS IOIL and/or IDENT/ENFORCE.

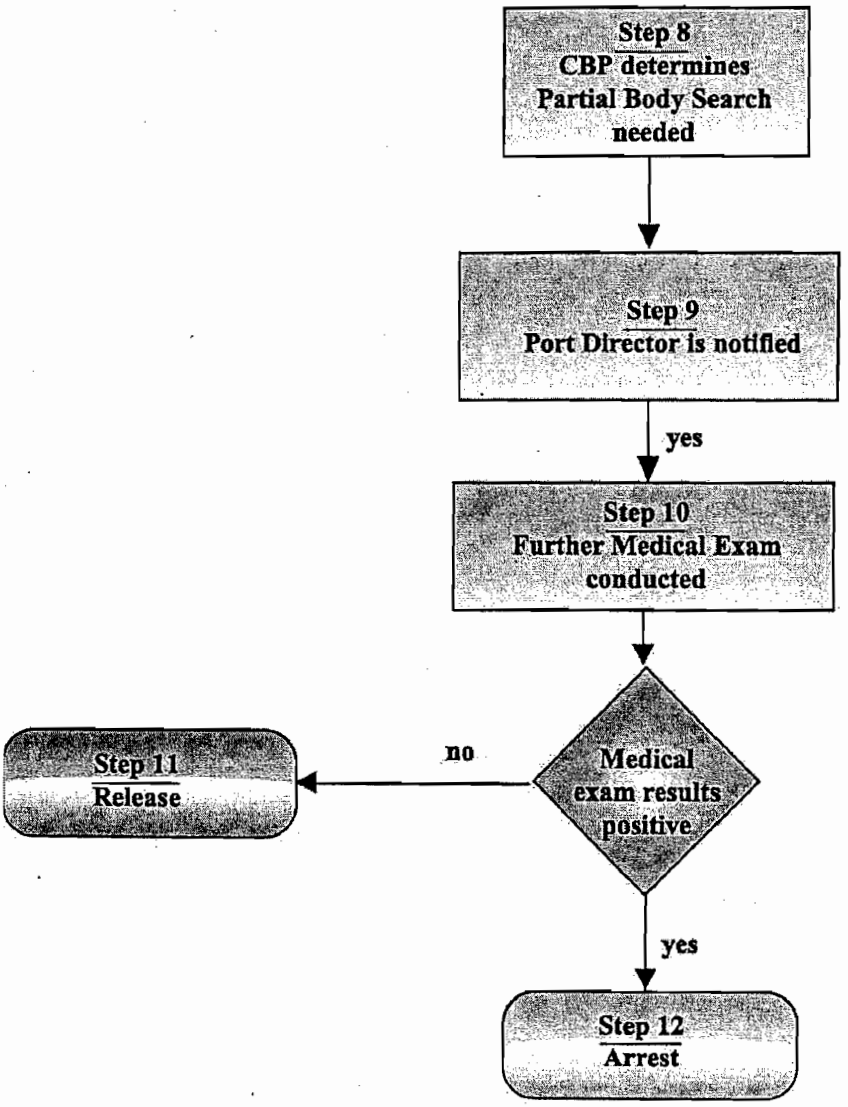
When practical, do **not** use special secure personnel transport vehicles for the return trip.

Maintain contact with SECTOR radio at all times, and provide departure and arrival times and mileage to SECTOR.

c. Written Report

When a personal search and detention does not lead to a seizure, arrest, administrative penalty, or immigration adverse action report it in the IOIL, Negative Search Report.

Chapter 10



When a person is detained for 8 hours, ICE will contact the U.S. Attorney's Office

Chapter 10
Miscellaneous

I. Probable Cause DISCOVERED DURING THE PERSONAL SEARCH PROCESS

a. Probable Cause Defined

Probable cause is a collection of facts and circumstances known to officers based on reasonably trustworthy information. This information would lead a reasonable officer to believe that a particular person committed a crime or that seizable property would be found in a particular place or on a particular person.

