

Policy 1013



Subject

STRIP SEARCHES AND BODY CAVITY SEARCHES

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By Order of the Police Commissioner

POLICY

The purpose of this policy is to provide members of the Baltimore Police Department (BPD) with guidelines for determining if and under what conditions the use of Strip Searches and Body Cavity Searches of persons in police custody are necessary and to establish guidelines to protect the privacy interests of persons searched. Members should understand the privacy interests at stake in conducting Strip Searches and Body Cavity Searches. "Even when carried out in a respectful manner, and even absent any physical touching, such searches are inherently harmful, humiliating, and degrading." *Florence v. Board of Chosen Freeholders of County of Burlington*, 566 U.S. 318, 345 (2012). It has also characterized the Body Cavity Search as "clearly the greatest personal indignity" that has "been found to engender 'deep degradation' and 'terror'" in persons in custody. *Bell v. Wolfish*, 441 U.S. 520, 593-94 (1979). This policy is intended to balance at all times the interests of public safety with the deeply personal, constitutional privacy interests of every person in BPD custody.

CORE PRINCIPLES

Privacy. The BPD recognizes the intrusiveness of these searches on individual privacy and will use the least intrusive means to achieve its law enforcement purpose. As such, it is imperative that BPD members consider the importance of individual privacy when determining the necessity for an allowable Strip Search or Body Cavity Search under the Fourth Amendment. Such searches shall be conducted with due recognition and deference for the human dignity of those being searched and only with proper authority and justification in accordance with BPD policy.

Safety. The use of Strip Searches and Body Cavity Searches may, under the rarest of conditions, be necessary to protect the safety of BPD members, civilians and other prisoners, and to safeguard the security and related interests of BPD station houses and holding facilities.

Evidence. The use of Strip Searches and Body Cavity Searches may, under the rarest of conditions, also be necessary to detect and secure evidence of criminal activity.

DEFINITIONS

Body Cavity Search – Any visual or manual inspection of a person's mouth, nose, ear canal, anus, genital region, and, in rare instances, organs such as the stomach, with or without physical contact with, or intrusion, into a body cavity.

NOTE: The visual inspection or minor manual manipulation of a person's ear, nose or mouth are exempt from the supervisory approval, warrant and reporting requirements for Body Cavity Searches.

Cross-Gender Search – Any search of a person conducted by a BPD member of a different gender

than the person being searched.

Field Strip Search – A Strip Search in a location other than a district station or headquarters.

Probable Cause to Search – Where facts and circumstances, known to the member and taken as a whole, would lead a reasonable member to believe that, based on their training and experience, either contraband or evidence of a crime will be found in a particular location.

Strip Search – The search of a person requiring the removal or rearrangement of some or all clothing to permit the visual inspection of the person's groin/genital area, buttocks, female breasts, or undergarments covering these areas.

NOTE: The following does not constitute a Strip Search or Body Cavity Search: (a) the removal or rearranging of clothing reasonably required to render medical treatment or assistance; (b) the removal of articles of outer clothing, such as coats, ties, belts, shoes; or (c) a weapons pat-down that includes minor manipulation at or around the waistband of the pants, including the untucking and shaking out of a person's shirt, which may expose the waistband of a person's undergarments only.

STRIP SEARCH

Justification

1. In order to conduct a Strip Search of an arrestee, the member must have Probable Cause that a person is concealing contraband or a dangerous weapon in the area to be searched and the Strip Search must be conducted in accordance with the procedures outlined below.
2. Probable Cause to Search should be founded on specific and objective facts or observations about how a person behaves, what the person is seen or heard doing, and the circumstances or situation in regard to the person that is either witnessed or known by the member. Accordingly, Probable Cause to Search must be based on facts or observations about a particular person's actions or the particular circumstances that a member encounters. The physical characteristics of a person are never, by themselves, sufficient. Instead, those characteristics must be combined with other factors, including a specific, non-general description matching the suspect or the observed behaviors of the person. A mere hunch or suspicion is not enough.
3. A Strip Search is much more invasive than a search incident to arrest. A search incident to arrest, which is conducted at the time of custodial arrest, shall include a weapons pat-down and search of all pockets, and could include a search of any articles of property found on the person, and manipulation of clothing that does not permit the visual inspection of the person's groin/genital area, buttocks, female breasts, or undergarments (with the exception of the waistband).

Directives

Required Actions

Prior to conducting a Strip Search

4. Strip Searches may only be performed on persons in police custody.
5. Less intrusive means, such as pat-downs, metal detectors (where available), and clothing searches, will be performed instead of a Strip Search wherever possible.

6. All Strip Searches, except the limited category of Field Strip Searches for deadly weapons identified in #11 below, must be approved prior to the search by a permanent-rank supervisor, lieutenant or above. In seeking approval, members shall state to the permanent-rank supervisor the particularized factual basis for Probable Cause, including identifying the item the person is concealing, and the member shall record the statement on the member's body-worn camera. Members will document the supervisor who provided approval on a Supplemental Report, Form 7.

