

Custodial Searches

902.1 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 Missoula 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 as covered by law (MCA 46-5-102).

902.1.1 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 and contraband.

Physical body cavity search - A search that includes a visual inspection and may include 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.

902.2 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.

902.3 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 and/or recorded on a department owned recording device.

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902.4 SEARCHES AT POLICE FACILITIES

Custody searches shall be conducted on all individuals in custody, upon entry to the Missoula Police Department facilities. Except when impracticable, the search should be conducted by a member of the same sex as the individual being searched. If a member of the same sex is not available, a witnessing member should 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.

902.4.1 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.

Closed containers located on a person in custody cannot be searched as part of search incident to arrest without legal exception.

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 Unit Policy.

902.4.2 VERIFICATION OF MONEY

All money being logged in to the MPD evidence facility will be handled in accordance with the Property and Evidence Unit policy.

902.5 STRIP SEARCHES

No individual in temporary custody at any Missoula 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 has a health condition requiring immediate medical attention, or is concealing a weapon or contraband (§ 46-5-105, MCA).

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).

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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).

902.5.1 STRIP SEARCH PROCEDURES

Strip searches at Missoula Police Department facilities shall be conducted as follows (28 CFR 115.115):

- (a) All members involved with the strip search should be of the same sex as the individual being searched, unless the search is conducted by a medical practitioner.
- (b) 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.
- (c) Whenever practicable, 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.
- (d) Members conducting a strip search should attempt to not touch the breasts, buttocks or genitalia of the individual being searched, unless necessary.
- (e) 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 name of the individual who was searched.
 3. The names of the members who conducted the search.
 4. The name of any person present during the search.
 5. The time and date of the search.
 6. The place at which the search was conducted.
 7. A list of the items, if any, that were recovered.
 8. Any presence of audio/video recordings of the search.
 9. The facts upon which the member based his/her belief that the individual was concealing a weapon or contraband.
- (f) No member should view an individual's private underclothing, buttocks, genitalia or female breasts while that individual is performing bodily functions or changing clothes, unless there is a safety risk or a need to preserve evidence.

902.5.2 SPECIAL CIRCUMSTANCE FIELD STRIP SEARCHES

A strip search may be conducted in the field only with Shift Commander 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

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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.

902.6 PHYSICAL BODY CAVITY SEARCH

Physical body cavity searches shall be subject to the following:

- (a) A copy of any search warrant and the results of the body cavity search shall be included with the related reports.
- (b) Only a physician may conduct a physical body cavity search.
- (c) Except for the physician conducting the search, persons present should 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) Names of medical staff involved in the search will be documented in the related reports.

902.7 TRAINING

The Training Division 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.