

# Custodial Searches

## 902.1 PURPOSE AND SCOPE

This policy provides guidance regarding searches of individuals in custody. Such searches are necessary to eliminate the introduction of contraband, intoxicants, or weapons into the St. Mary's County Sheriff's Office facilities to include the St. Mary's County Detention and Rehabilitation Center. Such items can pose a serious risk to the safety and security of office members, individuals in custody, contractors, and the public.

Nothing in this policy is intended to prohibit the otherwise lawful collection of evidence from an individual in custody.

### 902.1.1 DEFINITIONS

Definitions related to this policy include:

**Custody search** - An in-custody search of an individual and of his/her property, shoes and clothing, including pockets, cuffs and folds on the clothing, to remove all weapons, dangerous items and contraband.

**Physical body cavity search** - A search that includes a visual inspection and may include a physical intrusion into a body cavity. Body cavity means the stomach or rectal cavity of an individual, and the vagina of a female person.

**Strip search** - A search that requires an individual to remove or rearrange some or all of his/her clothing to permit a visual inspection of the underclothing, breasts, buttocks, anus or outer genitalia. This includes monitoring an individual who is changing clothes, where his/her underclothing, buttocks, genitalia or female breasts are visible.

## 902.2 POLICY

All searches shall be conducted with concern for safety, dignity, courtesy, respect for privacy and hygiene, and in compliance with policy and law to protect the rights of those who are subject to any search.

Searches shall not be used for intimidation, harassment, punishment or retaliation.

## 902.3 FIELD AND TRANSPORTATION SEARCHES

A deputy should conduct a custody search of an individual immediately after his/her arrest, when receiving an individual from the custody of another, and before transporting a person who is in custody in any office vehicle.

Whenever practicable, a custody search should be conducted by a deputy of the same sex as the person being searched. If a deputy of the same sex is not reasonably available, a witnessing deputy should be present during the search and Body Worn Camera (BWC) utilized, if available.

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### **902.4 SEARCHES AT SHERIFF'S FACILITIES**

Custody searches shall be conducted on all individuals in custody, upon entry to the St. Mary's County Sheriff's Office facilities. Except in exigent circumstances, the search should be conducted by a member of the same sex as the individual being searched. If a member of the same sex is not available, a witnessing member must be present during the search.

Custody searches should also be conducted any time an individual in custody enters or re-enters a secure area, or any time it is reasonably believed that a search is necessary to maintain the safety and security of the facility.

#### **902.4.1 PROPERTY**

Members shall take reasonable care in handling the property of an individual in custody to avoid discrepancies or losses. Property retained for safekeeping shall be kept in a secure location until the individual is released or transferred.

Some property may not be accepted by a facility or agency that is taking custody of an individual from this office, such as weapons or large items. These items should be retained for safekeeping in accordance with the Property Policy.

All property shall be inventoried by objective description (this does not include an estimated value). The inventory should include the case number, date, time, member's St. Mary's County Sheriff's Office identification number and information regarding how and when the property was obtained and if it may be released.

#### **902.4.2 VERIFICATION OF MONEY**

All money shall be counted in front of the individual from whom it was received. Additionally, all money should be placed in a separate currency pouch and sealed. Negotiable checks or other instruments and foreign currency should also be sealed in an envelope or pouch with the amount indicated but not added to the cash total. All envelopes/pouches should clearly indicate the contents on the front. The office member sealing it should place his/her initials across the sealed flap. Should any money be withdrawn or added, the member making such change shall enter the amount below the original entry and initial it. The amount of money in the envelope/pouch should always be totaled and written on the outside of the envelope/currency pouch.

### **902.5 STRIP SEARCHES**

No individual in temporary custody at any St. Mary's County Sheriff's Office facility shall be subjected to a strip search unless there is reasonable suspicion based upon specific and articulable facts to believe the individual has a health condition requiring immediate medical attention or is concealing a weapon or contraband. Factors to be considered in determining reasonable suspicion include, but are not limited to:

- (a) The detection of an object during a custody search that may be a weapon or contraband and cannot be safely retrieved without a strip search.
- (b) Circumstances of a current arrest that specifically indicate the individual may be concealing a weapon or contraband.

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1. A felony arrest charge or being under the influence of a controlled substance should not suffice as reasonable suspicion absent other facts.
- (c) Custody history (e.g., past possession of contraband while in custody, assaults on office members, escape attempts).
- (d) The individual's actions or demeanor.
- (e) Criminal history (i.e., level of experience in a custody setting).

No transgender or intersex individual shall be searched or examined for the sole purpose of determining the individual's genital status. If the individual's genital status is unknown, it may be determined during conversations with the person, by reviewing medical records, or as a result of a broader medical examination conducted in private by a medical practitioner (28 CFR 115.115).