Probable cause to believe that a person has committed a crime can arise when the person confesses; when sufficient evidence is discovered at any point during a personal search, developed during the course of the inspection; or when the National Crime Information Center (NCIC) database shows an outstanding arrest warrant. Although a confession or positive X-ray may constitute probable cause by law, for the purpose of the procedures in this Handbook, probable cause to believe the traveler is transporting narcotics internally is satisfied only by a positive field test.

b. Notification of Probable Cause

If, at any point in the inspection process, probable cause develops that a crime has been committed (e.g., contraband is retrieved from the person) the duty CBP prosecution officer will be notified immediately. In those locations where duty CBP prosecution officers are not present, notification will be made to the duty ICE agent. Operational control and prosecution will remain with CBP. However, courtesy notification will be made to the ICE duty agent to participate in the enforcement action. The CBP prosecution officer and/or ICE agent will consult with the appropriate U.S. Attorney concerning the arrest of the person.

c. Written Report

When a personal search and detention leads to, or is done in conjunction with, a seizure, arrest, administrative penalty, or immigration adverse action, all data must be reported in the appropriate SEACATS S/A/S and/or IDENT/ENFORCE Report.

II. *Miranda* Warnings

Any person detained for a partial body, X-ray, body cavity search, or MBM is deemed to be in "custody" for *Miranda* purposes.

a. Requirement for *Miranda* Warnings

Miranda warnings are required when two factors are present: when a person is in custody **and** is going to be interrogated.

Miranda warnings must be given in a language that the person can understand.

Federal law requires that if a person under the age of 18 is arrested for a federal crime, *Miranda* warnings must be given in language the juvenile can understand *(see §§ 5.200 and 6.600, LCCO)*. You must also notify the juvenile's parent(s), guardian, or custodian of the nature of the alleged offense and the juvenile's rights.

b. Routine Questioning

Routine questioning such as that during rover operation stops and airport checkpoint stops are generally not "custody" for *Miranda* purposes.

Even if a person is interrogated, *Miranda* warnings are generally not required for inspections that do not involve a personal search beyond a patdown. However, if the person is aware that evidence of criminal activity has been discovered or if there are other circumstances that would cause an innocent, reasonable person to believe that he has been or will be arrested for the activity about which he is being interrogated, then the person should be given a *Miranda* warning.

c. Interrogation Defined

Interrogation includes any questions, words, or actions that an officer knows or should know are reasonably likely to result in an incriminating response.

The courts have ruled that any action or statement of a CBP officer that is designed to elicit a confession or to motivate voluntary removal of contraband from a body cavity is interrogation. Therefore, such actions as showing photographs or telling graphic stories about contraband containers rupturing inside the body must be preceded by *Miranda* warnings and a valid waiver.

Interrogation does not include requests for personal history or information necessary for routine booking or completing consent forms.

d. Personal Searches beyond Patdown

If, during the course of a personal search beyond a patdown, the person requests the presence of an attorney, you must advise him that no interrogation will take place; and, therefore, there is no right to have an attorney present during the remainder of the CBP examination. You may ask routine administrative questions, but be sure that you do not interrogate the person.

Responses to any interrogation may be inadmissible in any criminal prosecution unless the person has been given *Miranda* warnings and has knowingly and intelligently waived his rights.

e. Voluntary Statements

If a person is in custody and begins to make voluntary statements (i.e., statements that are not the result of any form of interrogation by CBP), allow the person to make such statements.

Write down any such statements, noting the time and date. You do not have to read *Miranda* warnings after a voluntary statement unless you intend to interrogate the person. Do not ask follow-up questions unless you have given the *Miranda* warnings and obtained a valid waiver.

You must record all voluntary statements in the TECS and/or IDENT/ENFORCE report.

Glossary

Alien: Any person not a citizen or national of the United States.

Admissibility: With respect to an arriving alien of an alien present in the United States without admission, the determination that such alien is ineligible to receive a visa and ineligible to be admitted to the United States. Section 212(a) of the INA).

Adverse Action: An enforcement action directed against an individual, or individuals, for violation of the laws, rules, and/or regulations enforced by U.S. Customs and Border Protection.

BICE/ICE: Bureau of Immigration and Customs Enforcement.

