



Approved:  
*Chief Marcia Harnden*

Subject:

# 261. Custodial Searches

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## 261.1: PURPOSE AND SCOPE

This policy provides guidance regarding searches of individuals who are in custody. Nothing in this policy is intended to prohibit the otherwise lawful collection of evidence from an individual who is in custody.

### 261.1.1: DEFINITIONS

**Custody Search** – A search of an individual who is in custody and of their property, shoes, clothing (including pockets, folds, and cuffs in the clothing), to remove all weapons, contraband, and other dangerous items.

**Physical body cavity search** – A search which includes a visual inspection and may include a physical intrusion into a body cavity. Body cavity means the stomach, vagina, or rectal cavity.

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

## 261.2: POLICY

**It is the policy of the Albany Police Department to conduct searches 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 search.**

## 261.3: FIELD AND TRANSPORTATION SEARCHES

- a. Officers shall conduct a custody search of an individual immediately after their arrest, when receiving an individual from the custody of another, and before transporting a person who is in custody in any department vehicle.
- b. Whenever practical, a custody search shall be conducted by an officer of the same gender as the person being searched. If an officer of the same gender is not reasonably available, a witnessing member shall be present during the search.

**261.4: SEARCHES AT POLICE FACILITIES**

- a. Custody searches shall be conducted on all individuals in custody upon entry into the Albany Police Department facility. Except in exigent circumstances, the search shall be conducted by a member of the same gender as the individual being searched. If a member of the same gender is not available, a witnessing member shall be present during the search.
- b. Custody searches shall 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.

**261.4.1: PROPERTY**

- a. 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.
- b. Property removed from a person lodged at jail will be transferred to jail staff along with the arrestee and is not required to be itemized by Albany Police Department members.
- c. Property retained by the Department shall be inventoried by objective description (this does not include an estimated value). The inventory shall include the case number, date, time, member's Albany Police Department identification number and information regarding how and when the property may be released.

**261.4.2: VERIFICATION OF MONEY**

When money is removed from an individual and booked into the Property and Evidence Section, members shall follow the procedures set forth for booking money in the Property and Evidence Manual.

**261.4.3: RECEIPT FOR PROPERTY OR MONEY**

- a. When money or property is taken or received from an individual during a search, the officer in charge of the inventory shall ensure that the individual is provided with a receipt for any money or other property taken.
- b. If possible, the officer in charge of the inventory shall have the individual countersign the Property Seized Receipt.
- c. In cases when the individual is unable to sign or receive the duplicate thereof, officers shall maintain the original Property Seized Receipt and ensure it is delivered to the individual when reasonably possible ([ORS 133.455](#)).
- d. Members shall be aware that failing to provide a receipt for property taken from a person in custody may be punishable as a misdemeanor crime ([ORS 133.455](#))

**261.5: STRIP SEARCHES**

No individual in temporary custody at any Albany Police Department facility shall be subjected to a strip search unless there is reasonable suspicion based upon specific and articulable facts to believe the individual 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 which may be a weapon or contraband and cannot be safely retrieved without a strip search;
- b. Circumstances of a current arrest which 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 shall not suffice as reasonable suspicion, absent other facts;
- c. Custody history (e.g., past possession of contraband while in custody, assaults on police officers, escape attempts);
- d. The individual's actions or demeanor;
- e. Criminal history (i.e., level of experience in a custody setting); and
- f. The age of the person to be searched.

**261.5.1: PROHIBITED STRIP SEARCHES**

No transgender or intergender 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](#)).

**261.5.2: STRIP SEARCH PROCEDURES**

- a. Strip searches at Albany Police Department facilities shall be conducted as follows (28 CFR 115.115):
- b. Authorization from the Shift Supervisor shall be obtained prior to the strip search;
- c. All members involved with the strip search shall be of the same gender, gender identity, or gender expression as the person being searched, unless the search is conducted by a medical practitioner;
- d. All strip searches shall be conducted in a professional manner under sanitary conditions, and in a secure area of privacy which cannot be observed by those not participating in the search;
- e. The search shall be audio recorded, but shall not be video recorded;

- f. Whenever possible, a second member of the same gender shall also be present during the search, both for security and as a witness to the finding of evidence;
- g. Members conducting a strip search shall not touch the breasts, buttocks, or genitalia of the person being searched;
- h. The primary member conducting the search shall prepare a written report to include:
  - 1) The facts which led to the decision to perform a strip search;
  - 2) The reasons why less intrusive methods of searching were not used or were insufficient;
  - 3) The written authorization for the search, obtained from the Shift Supervisor;
  - 4) The name of the individual who was searched;
  - 5) The names and genders of members who conducted the search;
  - 6) The names, genders, and roles of any person present during the search;
  - 7) The date and time of the search;
  - 8) The place at which the search was conducted;
  - 9) A list of items recovered;
  - 10) The facts upon which the member based their belief that the individual was concealing a weapon or contraband.
- i. No member shall view an individual's private underclothing, buttocks, genitalia or female breasts while that person is performing bodily functions, or changing clothes, unless that person otherwise qualifies for a strip search.
- j. If serious hygiene or other health issues make it reasonably necessary to assist the person with a change of clothes, a supervisor shall be contacted to ensure reasonable steps are taken to obtain the person's consent and/or otherwise protect their privacy and dignity.
- k. Persons conducting an unclothed search will not touch the individual's private body parts being searched except as reasonably necessary to effectuate the unclothed search of the individual.

### **261.5.3: 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 items which cannot be recovered by a more limited search;

- b. There is probable cause to believe that the individual is concealing controlled substances or evidence which 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.

#### **261.6: PHYSICAL BODY CAVITY SEARCHES**

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 Watch 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 may conduct a physical body cavity search.
- c. Except for the physician conducting the search, persons present must be of the same gender, gender identity, or gender expression as the individual being searched. Only the necessary department 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 which led to the decision to perform a physical body cavity search of the individual;
  - 2) The reasons why less intrusive methods of searching were not used or were insufficient;
  - 3) The Shift Supervisor's written approval;
  - 4) A copy of the search warrant;
  - 5) The date, time and location of the search;
  - 6) The medical personnel present;
  - 7) The name, gender, and role of any department members present;
  - 8) Any contraband or weapons discovered by the search;
  - 9) Audio only recording of the search.

- f. A copy of the written authorization shall be retained and made available to the individual who was searched or other authorized representative upon request.

#### **261.6.1: JUVENILES**

All of the above-outlined policy relating to both an unclothed (strip) search and a body cavity search would be applicable in relation to a juvenile. In addition, the following will also apply to juveniles:

- a. All attempts will be made to notify the parent or legal guardian of the juvenile prior to conducting an unclothed (strip) search and a body cavity search.
- b. Person conducting an unclothed search will not touch the juvenile's private body parts being searched except as reasonably necessary to effectuate the unclothed search of the juvenile.

#### **261.7: CLOSED CONTAINER SEARCHES**

Closed containers will not be opened for inventory purposes except for the following, which shall be opened for inventory: wallets, purses, coin purses, fanny packs, personal organizers, briefcases, backpacks, or other closed containers designed for carrying money or small valuables, or closed containers which are designed for hazardous materials. Other closed containers shall be opened and inventoried if the owner acknowledges they contain cash in excess of \$10, valuables, or a hazardous material.

#### **261.8: TRAINING**

The Administrative Lieutenant shall ensure members of the department have training which includes (28 CFR 115.115):

- a. Conducting searches of cross-gender individuals;
- b. Conducting searches of transgender or intergender individuals;
- c. Conducting searches in a professional and respectful manner and in the least intrusive manner possible with consideration to security needs.