#### 902.5.1 STRIP SEARCHES PROCEDURES

Strip searches at St. Mary's County Sheriff's Office facilities shall be conducted as follows (28 CFR 115.115):

- (a) Authorization from the Shift Supervisor shall be obtained prior to the strip search.
- (b) All officers involved with the strip search shall be of the same sex as the individual being searched, unless the search is conducted by a medical practitioner.
- (c) All strip searches shall be conducted in a professional manner under sanitary conditions and in a secure area of privacy so that it cannot be observed by those not participating in the search. The search shall not be reproduced through a visual or sound recording.
- (d) Whenever possible, a second officer of the same sex should also be present during the search, for security and as a witness to the finding of evidence.
- (e) Officers conducting a strip search shall not touch the breasts, buttocks or genitalia of the individual being searched.
- (f) The primary officer conducting the search shall prepare a written report to include:
  1. The facts that led to the decision to perform a strip search.
  2. The reasons are less intrusive methods of searching were not used or were insufficient.
  3. The the name of the supervisor who authorized the strip search.
  4. The name of the individual who was searched.
  5. The name and sex of the members who conducted the search.
  6. The name, sex and role of any person present during the search.
  7. The time and date of the search.
  8. The place at which the search was conducted.
  9. A list of the items, if any, that were recovered.

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10. The facts upon which the member based his/her belief that the individual was concealing a weapon or contraband.
- (g) No officer should view an individual's private underclothing, buttocks, genitalia or female breasts while that individual is showering, performing bodily functions or changing clothes, unless he/she otherwise qualifies for a strip search. However, if serious hygiene or health issues make it reasonably necessary to assist the individual with a shower or a change of clothes, a supervisor should be contacted to ensure reasonable steps are taken to obtain the individual's consent and/or otherwise protect his/her privacy and dignity.

### **902.5.2 SPECIAL CIRCUMSTANCE FIELD STRIP SEARCHES**

A strip search may be conducted in the field only with Shift Supervisor authorization and only in exceptional circumstances, such as when:

- (a) There is probable cause to believe that the individual is concealing a weapon or other dangerous item that cannot be recovered by a more limited search.
- (b) There is probable cause to believe that the individual is concealing controlled substances or evidence that cannot be recovered by a more limited search, and there is no reasonable alternative to ensure the individual cannot destroy or ingest the substance during transportation.

These special-circumstance field strip searches shall only be authorized and conducted under the same restrictions as the strip search procedures in this policy, except that the Shift Supervisor authorization does not need to be in writing.

### **902.6 PHYSICAL BODY CAVITY SEARCH**

Physical body cavity searches shall be subject to the following:

- (a) No individual shall be subjected to a physical body cavity search without written approval of the Shift Supervisor and only upon a search warrant or approval of legal counsel. A copy of any search warrant and the results of the physical body cavity search shall be included with the related reports and made available, upon request, to the individual or authorized representative (except for those portions of the warrant ordered sealed by a court).
- (b) Only a physician or other qualified medical practitioner may conduct a physical body cavity search.
- (c) Except for the physician conducting the search, persons present must be of the same sex as the individual being searched. Only the necessary office members needed to maintain the safety and security of the medical personnel shall be present.
- (d) Privacy requirements, including restricted touching of body parts and sanitary condition requirements, are the same as required for a strip search.
- (e) All such searches shall be documented, including:
  1. The facts that led to the decision to perform a physical body cavity search of the individual.

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2. The reasons less intrusive methods of searching were not used or were insufficient.
3. The Shift Supervisor's approval.
4. A copy of the search warrant, if applicable.
5. The time, date and location of the search.
6. The medical personnel present.
7. The names, sex and roles of any office members present.
8. Any contraband or weapons discovered by the search.
9. A copy of the written authorization shall be retained and may be provided/made available to the individual who was searched or other authorized representative upon request.

### **902.7 GENDER IDENTITY OR EXPRESSION CONSIDERATIONS**

If an individual who is subject to a strip search or physical body cavity search has a gender identity or expression that differs from their sex assigned at birth, the search should be conducted by members of the same gender identity or expression as the individual, unless the individual requests otherwise.

### **902.8 JUVENILES**

No juvenile should be subjected to a strip search or a physical body cavity search at the Office.

The Sheriff or the authorized designee should establish procedures for the following:

- (a) Safely transporting a juvenile who is suspected of concealing a weapon or contraband, or who may be experiencing a medical issue related to such concealment, to a medical facility or juvenile detention facility as appropriate in the given circumstances.
  1. Procedures should include keeping a juvenile suspected of concealing a weapon under constant and direct supervision until custody is transferred to the receiving facility.
- (b) Providing deputies with information identifying appropriate medical and juvenile detention facilities to which a juvenile should be transported for a strip or body cavity search.

Nothing in this section is intended to prevent a deputy from rendering medical aid to a juvenile in emergency circumstances (see the Medical Aid and Response Policy for additional guidance).

### **902.9 TRAINING**

The Training Coordinator shall ensure members have training that includes (28 CFR 115.115):

- (a) Conducting searches of cross-gender individuals.
- (b) Conducting searches of transgender and intersex individuals.

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- (c) Conducting searches in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.