Body cavity search: any visual or physical intrusion into the rectal or vaginal cavity.

Body Scan: A personal search technology, which provides for a non-intrusive search of an individual to determine if merchandise or contraband is present.

CBP: United States Customs and Border Protection.

CIS: Central Index System.

Dangerous Object: An object/device, which a reasonable officer would believe can be used as an offensive weapon and cause bodily harm.

Deportability: With respect to an alien in an admitted to the United States, the determination that such alien is within one or more classes of deportable aliens subject to removal from the United States. Section 237(a) of the INA.

IAFIS: Integrated Automated Fingerprint Identification System.

IDENT/ENFORCE: Automated Biometrics Identification System/Enforcement Case Tracking System.

IOIL: TECS Incident Log Report.

Immediate patdown: a search necessary to ensure officer safety.

Interrogation: any questions, words, or actions that an officer knows or should know are reasonably likely to result in an incriminating response.

Juvenile: a person who has not reached his eighteenth birthday.

Material Evidence: **Any statement, writing, or object that is relevant in establishing probable cause that a crime has been committed.**

Medical examination: a body cavity search, X-ray, or monitored bowel movement conducted at a medical facility.

Medical facility: a facility authorized by the Port Director for officers to take individuals for medical examinations as outlined in this Handbook. Such authorization by the Port Director is not required for the rendering of emergency medical assistance.

Monitored bowel movement (MBM): the detention of a person for the purpose of determining whether contraband or other merchandise is concealed in the alimentary canal.

NAILS: National Automated Immigration Lookout System.

NCIC: National Crime Information Center.

Partial body search: the removal of some of the clothing by a person to recover material evidence reasonably suspected to be concealed on the body.

Patdown search: a search for material evidence and/or merchandise (including contraband) hidden on a person's body.

Probable cause: a collection of facts and circumstances known to officers based on reasonably trustworthy information. This information would lead a reasonable officer to believe that a particular person committed a crime or that seized property would be found in a particular place or on a particular person.

Reasonable suspicion: more than some or mere suspicion. It is based on specific, articulable facts which, when taken together with reasonable inferences from those facts, would lead a reasonable officer to suspect that a person might have merchandise entered contrary to law.

S/A/S: TECS Search/Arrest/Seizure report.