7. Prior to conducting the Strip Search, the member will explain to the person why they are being Strip Searched, inform the person of their *Miranda* rights and give the person the opportunity to voluntarily produce the suspected item. The person will be allowed to voluntarily produce the item only if the member and permanent-rank supervisor, lieutenant or above, believe that the item can be produced without compromising member safety or risking destruction of evidence.

NOTE: Under no circumstances may a member tell an arrested person that they will conduct a Strip Search unless they already have Probable Cause to conduct such a search, have received permission from a permanent-rank supervisor lieutenant or above to conduct such a search, and have actual intent to conduct such a search.

8. Prior to beginning the Strip Search, members issued a body-worn camera (BWC) shall advise the person to be searched that they are being recorded (if BWC is activated). Then, follow these steps:

8.1. Ask the person to be searched if they want the search to be recorded on the BWC, or if the person wishes the BWC to be deactivated during the search.

8.2. Comply with the wishes of the person.

8.3. If the person wishes the BWC to be deactivated:

8.3.1. Memorialize this request on the BWC, deactivate the BWC, and then conduct the search.

8.3.2. Once the search is complete, activate the BWC immediately to record the rest of the encounter.

Conducting a Strip Search

9. Strip Searches of prisoners shall be conducted only under the following circumstances:

9.1. All Strip Searches must be conducted in a setting that ensures the privacy of the person searched, away from public view, under sanitary conditions and in a professional, dignified manner.

9.2. A Strip Search for anything other than a deadly weapon must be conducted in a private location either in a district station or at headquarters.

9.3. All members involved in a Strip Search shall take reasonable steps to minimize the potential embarrassment or discomfort to the party being searched.

10. When authorized, Strip Searches shall be conducted by the fewest number of personnel necessary, in privacy, and by members who have been specifically trained in how to conduct a

Strip Search.

11. A Field Strip Search can only be conducted where the member has Probable Cause to believe that the person is concealing a deadly weapon, the person is a threat to himself or others, and the person cannot be transported safely to conduct the Strip Search in a district station or headquarters. A Field Strip Search for anything other than a deadly weapon is not permitted. Members must obtain express approval for any Field Strip Search from a permanent-rank supervisor, lieutenant or above unless taking the time needed to obtain approval would pose an imminent threat to the safety of the arrestee, a member, or the public

NOTE: If a youth must be Strip Searched in the field, members must provide enhanced protection and privacy. “[A]dolescent vulnerability intensifies the patent intrusiveness of the exposure [of a strip search].” *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 375 (2009).

12. Where Probable Cause exists to conduct a Strip Search, and prior approval has been obtained, the arresting member shall document the approval on a Supplement Report, Form 7. The basis for the member’s Probable Cause to Search must be clearly defined. The member shall document:
- 12.1. Date, time, duration, and location of the search.
 - 12.2. Identity of the member conducting the search.
 - 12.3. Identity of the person searched.
 - 12.4. Identity of any other persons(s) present during the search.
 - 12.5. A detailed description of the nature and extent of the search.
 - 12.6. List of item(s) seized as a result of the search.
 - 12.7. If the search was recorded on BWC.
 - 12.8. Any wounds, scars or abrasions on the person’s body in the areas being searched.

NOTE: This report must be submitted by the member and reviewed by a command level official within 48 hours of the search. The command level official shall review the Supplemental Report, Form 7, and all body-worn camera footage pertaining to the Probable Cause for the Strip Search.

13. Following a Strip Search, the member will provide the arrestee a Form 309 per Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches*.

Prohibited Actions

14. Members shall not conduct a Field Strip Search for anything other than a deadly weapon. As provided in Section 11 above, a member may not conduct a Field Strip Search for a deadly weapon unless the member has Probable Cause to believe the arrestee is concealing a deadly weapon, the arrestee is a threat to himself or others, and the arrestee cannot be transported safely to conduct the Strip Search in a district station or headquarters.
15. Members shall not conduct any Cross-Gender Strip Search. There is one exception to this

prohibition: a member may conduct a Cross-Gender Field Strip Search on the rare occasion when (1) the member has Probable Cause to believe the arrestee is concealing a deadly weapon and (2) waiting on a member of the same gender identity as the arrestee, or attempting to transport the arrestee to a district station or headquarters, would pose an imminent risk to the safety of the arrestee, a member, or the public.

15.1 The gender identity of the arrestee being Strip Searched may be determined by asking the arrestee being Strip Searched their gender identity.

15.2 If the arrestee expresses a preference about the gender identity of the member who will conduct the Strip Search, that request should be honored. In the absence of a stated preference, the gender identity of the arrestee being Strip Searched shall be consistent with the gender identity of the member conducting the Strip Search, except on the rare occasion explained above.

15.3 All Cross-Gender Strip Searches shall be documented on an *Administrative Report Form 95* and attached to the arrestee's file.

