



MAINE STATE POLICE GENERAL ORDER

E-125

SUBJECT: MAINE STATE POLICE POLICY REGARDING STRIP SEARCHES, MANUAL MOUTH SEARCHES, AND BODY CAVITY SEARCHES OF ARRESTEES

EFFECTIVE DATE: 02.09.2021

EXPIRATION DATE: 02.09.2028

RECENT HISTORY: AMENDED (02.09.2021); AMENDED (08.01.2020); AMENDED (03.23.2017); NEW (12.22.2016)

DISTRIBUTION CODE: 2 (MAY BE PUBLICLY DISCLOSED)

APPLICABILITY CODE: S, Z

MLEAP: 10.14

SIGNATURE OF COLONEL:

A handwritten signature in blue ink, appearing to read "John Cote", is written over a light blue rectangular background.

I. PURPOSE

1. The purpose of this General Order is to establish the Maine State Police policy governing strip searches, manual mouth searches, and body cavity searches of arrestees.

II. POLICY

1. The policy of the Maine State Police is, when necessary, to conduct strip searches, manual mouth searches, and/or body cavity searches of arrestees, in accordance with applicable law, including, but not limited to, the Fourth Amendment of the Constitution of the United States of America, Article I, §5 of the Maine Constitution, 5 M.R.S. sec. 200-G, Strip

searches and body cavity searches, and 26-239 C.M.R. Chapter 1, Rules for Strip Searches, Manual Mouth Searches, and Body Cavity Searches of Arrestees.

III. DEFINITIONS

1. For the purposes of this General Order, the terms included in this section are defined as follows, unless otherwise indicated in the order.
 - A. Arrestee. "Arrestee" means a person who has been placed under custodial arrest by a law enforcement officer.
 1. Once remanded by a court to a facility, the person is no longer considered an arrestee.
 - B. Body cavity search. "Body cavity search" means an inspection of an arrestee's anal or vaginal cavity by insertion of fingers or instruments.
 - C. Facility. "Facility" means any state correctional or detention facility, county institution or facility, or local lockup.
 - D. Law enforcement officer. "Law Enforcement Officer" means, for purposes of this policy, a "law enforcement officer" as defined in 17-A M.R.S.A. §2(17), a "law enforcement officer" as defined in 25 M.R.S.A. §2801-A(5), a "transport officer" as defined in 25 M.R.S.A. §2801-A(8), a "corrections officer" as defined in 17-A M.R.S.A. §2(5-A) and 25 M.R.S.A. §2801-A(2), a "corrections supervisor" as defined in 17-A M.R.S.A. §2(5-B), or a jailer, jailer's assistant, or employee as provided for in 30-A M.R.S.A. §1501.
 - E. Manual mouth search. "Manual mouth search" means a search of an arrestee's mouth, including any dentures located in the mouth, with the use of fingers or instruments.
 - F. Medically trained personnel. "Medically trained personnel" means a licensed physician, physician's assistant, nurse practitioner, or registered nurse.
 - G. Strip search. "Strip search" means a search during which any private part of an arrestee's body, including an arrestee's anal or genital area or buttocks or a female arrestee's breasts, is visually inspected.
 1. There may not be any manual search of the arrestee during a strip search except for a manual mouth search unless the rules governing body cavity searches are complied with. See 26-239 C.M.R. Chapter 1, Rules for Strip Searches, Manual Mouth Searches, and Body Cavity Searches of Arrestees.