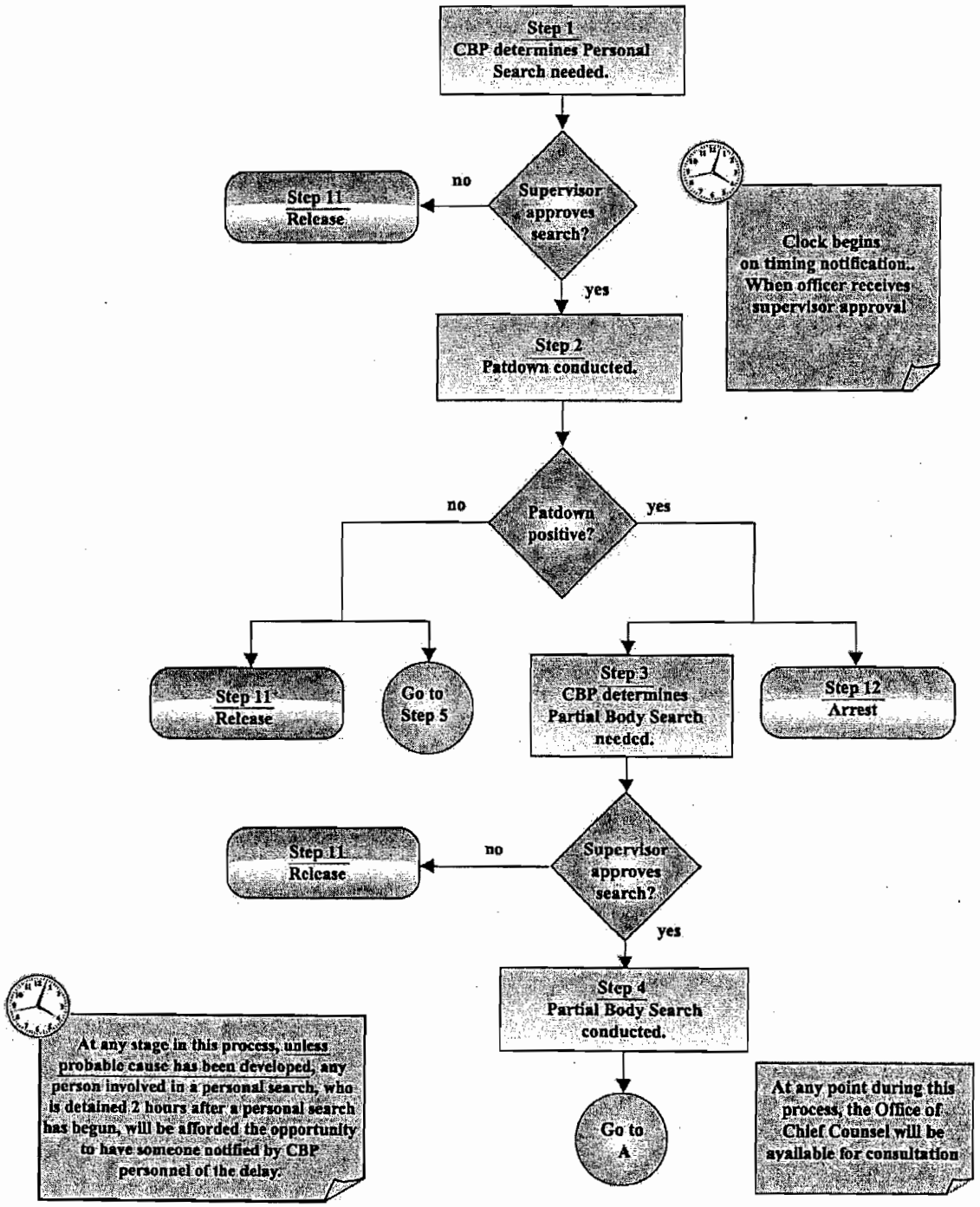
Some or mere suspicion: the minimal level of suspicion required to conduct a patdown search. By policy, CBP requires at least one fact before conducting a patdown.

