

Custodial Searches

405.1 VERSION

Review Date	Effective Date	Approving Authority
02/02/19	07/09/18	Eric D. English, Chief of Police

405.2 POLICY AND PURPOSE

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 law enforcement facility. Such items can pose a serious risk to the safety and security of department 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.

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.

405.3 ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines set forth in this policy. Responsibility rests with the supervisor to ensure that any violations of policy are investigated and appropriate training, counseling and/or disciplinary action is initiated. This directive is for internal use only, and does not enlarge an employee's civil liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

405.4 DEFINITIONS

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 and mouth. Body cavity means the stomach or rectal cavity of an individual, and the vagina of a female person and must be performed by or under the supervision of medically trained personnel.

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.

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405.5 FIELD AND TRANSPORTATION SEARCHES

An officer 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 department vehicle.

Whenever practicable, a custody search should be conducted by an officer of the same sex as the person being searched. If an officer of the same sex is not reasonably available, a witnessing officer should be present during the search, if feasible.

Officers delivering person(s) to the Rockingham County Jail for incarceration shall assist in or visually observe the search of their prisoner(s). Upon discovery of contraband or weapons, the arresting officer shall take the appropriate action relevant to the seized property and the securing of warrants.

405.6 SEARCHES AT POLICE FACILITIES

Custody searches shall be conducted on all individuals in custody, upon entry to the law enforcement facilities. 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.

405.7 STRIP SEARCHES (PROHIBITED,EXCEPTIONS)

- (a) No person in custodial arrest for a traffic infraction, Class 3 or Class 4 misdemeanor, or a violation of a city, county, or town ordinance, which is punishable by no more than thirty days in jail shall be strip searched unless there is reasonable cause to believe on the part of a law-enforcement officer authorizing the search that the individual is concealing a weapon. All strip searches conducted under this section shall be performed by persons of the same sex as the person arrested and on premises where the search cannot be observed by persons not physically conducting the search (Va. Code § 19.2-59.1).
- (b) A regional jail superintendent or the Chief of Police or the Sheriff of the county or city shall develop a written policy regarding strip searches (Va. Code § 19.2-59.1).
- (c) A search of any body cavity must be performed under sanitary conditions and a search of any body cavity, other than the mouth, shall be conducted either by or under the supervision of medically trained personnel (Va. Code § 19.2-59.1).
- (d) Strip searches authorized pursuant to the exceptions stated in subsection A of this section shall be conducted by a law-enforcement officer as defined in §9.1-101.Va. Code § 19.2-59.1.
- (e) The provisions of this section shall not apply when the person is taken into custody by or remanded to a law-enforcement officer pursuant to a circuit or district court order (Va. Code § 19.2-59.1).
- (f) 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, ask the person which gender should perform the search. It may be

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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).

405.7.1 STRIP SEARCH PROCEDURES

Strip searches at law enforcement facilities shall be conducted as follows (28 CFR 115.115):

- (a) Notify on-duty supervisor 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 (Va. Code § 19.2-59.1) or in the case of (f) above in 903.5.
- (c) All strip searches shall be conducted in a professional manner under sanitary conditions and in a secure area of privacy so that the search 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, unless necessary.
- (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 less intrusive methods of searching were not used or were insufficient.
 3. The authorization for the search, obtained from the direct supervisor.
 4. The name of the individual who was searched.
 5. The name and sex of the officers 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 officer based his/her belief that the individual was concealing a weapon or contraband.

405.7.2 SPECIAL CIRCUMSTANCE FIELD STRIP SEARCHES

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

- (a) There is reasonable suspicion 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 reasonable suspicion to believe that the individual is concealing controlled substances or evidence that cannot be recovered by a more limited search, and there

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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.

405.8 PHYSICAL BODY CAVITY SEARCH

Physical body cavity searches shall be subject to the following:

- (a) Other than the mouth, no individual shall be subjected to a physical body cavity search without approval of the appropriate Commander 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).
- (b) Only medically trained personnel may conduct a physical body cavity search (Va. Code § 19.2-59.1).
- (c) Except for the medically trained personnel conducting the search, persons present must be of the same sex as the individual being searched. Only the necessary department officers 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 (Va. Code § 19.2-59.1).
- (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. The appropriate Commander's 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 department officers present.
 - 8. Any contraband or weapons discovered by the search.
- (f) A copy of the written authorization shall be retained and shall be made available to the individual who was searched or other authorized representative upon request.

405.9 TRAINING

The Training Officer shall ensure officers have training that includes (28 CFR 115.115):

- (a) Conducting searches of cross-gender individuals.

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