IV. PROCEDURE MLEAP 10.14

1. PRECONDITIONS FOR SEARCH

A. STRIP SEARCH AND MANUAL MOUTH SEARCH

1. An arrestee may be subjected to a strip search and/or manual mouth search if either of the following preconditions for such searches exists:
 - a. An arrestee for a violent, weapon, or drug offense, or a corresponding juvenile offense, may be subjected to a strip search and/or manual mouth search.
 - b. An arrestee for other than a violent, weapon, or drug offense, or corresponding juvenile offense, may be subjected to a strip search and/or manual mouth search if the law enforcement officer authorizing (and, if applicable, conducting) such search has probable cause to think that the arrestee is concealing on or inside the arrestee's body a weapon, contraband, or evidence of a crime.
 - (1) Probable cause may be based on such factors as the nature of any offense for which the arrestee has previously been arrested, any prior facility history of the arrestee, the arrestee's appearance, the arrestee's conduct, and items found during a less intrusive search.
 - (2) Where probable cause exists to conduct a strip search and/or manual mouth search, the arresting officer shall make a request for such action to the officer's supervisor that clearly defines the basis for probable cause. **That the request was made must be documented.**

B. BODY CAVITY SEARCH

1. An arrestee may be subjected to a body cavity search if the law enforcement officer authorizing such search has probable cause to believe that the arrestee is concealing inside a body cavity a weapon, contraband, or evidence of a crime.
 - a. **The search must be conducted pursuant to a search warrant issued upon probable cause.**

- (1) The warrant may be dispensed with, however, under the constitutionally recognized exceptions of exigent circumstances or consent.

(A) Consent must be given in advance and in writing, using the Consent to Search Form.

- b. Where probable cause exists to conduct a body cavity search, the arresting officer shall make a written request for such action to the officer's supervisor that clearly defines the basis for probable cause.

2. An arrestee who is pregnant shall NOT be subject to a body cavity search.

2. STRIP SEARCHES AND MANUAL MOUTH SEARCHES

A. PERSON TO CONDUCT SEARCH

1. A strip search and manual mouth search must be conducted by:
 - a. A law enforcement officer or officers of the same gender as the arrestee; or
 - b. Medically trained personnel of the same gender as the arrestee.

B. EXCLUSION OF THIRD PERSONS

1. A strip search and manual mouth search cannot be observed by persons other than:
 - a. Persons conducting the search as identified in IV(2)(A), above; and
 - b. Only the number of law enforcement officers of the same gender as the arrestee necessary to be present at the search for one or more law enforcement purposes, such as:
 - (1) The protection of the person conducting the search;
 - (2) The witnessing of the removal of any weapon, contraband, or evidence of a crime from the body or clothing of the arrestee;
 - (3) The seizure of such weapon, contraband, or evidence; and

(4) Any other legitimate law enforcement purpose.

C. Persons conducting or observing strip and manual mouth searches shall treat arrestees with respect to minimize embarrassment and indignity.

3. BODY CAVITY SEARCHES

A. PERSON TO CONDUCT SEARCH

1. A body cavity search must be conducted by medically trained personnel of the same gender as the arrestee.
2. A body cavity search shall not be conducted by a law enforcement officer, unless the law enforcement officer is also medically trained personnel.

B. EXCLUSION OF THIRD PERSONS

1. A body cavity search cannot be observed by persons other than:
 - a. The medically trained personnel conducting the search; and
 - b. Only the number of law enforcement officers of the same gender as the arrestee necessary to be present at the search for one or more law enforcement purposes, such as:
 - (1) The protection of the medically trained personnel;
 - (2) The witnessing of the removal of any weapon, contraband, or evidence of a crime from the body or clothing of the arrestee;
 - (3) The seizure of such weapon, contraband, or evidence; and
 - (4) Any other legitimate law enforcement purpose.

C. Persons conducting or observing body cavity searches shall treat arrestees with respect to minimize embarrassment and indignity.

4. CLOSURE CODE REQUIREMENT

A. After conducting a strip search, manual mouth search, or body cavity search, the officer who did so shall request a separate closure code that will be coded to account for each such search.

- B. The closure code must require a description of the type of search or searches ("manual mouth search," "strip search," "body cavity search") conducted in each case.