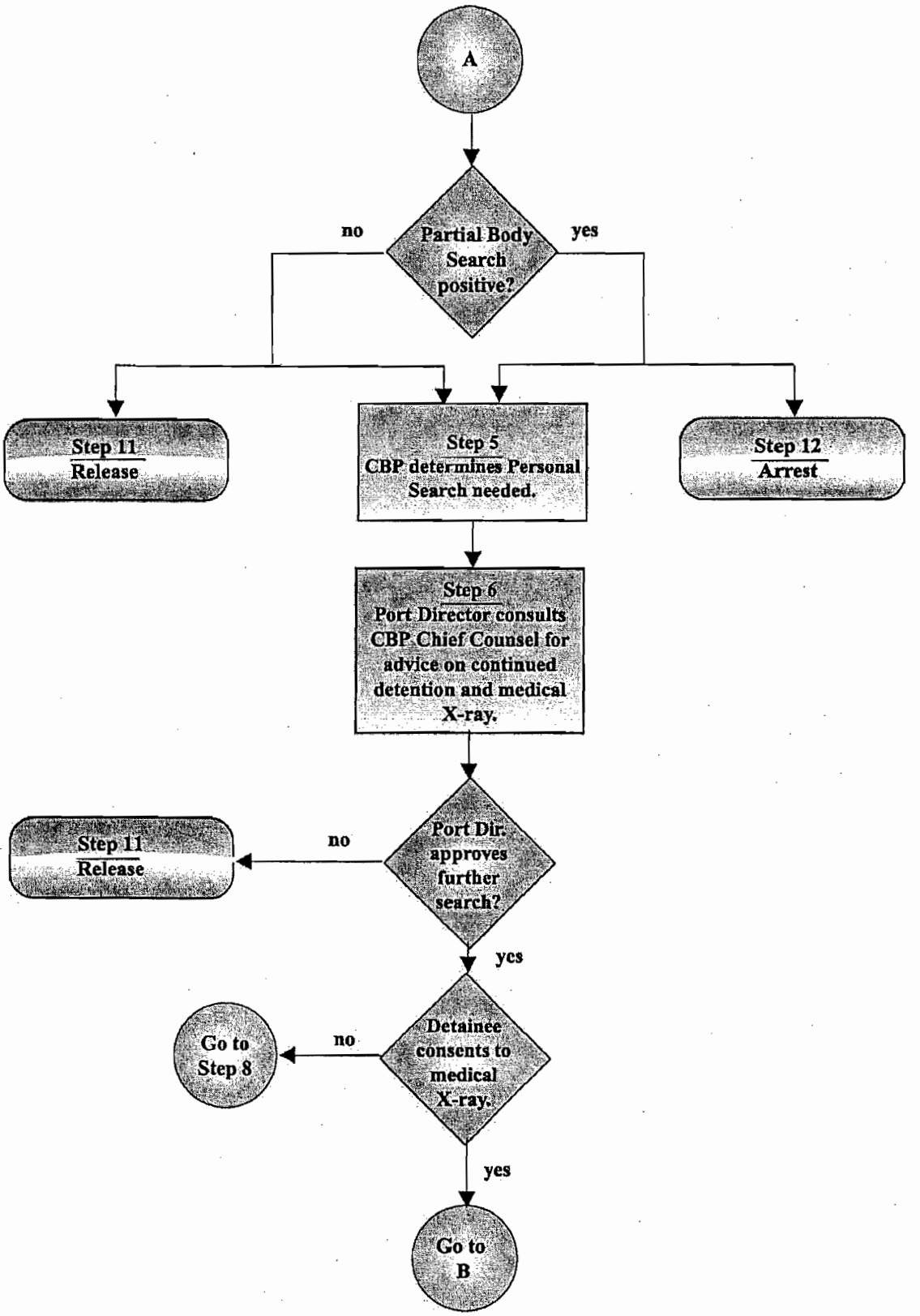
TECS: Treasury Enforcement Communication System.

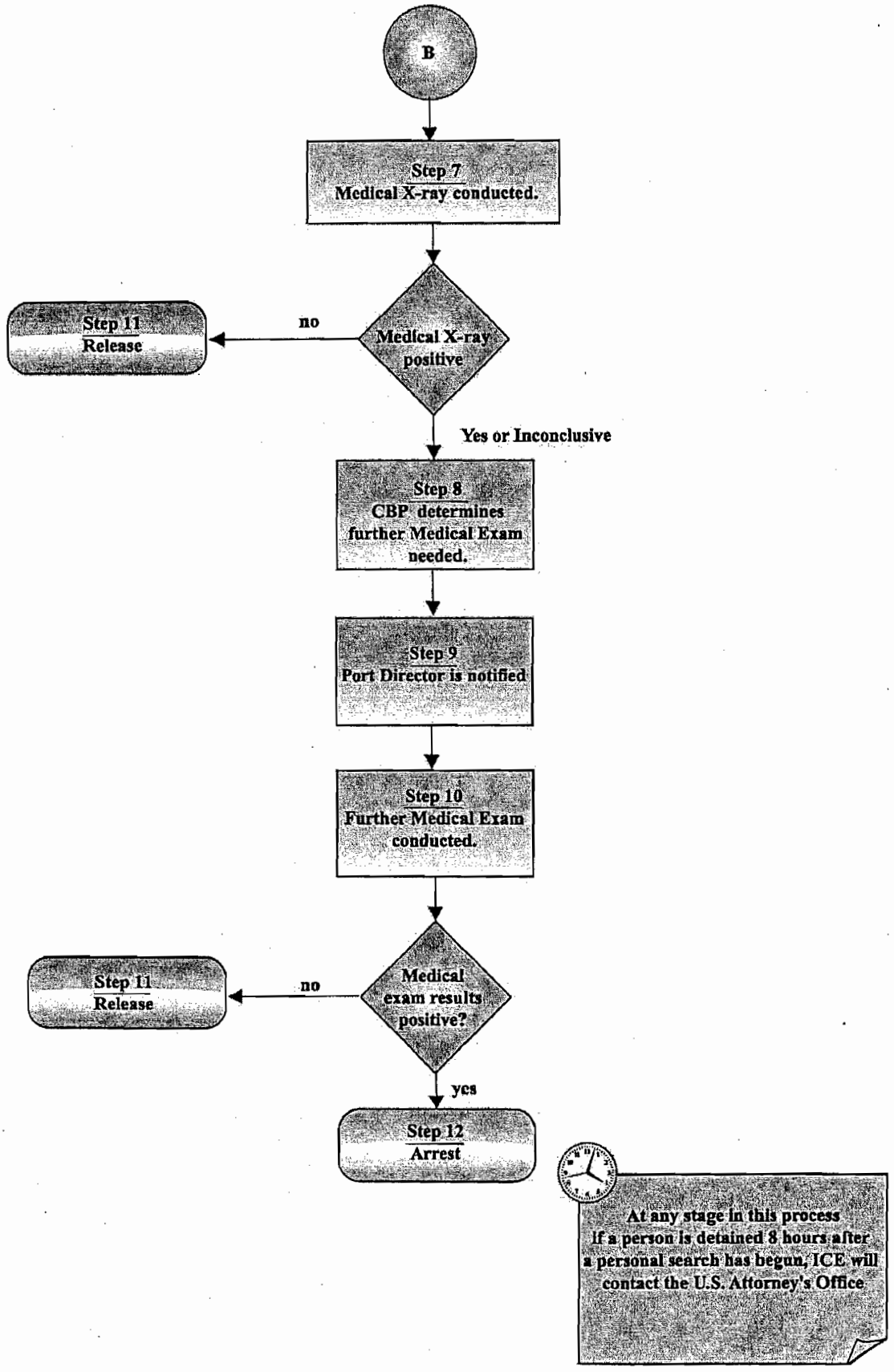
X-ray search: the use of a medical X-ray by medical personnel to determine the presence of merchandise within the body.

