

Security Searches at Courthouses

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To enter most courthouses these days, a person must submit to a security search. Often, one must walk through a metal detectors and pass one's personal items through an x-ray device. Are these security procedures constitutional? Are there any limits to how intrusive they may be? Read more to find out.

In general, courthouse searches are permissible administrative searches. Virtually every case to consider the matter has ruled that searches of this kind are permissible administrative searches. The leading case may be *McMorris v. Alioto*, 567 F.2d 897 (9th Cir. 1978), in which the court considered a policy requiring all persons entering a state courthouse to walk through a metal detector and to hand over their personal items for visual inspection, though officers were directed not to inspect written material. The court stated that administrative searches of this kind are permissible when "clearly necessary to secure a vital governmental interest, such as protecting sensitive facilities from a real danger of violence," and found that various threats and acts of violence against police buildings and courthouses "justified a limited search procedure" for visitors. The court further found that the procedure in question was reasonable as it was not very intrusive and focused on the detection of weapons rather than evidence of crimes.

Many cases since then have reached the same conclusion. *See, e.g., State v. Kurth*, 981 S.W.2d 410 (Tex. Ct. App. 1998) (similar procedure deemed a reasonable administrative search); *Rhode Island Defense Attorneys Ass'n v. Todd*, 463 A.2d 1370 (R.I. 1983) (same; court took judicial notice that "threats of violent acts directed at courthouses and court personnel have given rise to an urgent need for security protections."). The Supreme Court of the United States has even noted that "where the risk to public safety is substantial and real, blanket suspicionless searches calibrated to the risk may rank as 'reasonable'—for example, searches now routine at airports and at entrances to courts and other official buildings." *Chandler v. Miller*, 520 U.S. 305 (1997). In North Carolina this authority is partially codified in G.S. 15A-1034(b), which states that "[t]he judge may order that all persons entering or any person present and choosing to remain in the courtroom be searched for weapons or devices that could be used to disrupt or impede the proceedings and may require that belongings carried by persons entering the courtroom be inspected."

Personal items may be searched extensively. Officers conducting security searches may examine visitors' personal items in detail. For example, in *Com. v. Gillespie*, 103 A.3d 115 (Pa. Super. Ct. 2014), as the defendant entered a courthouse, he placed several personal items, including a pill bottle, in a bin before going through a metal detector. A deputy handled the pill bottle and noticed that it did not rattle like a pill bottle normally would, so he opened it and found crack cocaine. The defendant challenged the search but the court ruled that it was a reasonable administrative search, justified by the need to prevent weapons from entering the courthouse, and stated that "[t]he bottle could have contained a small weapon or substance used to inflict harm on others." *See also State v. Plante*, 594 A.2d 165 (1991) (holding that officers properly searched metal Sucrets throat lozenge container belonging to courthouse visitor and stating that "weapons and explosives can be concealed" in containers of that size).

Limits. Although courts generally have approved security searches, some constitutional limits likely exist.

- First, absent specific and very unusual security concerns, a strip search or other very intrusive search would not be reasonable. *Justice v. Elrod*, 832 F.2d 1048 (7th Cir. 1987) (stating that a metal detector search, "being unintrusive," is permissible if there is even a modest concern "that armed and dangerous people might

otherwise enter,” but noting that a more intrusive search, such as a strip search, would require a very strong justification). As scanning technologies advance, there may be room to argue that some imaging technologies conduct what amount to strip searches that are not warranted by the level of security concern present at most courthouses. However, that argument has not gained traction in the related context of airport searches. See, e.g., *Electronic Privacy Information Center v. U.S. Dep’t of Homeland Sec.*, 653 F.3d 1 (D.C. Cir. 2011) (upholding the use of advanced scanning technologies as an administrative search).

- Second, any security protocol should prescribe the search procedure in detail and should leave little discretion in the hands of the officer carrying out the search. See *State v. Snow*, 268 P.3d 802 (Or. Ct. App. 2011) (ruling that a courthouse policy stating that visitors must “submit to a search of their person and . . . hand-carried items” did not sufficiently limit the discretion of the officers conducting searches, and therefore the searches were not valid administrative searches under the state constitution; officers were not required to search anyone and could search one person more intrusively than another).
- Third, the procedure for security searches should be mindful of the fact that attorneys and other courthouse visitors may carry privileged material with them, and should not allow the contents of written materials to be examined.

If readers have questions or comments about specific security search practices, please weigh in.