5. REPORTING

- A. Each strip search, manual mouth search, and body cavity search of an arrestee must be documented in a Maine State Police Search of Person Report within twenty-four (24) hours after the search is conducted.
 - 1. All applicable areas of the report must be completed, and the report, signed by the officer who conducted the search.
 - 2. The report must then be submitted to, and be reviewed and approved by, the officer's direct supervisor.
 - a. Such approval must be indicated in writing.
 - 3. Once the report is approved by the officer's direct supervisor, the direct supervisor shall forward the report to the Commanding Officer of the Troop or Unit of jurisdiction, for review and approval.
 - a. Such approval must be indicated with the written signature of the Commanding Officer, which may be given electronically.
 - b. The Troop Commander's approval of the report indicates (1) that, given the circumstances of the incident, the search was justified pursuant to the requirements of this policy, and (2) the report is complete and thorough.
 - 4. Once the report is approved by the Commanding Officer of the Troop or Unit of jurisdiction, he or she shall scan the report, and then forward a copy of the report to the Maine State Police Training Unit.
 - a. The Training Unit shall review and assess the report to determine whether -- and, if so, how -- any aspects of training need to be improved.
 - b. After the Training Unit's review of the report is completed, the Commanding Officer of the Training Unit shall sign the report, create a scanned copy of it, and then forward the report to the Office of Professional Standards, which then shall file the report in IAPro for reporting purposes.

- B. Reports required under this section must be kept for a minimum of seven (7) years.
- C. Reports required under this section must indicate, at a minimum:
 - 1. The name of the officer who ordered the search;
 - 2. The name of the officer or medically trained personnel who conducted the search;
 - 3. The names of the officers present at the search;
 - 4. The name of the arrestee;
 - 5. The type of search conducted (strip search, manual mouth search, or body cavity search);
 - 6. The parts of the body searched, and the justification or justifications for the search (e.g., (1) search warrant, (2) exigent circumstances and probable cause, (3) consent, (4) arrested for a violent, weapon, or drug crime, or corresponding juvenile offense, or (5) arrested for other than a violent, weapon, or drug crime, or corresponding juvenile offense, combined with reasonable suspicion).
 - a. Where the justification for a warrantless search is based on the existence of probable cause and exigent circumstances or reasonable suspicion, such probable cause and exigent circumstances or reasonable suspicion must be summarized in the report.
 - b. Where the justification for a warrantless search is consent, the written consent must be retained for a minimum of seven (7) years.

6. NONAPPLICABILITY OF GENERAL ORDER

- A. This General Order does not apply to persons who are taken into custody for execution of a sentence, who have been remanded by a court to a facility, or who are already inmates of a facility.
 - 1. Strip searches, manual mouth searches, and body cavity searches of such persons are governed by the Fourth Amendment of the United States Constitution, Article I, §5 of the Maine Constitution, and existing policies and procedures of facilities.
- B. This General Order does not apply to other types of searches of arrestees or other persons, including, but not limited to, pat down or frisk searches and visual mouth searches.
 - 1. Such other searches are governed by the Fourth Amendment of the United States Constitution, Article I, §5 of the Maine Constitution, and existing policies and procedures of facilities.

ATTACHMENT

Consent to Search Form **Maine State Police Search of Person Report**



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ATT.002-ConsenttoSei125-ATT.001-MSPSear

NOTICE

THIS GENERAL ORDER IS FOR USE OF THE MAINE STATE POLICE AND NOT FOR ANY OTHER AGENCY. THE GENERAL ORDER IS NOT INTENDED TO BE RELIED UPON BY ANY OTHER INDIVIDUAL OR PRIVATE OR PUBLIC AGENCY. THE GENERAL ORDER EXPRESSLY DOES NOT CREATE, AND IS NOT INTENDED TO CREATE, A HIGHER LEGAL STANDARD OF SAFETY OR CARE IN AN EVIDENTIARY SENSE WITH RESPECT TO THIRD-PARTY CLAIMS. VIOLATIONS OF THIS ORDER ONLY MAY FORM THE BASIS FOR ADMINISTRATIVE SANCTIONS BY THE MAINE STATE POLICE.