Appendix A

Personal Search Procedure for U.S. Customs Service




A
Partial Body Search positive?
no
yes
Step 11
Release
Step 5
CBP determines Personal Search needed.
Step 12
Arrest
Step 6
Port Director consults CBP Chief Counsel for advice on continued detention and medical X-ray.
Port Dir. approves further search?
no
Step 11
Release
yes
Detainee consents to medical X-ray.
no
Go to Step 8
yes
Go to B


B
Step 7
Medical X-ray conducted.
Medical X-ray positive
no
Step 11
Release
Yes or Inconclusive
Step 8
CBP determines further Medical Exam needed.
Step 9
Port Director is notified
Step 10
Further Medical Exam conducted.
Medical exam results positive?
no
Step 11
Release
yes
Step 12
Arrest
At any stage in this process
If a person is detained 8 hours after a personal search has begun, ICE will contact the U.S. Attorney's Office

Appendix B

Field Operations Personal Search Matrix

Search Type	Suspicion Level	Approval	Notes
Immediate Patdown	Officer safety	No approval required	Immediate action to secure a weapon and Verification a weapon is Not present
Patdown	One articulable fact, per CBP policy	On-duty supervisor (unless immediate action to secure a weapon)	Contraband, other merchandise, and/or material evidence (including weapons).
Partial Body Search	Reasonable	On-duty supervisor	Approval required to proceed from patdown to partial body search.
X-Ray—Voluntary	Reasonable	Port Director	Notify Associate Chief Counsel. Never on pregnant woman or woman refusing pregnancy test.
X-Ray—Involuntary	Reasonable	Port Director and court order	Notify Associate Chief Counsel. Never on pregnant woman or woman refusing pregnancy test.
Body Cavity—Voluntary	Reasonable	Port Director (except see paragraph 4c)	Notify Associate Chief Counsel. Proper consent.
Body Cavity—Involuntary	Reasonable	Port Director and court order	Notify Associate Chief Counsel. Exceptional Circumstances.
MBM—Initial	Reasonable	Port Director	Notify Associate Chief Counsel, and U.S. Attorney's Office.
MBM over 8 hours	Reasonable	Port Director	Notify Associate Chief Counsel, and U.S. Attorney's Office. Port Director reapproval is required every eight hours. U.S. Attorney will advise if and when additional notices are required.

