



Written by [Joe Wolverton, II, J.D.](#) on July 13, 2016

## South Dakota Forcibly Catheterizes Suspects Refusing to Submit to Urine Test

The state of South Dakota is forcibly catheterizing people who refuse to provide a urine specimen to police.

As reported by the Sioux Falls, South Dakota, *Argus Leader*, the story began in March of this year:



Dirk Landon Sparks was arrested March 14 after a report of a domestic disturbance. While in custody, officers with the Pierre Police Department observed Sparks fidgeting and his mood changing rapidly. A judge signed off on a search warrant for police to obtain blood or urine.

After Sparks refused to cooperate, police transported him to Avera St. Mary's Hospital in Pierre, where he was strapped to a bed while a catheter was forced into his penis so that officers could obtain a urine sample.

Sparks' urine tested positive for THC and methamphetamine. He was charged with obstruction, two counts of felony drug ingestion, and possession of marijuana and drug paraphernalia.

Details of the procedure were provided in the article:

Police always take the person to a hospital if they are going to take a forced urine sample, said Tim Whalen, a Lake Andes attorney who has represented a couple of clients who have had urine samples taken without permission. Health care workers at the Wagner and Platte hospitals conduct the procedure on a regular basis, he said.

"They don't anesthetize them," Whalen said. "There's a lot of screaming and hollering."

So, to summarize the situation in South Dakota, if a person refuses to submit to a urine test administered by police in pursuit of charges against that person, the cops can take the guy to the hospital, force a catheter into his genitals — without administering any anesthesia — and take the sample the hard way.

While some will certainly respond to this story by pointing out that if Sparks hadn't been doing drugs, then he would have had nothing to fear.

Isn't the precise purpose of the protections offered by the Bill of Rights the guarantee of the enjoyment of certain fundamental liberties, even by those who have allegedly committed some crime?

The Pierre Police Department would offer no comment on the case, but as reported by the *Argus Leader*, "Pam Hein, a defense attorney in Lake Andes, said the practice of forcing catheters into suspects' urethras 'has been going on for years.'"

South Dakota Attorney General Marty Jackley seems to come down on the side of the "he had it coming"



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crowd. Jackley was quoted in the *Argus Leader* story as saying that people should just submit to the urine test demanded by police, adding, “I don’t think anyone wants to go through that methodology.”

Jackley and other state officials insist that the procedure has become an issue only since Sparks decided to sue the state for violation of his rights against unreasonable searches and seizures as protected by the Fourth Amendment of the U.S. Constitution.

In other words, if Sparks had just shut up and obeyed the police officers, no one would have known that residents of the Mt. Rushmore State have been subjected “for years” to force catheterization without any anesthesia when they get uppity.

There are other cases pending as well, in other states. As set out in the *Argus Leader* story:

An Indiana man lost a 2011 case against police in Lawrenceburg, Ind., after they handcuffed him to a hospital bed and grabbed his ankles as nurses applied a catheter against his will, according to court records. Jamie Lockhard sued the city, the hospital and others after the experience. The judge ruled against him because the urine sample was court-ordered.

A Utah man filed an \$11 million lawsuit against two police officers, against a local sheriff’s deputy and a hospital. Stephan Cook claimed officers and health care workers used “forced catheterization” [sic] to draw a urine sample after he refused to be tested for marijuana. A federal judge later dismissed Cook’s case.

In 2014, another Indiana man filed a lawsuit against two police officers and a hospital after he was pulled over for drunken driving. Police “undertook an effort to forcibly obtain” a urine sample, according to the complaint filed by William B. Clark in federal court. An officer held Clark to the bed as nurses inserted a catheter into Clark’s penis, according to court records.

Clark asked for roughly \$11 million in 2014 and the case is still pending.

In South Dakota, perhaps the most disturbing and constitutionally appalling aspect of this case is that there is apparently no state statute authorizing the forced catheterization of suspects who refuse to submit to a urine test.

In the United States, the consent of the governed is the only legitimate basis for the exercise of any political power by government on any level. If the government acts outside the boundaries of its authority as drawn by the people, then that government abandons all legitimacy and its acts ought to be regarded as usurpations, null and void of any legal effect.

As it stands today, however, government not only regularly disregards the limits of its power, but it will not hesitate to forcibly deny to the people the protections afforded them by a constitution and the laws enacted pursuant to its enumerated powers.

Finally, when asked to comment on the practice of involuntary catheterization of suspects who refuse urine tests, the chief justice of the South Dakota Supreme Court demurred.

“This issue could very likely come before the [Supreme] Court for a decision and if he should make any public comments he would have to recuse himself from any future case,” said Greg Sattizahn, state court administrator.

Given the government’s unrelenting assault on the Fourth Amendment, it seems probable that the issue will indeed come before the state’s Supreme Court and equally probable that the rights of the people will be weighed in the balance and be found wanting.



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