

## 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 Kalamazoo Department of Public Safety booking facility and the Kalamazoo County Jail. 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.

#### 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

A public safety 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 a public safety officer of the same sex as the person being searched. If a public safety officer of the same sex is not reasonably available, a witnessing public safety officer should be present during the search.

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#### **902.4 SEARCHES AT KALAMAZOO DEPARTMENT OF PUBLIC SAFETY FACILITIES**

Custody searches shall be conducted on all individuals in custody, upon entry to the Kalamazoo Department of Public Safety facilities. Except in exigent circumstances, 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 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.

##### **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.

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 Evidence Room Policy.

All property should be inventoried by Kalamazoo County Jail personnel upon arrival at their receiving facility. Public Safety Officers shall turn over any property they removed from an arrestee during a custodial search to KCSD personnel. When an arrestee claims that their property is missing as a result of a department member, the involved KDPS officer shall immediately report the discrepancy to the Shift Commander for investigation.

#### **902.5 STRIP SEARCHES**

No individual in temporary custody at any Kalamazoo Department of Public Safety 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. Probable cause is required for individuals who are in custody for a misdemeanor or a lesser offense and have not been ordered to jail by a court. Searches of these individuals are limited to weapons, controlled substances and evidence (MCL 764.25a). Factors to be considered in determining probable cause or 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.

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- (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).

#### 902.5.1 STRIP SEARCH PROCEDURES

Strip searches at Kalamazoo Department of Public Safety facilities shall be conducted as follows (28 CFR 115.115):

- (a) Written authorization from a command officer shall be obtained prior to the strip search (MCL 764.25a). The original strip search form should be routed to Records and a copy scanned into the police report.
  - 1. [Strip Search Form](#)
- (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 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 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 a command officer.
  - 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 his/her belief that the individual was concealing a weapon or contraband.

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- (g) 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 he/she 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 his/her privacy and dignity.

Any documentation listed above shall be provided to a searched person who is in custody for a misdemeanor or lesser offense and who has not been ordered to jail by a court. Reports may be redacted for security or other reasons appropriate under the Michigan Freedom of Information Act (MCL 764.25a).

#### **902.5.2 SPECIAL CIRCUMSTANCE FIELD STRIP SEARCHES**

A strip search may be conducted in the field only with command officer 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 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. In these instances, a strip search form shall be obtained prior to the strip search (MCL 764.25a).

#### **902.6 PHYSICAL BODY CAVITY SEARCH**

Physical body cavity searches shall be subject to the following:

- (a) No individual shall be subjected to a physical body cavity search without approval of the Shift 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 licensed physician or a physician's assistant, licensed practical nurse, or registered professional nurse acting with the approval of a licensed physician may conduct a physical body cavity search (MCL 764.25b).
- (c) Except for the licensed physician or a physician's assistant, licensed practical nurse, or registered professional nurse conducting the search, persons present must be of the same sex as the individual being searched (MCL 764.25b). 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

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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 Shift 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.
  - 9. The identification of the person who actually conducted the search (MCL 764.25b).
- (f) A copy of the search warrant shall be retained and shall be provided/made available to the individual who was searched or other authorized representative upon request.

### **902.7 TRAINING**

The Training Division Commander 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.