Appendix C

Negative Personal Search—Supervisor's Check Sheet

This check sheet is to be completed by supervisors when the personal search does not lead to, or is not conducted in association with, an enforcement action (seizure or arrest).

Date of Search: TECS Incident Log Number:

◇◇

Mark each item when completed. For those not completed, provide an explanation in the REMARKS section below.

1. Y / N / N/A ____ Search criteria reviewed by supervisor as being appropriate
2. Y / N / N/A ____ Person provided with a general explanation on why CBP conducts personal searches
3. Y / N / N/A ____ Person given the appropriate pamphlet before conducting a personal search *(Personal Search—What to expect)*
4. Y / N / N/A ____ Person provided with the appropriate pamphlet (e.g., *Why U.S. Customs and Border Protection Conducts Examinations)* if requested
5. Y / N / N/A ____ Person provided with *Comment Card*
6. Y / N / N/A ____ The person's questions on CBP examination process were addressed
7. Y / N / N/A ____ Person offered assistance with resolving personal issues resulting from the search (e.g., repacking baggage, onward travel, contacting friends/relatives, etc.)
8. Y / N / N/A ____ Supervisor reviews the search criteria and results, examination, and personal search process with the officer for lessons learned

Remarks:

Supervisor ______________________________ ______________________________

Name Signature

Retain on file locally, in chronological order, together with other paperwork associated with the search, for two years and three months from the date of the search.

Appendix D

Personal Search Worksheet

Date of search: TECS Report Number:

Search start time: Stop time:

◇◇◇

PERSON SEARCHED

Last name:__________ First name:__________ MI:_____ DOB:______

POB: City:__________ State:_____ Country:________

Address:____________________

Street:____________________

City:__________ State:_____ ZIP Code:_____-____

Country:____________________

Race:____ Gender:____ Ht:____ Wt:____ Hair:____ Eyes:____ Citizenship:______

◇◇◇

Conveyance type:__________ In/out:__________

Airline/cruise line:__________ Flight/voyage number:

Departure airport:__________ Embarkation airport:__________

Vehicle:________ License year:____ State:____ Number:________

Search type:______ If partial body: Degree of search:______ Results:______ (P/N)

Funds on person: $__________

Requesting officer:__________ Searching officer:__________

Witness:__________ Authorizing supervisor(s):__________

Reasons for search:____________________

Supervisor's check sheet completed:________ On-call attorney consulted:________

Port director notified:________________ Time:________

Use reverse side for narrative

This Worksheet should be used to record information on the search when input into TECS cannot be done immediately. If input is done immediately, Appendix D is not required. When the search results in a seizure and/or arrest, the Worksheet becomes part of the seizure documentation. When no enforcement action results and the Worksheet was used, it should be retained locally, along with consent forms and other pertinent documents, in chronological order, for two years and three months from the date of the search. Local reproduction of this form is authorized.

Narrative

Appendix E

Standard Consent Form for X-Rays and/or Pregnancy Tests

Administered by an X-Ray and/or Medical Facility

I, the undersigned, hereby consent, as necessary, to x-ray examination of my body by a medical facility and/or an X-ray facility designated by the United States Customs and Border Protection. If female, I further consent to a pregnancy test prior to undergoing any X-ray examination. I consent to the results of any said examination(s), pregnancy test(s), and related records, including any medical records, being given to officials of the United States Customs and Border Protection. I hereby release the facility and its personnel performing said examinations/tests and any officials of the United States Customs and Border Protection directing that said examinations/tests be carried out, from any liability arising out of the performance of said examinations/tests. I understand that I have the right to refuse such consent and acknowledge that my consent is freely given and is not the result of any threats, coercion, or other intimidation.

