

# Custodial and Lawful Detention Searches

## 900.1 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 Santa Monica Police Department 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.

### 900.1.1 DEFINITIONS

Definitions related to this policy include:

**Pat-Down Search-** This type of search is used by officers in the field to check an individual for weapons. It involves a thorough patting down of clothing to locate any weapons or dangerous items that could pose a danger to the officer.

**Custody search** - An in-custody search of an individual involves a thorough patting down of an individual's clothing and a search of the individual's 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 involves a physical intrusion into a body cavity. Body cavity means the stomach, rectal cavity, or vagina of an individual.

**Strip search or Visual Body Cavity Search** - A search that requires an individual to remove or rearrange some or all of the individual's 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 the individual's underclothing, buttocks, genitalia or breasts are visible to the monitoring employee.

## 900.2 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.

## 900.3 PAT-DOWN SEARCHES

When an officer has reasonable suspicion to believe that a person being lawfully detained may possess weapons or other dangerous items, or in such circumstances the officer reasonably believes that the individual may present a threat to officer safety, that officer may conduct a pat-down search of that individual. When conducting pat-down searches, officers shall make the following considerations:

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- (a) Prior to detaining any individual in any police vehicle, an officer should conduct a normal pat-down search of the individual.
- (b) Whenever practical, a pat-down search of an individual should be conducted by an officer of the same sex as the person being searched.
- (c) This policy does not preclude a male officer from performing a pat-down search of a female detainee or a female officer from performing a pat-down search of a male detainee when the officer believes the detainee may be in possession of a weapon or other dangerous item.
- (d) If it is not practical to wait for an officer of the same sex to arrive on scene, it is recommended that a witness officer be present during any pat-down search of an individual of the opposite sex of the searching officer.
- (e) Officers shall also comply with the regulations of the Portable Audio/Video Policy and Mobile/Audio Video Policy.

### **900.4 FIELD AND TRANSPORTATION SEARCHES**

A sworn officer shall conduct a custody search of an individual immediately after the individual's 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 a sworn officer of the same sex as the person being searched. If a sworn officer of the same sex is not reasonably available, a witnessing officer should be present during the search.

### **900.5 SEARCHES AT POLICE FACILITIES**

Custody searches shall be conducted on all individuals in custody, upon entry to the Santa Monica Police Department facilities. The search should be conducted by an officer or other authorized 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.

#### **900.5.1 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 Department, such as weapons or large items. These items should be retained for safekeeping in accordance with the Property and Evidence Policy.

All property shall be inventoried by objective description (this does not include an estimated value). The individual from whom it was taken shall be required to sign the completed inventory. If the

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individual's signature cannot be obtained, the inventory shall be witnessed by another Department member.

#### **900.5.2 VERIFICATION OF MONEY**

All money shall be counted in front of the individual from whom it was received. Cash deposits over \$50.00 shall be verified by the jailer, arresting officer, and arrestee. If the arrestee is uncooperative, then a supervisor shall verify the deposit. Additionally, all United States Currency shall be placed in a separate, labeled money envelope and sealed.

Negotiable checks or other instruments should be recorded by the name of the payee, the check number, and amount. Foreign currency shall be individually itemized and placed in a jewelry envelope. All envelopes should clearly indicate the contents on the front. The Department member sealing it should place the member's 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 should always be totaled and written on the outside of the envelope.

#### **900.6 STRIP SEARCHES**

No person arrested and held in custody on a misdemeanor or infraction offense, except those involving weapons, possession of controlled substances, or violence, shall be subjected to a strip search or visual cavity search prior to placement in the general jail population unless an officer has determined that there is reasonable suspicion based upon specific and articulable facts to believe such person is concealing a weapon or contraband which would be discovered by such search. 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 Department 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).

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### 900.6.1 STRIP SEARCH PROCEDURES

Strip searches at Santa Monica Police Department facilities shall be conducted as follows (28 CFR 115.115; Penal Code § 4030):

- (a) Officers shall complete a Strip Search Authorization form (SMPD Form# 0606) and obtain written authorization from a supervisor prior to the strip search.
- (b) All members 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 member of the same sex should also be present during the search, for security and as a witness to the finding of evidence.
- (e) Members conducting a strip search shall not touch the breasts, buttocks or genitalia of the individual being searched.
- (f) The primary member 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 written authorization for the search, obtained from the supervisor.
  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.
  10. The facts upon which the member based the member's belief that the individual was concealing a weapon or contraband.
  11. The Strip Search Authorization form (SMPD Form #0606) shall be attached to the original report.
- (g) No member should view an individual's private underclothing, buttocks, genitalia or breasts while that individual is showering, performing bodily functions or changing clothes, unless the individual 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 the individual's privacy and dignity.

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- (h) If the individual has been arrested for a misdemeanor or infraction offense, the written authorization from the Watch Commander shall include specific and articulable facts and circumstances upon which the reasonable suspicion determination for the search was made.
- (i) A copy of the written authorization shall be retained and made available upon request to the individual or the individual's authorized representative. A record of the time, date, place of the search, the name and sex of the person conducting the search, and a statement of the results of the search shall also be retained and made available upon request to the individual or the individual's authorized representative.

### **900.7 PHYSICAL BODY CAVITY SEARCH**

Physical body cavity searches shall be subject to the following (Penal Code § 4030):

- (a) No individual shall be subjected to a physical body cavity search without written approval of the Watch 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 a physician, nurse practitioner, registered nurse, licensed vocational nurse or Emergency Medical Technician Level II licensed to practice in California may conduct a physical body cavity search.
- (c) Except for the physician or licensed medical personnel conducting the search, persons present must be of the same sex 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 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 Watch 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 members present.
  - 8. Any contraband or weapons discovered by the search.

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- (f) Copies of the written authorization and search warrant shall be retained and shall be provided to the individual who was searched or other authorized representative upon request. A record of the time, date, place of the search, the name and sex of the person conducting the search and a statement of the results of the search shall also be retained and made available upon request to the individual or the individual's authorized representative.

### **900.8 TRAINING**

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