

Custodial Searches

1102.1 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 Montgomery County Sheriff's Office facility. 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 trace evidence from an individual in custody.

1102.1.1 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, evidence and contraband.

Physical body cavity search - A search that includes a visual inspection into, or 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.

1102.2 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.

1102.3 FIELD AND TRANSPORTATION SEARCHES

A deputy will 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.

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1102.4 SEARCHES AT THE SHERIFFS OFFICE

Custody searches shall be conducted on all individuals in custody, upon entry to the Montgomery County Sheriff's Office . Except in exigent circumstances, the search should be conducted by a Deputy of the same sex as the individual being searched. If a Deputy 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.

1102.4.1 PROPERTY

Deputies 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, and documented using a incident report in RMS.

All property shall be inventoried by objective description (this does not include an estimated value), and included in the property section of the incident report. The individual from whom it was taken shall be required to sign a property receipt. If the individual's signature cannot be obtained, the property receipt shall be witnessed by another employee. The property receipt should include the case number, date, time, deputy's Montgomery County Sheriff's Office identification number and information regarding how and when the property may be released. Property held for safekeeping shall be entered into the evidence room and entry shall be made using the RMS evidence module. The property receipt shall be attached with the incident report.

1102.4.2 VERIFICATION OF MONEY

All money shall be counted in front of the individual from whom it was received. When possible, the individual shall initial the dollar amount on the inventory. In the event that the person from whom the money was seized refuses to initial the envelope or bag containing the money, a second deputy shall initial the envelope. Additionally, all money should be placed in a separate envelope and sealed. Negotiable checks or other instruments and foreign currency should also be sealed in an envelope with the amount indicated but not added to the cash total. All envelopes should clearly indicate the contents on the front. The Deputy sealing it should place his/her initials across the sealed flap. Should any money be added, the Deputy making such change shall enter the amount below the original entry and initial it. The amount of money in the envelope should always be totaled and written on the outside of the envelope.

1102.5 STRIP SEARCHES

No individual in temporary custody 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

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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.
 - 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).

1102.5.1 STRIP SEARCH PROCEDURES

Strip searches at Montgomery County Sheriff's Office facilities shall be conducted as follows:

- (a) Authorization from the shift supervisor shall be obtained prior to the strip search.
- (b) All personnel 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) Personnel conducting a strip search shall not touch the breasts, buttocks or genitalia of the individual being searched.
- (e) The primary person conducting the search shall document:
 - 1. The facts that led to the decision to perform a strip search.
 - 2. The reasons less intrusive methods of searching were not used or were insufficient.
 - 3. Authorization for the search.
 - 4. The name of the individual who was searched.

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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.
 10. The facts upon which the deputy based his/her belief that the individual was concealing a weapon or contraband.
- (g) No personnel should view an individual's private underclothing, buttocks, genitalia or female breasts while that individual is performing bodily functions or changing clothes, unless he/ she otherwise qualifies for a strip search or the employee is conducting a required security check and inadvertently conducts such check during the time the individual is performing one of the above functions and the individual has failed to use the privacy screens available to the individual. Security checks must never be solely for the purpose of viewing any individual during the performance of any bodily function or changing clothes. 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.

1102.5.2 SPECIAL CIRCUMSTANCE FIELD STRIP SEARCHES

A strip search may be conducted in the field only with the shift supervisor's 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.

1102.6 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 approval of the shift supervisor and only upon a search warrant. 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).

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- (b) Only a licensed physician 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 Deputies 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.
 - 2. The reasons less intrusive methods of searching were not used or were insufficient.
 - 3. Shift supervisor approval.
 - 4. A copy of the search warrant.
 - 5. The time, date and location of the search.
 - 6. The medical personnel present.
 - 7. The names, sex and roles of any employees present.
 - 8. Any contraband, evidence or weapons discovered by the search.
- (f) A copy of the written authorization shall be retained and should be made available to the individual who was searched or other authorized representative upon request.