Signed: _____

Printed Name: _____

Gender (circle one): Male Female

Date: _____

Time: _____

Witness Signature: _____

Badge: _____

Appendix F

Standard Consent Form for a Pelvic/Rectal Examination

I, the undersigned, hereby consent to a pelvic and/or rectal examination by a physician designated by the United States Customs and Border Protection. I consent to the result of said examination and related medical records being given to officials of the United States Customs and Border Protection. I hereby release the physician performing said examinations and any officials of the United States Customs and Border Protection directing that said examinations be carried out, from any liability arising out of the performance of said examinations. I understand that I have the right to refuse such consent, and acknowledge that my consent is freely given and is not the result of any threats, coercion, or other intimidation.

Signed:_____

Print Name:_____

Date:_____

Time:_____

Witness Signature:_____

Badge:_____

Attachment 1

Acknowledgment of Receipt of Training on Personal Search Handbook

Date Training Completed: _____

Chapters

1. Determining the Need for a Personal Search
2. What You Need to Know for a Personal Search
3. Patdown Searches
4. Partial Body Searches
5. Determining the Need for a Medical Examination
6. Medical X-Rays
7. Determining the Need for Further Medical Examination
8. Further Medical Examinations
9. Release
10. Miscellaneous

Glossary of Terms

Appendixes A through F

Attachments 1 through 3

☐ This is to acknowledge that I have viewed the training listed above and received my copy of the Personal Search Handbook, CIS HB 3300-04B, dated July 2004.

_____	_____	_____
Officer's printed name	Signature	SSN

Supervisor: _____ _____

Signature Date

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Attachment 2

Contact Advisory of CBP Detention

To be used once any person has been detained for 2 hours for a personal search. The detainee will be afforded the opportunity to have CBP notify someone of the delay. The 2-hour period for the notification requirement begins at the time the officer initiates the patdown, or when an officer receives permission from a supervisor for the personal search of a juvenile or a body scan examination. Time spent on prior interviews and baggage examination does not count toward the 2-hour period. Additionally, detentions due to the determination of admissibility into the U.S., and/or to the Detention and Removal (D&R) process of aliens, does not apply under this Contact Advisory.

I am Supervisory Inspector [name] **of the U.S. Customs and Border Protection at** [location]**. Your** [husband, sister, etc.] **who has arrived in the United States** [at airport locations, include flight number and country] **has asked that we contact you. He** [or she] **is safe, but has not yet completed CBP processing. He** [or she] **is not available to speak with you during CBP processing, but we will ask him** [or her] **to let you know when processing is completed.**

Additional background information that may be provided:

1. The CBP has the authority under federal law, United States Code, Title 19, sections 482 and 1582, to detain individuals to determine if they are smuggling. CBP authority for detentions and personal searches has been upheld by the Supreme Court in the case of *United States v. Montoya de Hernandez,* 473 U.S. 531 (1985).
2. The CBP detentions for personal searches do not constitute an arrest.
3. During such detentions, these individuals may not contact others without CBP authorization.
4. If an attorney has any additional questions about CBP legal authority or the search process, CBP can have its counsel contact the attorney.

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Attachment 3

Advisory of CBP Procedures: Detention on Suspicion of Carrying Drugs Internally

To be used when personal searches require moving the person to a medical facility for a medical examination (body cavity search, X-ray, or detention for monitored bowel movement).

1. We have reason to suspect that you are carrying controlled substances (or other merchandise) internally.
2. The CBP has the obligation and legal authority to determine if you are smuggling internally. The CBP detentions for personal searches are authorized by federal laws, and they do not constitute an arrest.
3. To confirm or dispel our suspicion, we will transport you to a medical facility. For safety purposes, we may handcuff you during transport.
4. You may consent to an X-ray at CBP expense conducted by medical personnel at the medical facility.
5. If you choose not to consent to an X-ray, or if medical personnel determine that the X-ray is positive or inconclusive, CBP may detain you under medical supervision.
6. The CBP will consult with the U.S. Attorney's Office regarding this continued detention and seek judicial approval if necessary. The CBP may continue to detain you while that approval is sought.
7. If your detention for search lasts longer than 2 hours, CBP will give you the opportunity to have someone notified, including an attorney, by CBP, of your delay in CBP processing.