BODY CAVITY SEARCHES

Justification

16. Body Cavity Searches are extremely invasive in nature, and as such must require the high legal standard of Probable Cause to Search in order to justify a Body Cavity Search. A Body Cavity Search can only be conducted if the member has Probable Cause to believe that a person has attempted to hide weapons **or, evidence of a crime,** pertinent to the investigation in a Body Cavity. The type of search requires a search and seizure warrant.
17. Probable Cause to Search should be founded on specific and objective facts or observations about how a person behaves, what the person is seen or heard doing, and the circumstances or situation in regard to the person that is either witnessed or known by the member. Accordingly, Probable Cause to Search must be based on facts or observations about a particular person's actions or the particular circumstances that a member encounters. The physical characteristics of a person are never, by themselves, sufficient. Instead, those characteristics must be combined with other factors, including a specific, non-general description matching the suspect or the observed behaviors of the person. A mere hunch or suspicion is not enough.
18. Though the visual inspection or minor manual manipulation of a person's ear, nose or mouth are technically considered searches of a body cavity, these searches are exempt from the supervisory approval, warrant and reporting requirements for Body Cavity Searches.

Directives

Required Actions

Prior to conducting a Body Cavity Search

19. Body Cavity Searches may only be performed on persons in police custody.
20. Other than the visual inspection of a person's mouth, nose or ears, Body Cavity Searches shall be conducted only upon receipt of a search and seizure warrant.

21. Members shall seek a search and seizure warrant, or conduct a visual inspection of a person's mouth, nose or ears, only if they have Probable Cause, that a person has attempted to hide weapons or contraband pertinent to the investigation in a body cavity.
22. Members shall consult with their immediate supervisors to determine whether Probable Cause exists to seek a search warrant for a Body Cavity Search.

NOTE: The decision to seek a search warrant shall recognize that a Body Cavity Search is highly invasive of personal privacy and is reasonable only where the suspected offense is of a serious nature and/or poses a threat to the safety of members or others and/or the security of a BPD detention facility.

23. If Probable Cause exists for a Body Cavity Search, a member will prepare an affidavit for a search warrant.
 - 23.1. The affidavit must clearly define the nature of the alleged offense and the basis for the member's Probable Cause for a Body Cavity Search.
 - 23.2. The member shall specify in the search warrant that the Body Cavity Search shall be conducted by a licensed medical professional under sanitary conditions.

NOTE: While the search and seizure warrant for a Body Cavity Search is being obtained, the person shall be transported to the appropriate medical facility in case a medical emergency should arise.

Conducting a Body Cavity Search

24. Body Cavity Searches shall be performed with due recognition of privacy and hygienic concerns. For safety and security reasons, the search shall be conducted by a licensed medical professional under sanitary conditions at a detention facility or other authorized medical facility in a room designated for this purpose. BPD members shall NOT conduct the search.
25. The arrestee shall be under constant visual surveillance by a member until the Body Cavity Search is conducted.
26. A BPD member must be present during the search by a licensed medical professional, and will be responsible for preparing the necessary documentation. The gender identity of the present member should either 1) be the gender identity preferred by the person being searched; or 2) in the absence of a stated preference, the gender identity of the person being searched shall be consistent with the gender identity of the member present during the search. The gender identity of the person being searched should be determined by asking the person being searched their gender identity.
27. Following a Body Cavity Search, the member shall submit an appropriate field report relating to the incident that details, at a minimum, the following:
 - 27.1. Date, time, duration, and location of the search.
 - 27.2. Identity of the licensed medical professional conducting the search.
 - 27.3. Identity of the person searched.
 - 27.4. Identity of the member witnessing the search.

- 27.5. Reference to the search warrant.
- 27.6. List of item(s) seized as a result of the search. See Policy 1401, *Control of Property and Evidence*, for guidance on how to treat all evidence seized.
- 27.7. Whether the subject made any complaints of injury.

NOTE: This report must be submitted by the member and reviewed by a command level official within 48 hours of the search.

- 28. Following a Body Cavity Search, the member will ensure arrestee receives a Form 309 per Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches*.

Sergeant Responsibilities

- 29. Ensure only same-Gender Searches, or searches where the person's preference regarding the member's gender is honored, are conducted unless exigent circumstances exist.
- 30. Ensure all Strip Searches and Body Cavity Searches are documented in a Supplement Report, Form 7.
- 31. Collect, review, and approve field reports.

Lieutenant Responsibilities

- 32. Approve/Disapprove requests by subordinates to conduct Strip Searches. Pay particular attention to:
 - 32.1. The strength of the Probable Cause justification that the person is concealing contraband or a dangerous weapon.
 - 32.2. Whether the member gave the person the opportunity to voluntarily produce the suspected item.
 - 32.3. Whether any exigency could be alleviated.
- 33. Per training on Body Cavity Searches, consult with subordinates to determine whether Probable Cause exists to seek a search warrant for a Body Cavity Search when the member believes such a search may be necessary.
- 34. Approve/Disapprove search and seizure warrant applications for Body Cavity Search requests made by subordinates.

NOTE: Refer to Policy 1007, *Search and Seizure Warrants*, for further supervisory guidance.

- 35. Ensure all Strip Searches and Body Cavity Searches are documented in a Supplement Report, Form 7.
- 36. Review the Supplement Report, Form 7, and all body-worn camera footage pertaining to the Probable Cause for the Strip Search within 48 hours.
- 37. Collect, review, and approve field reports.

Commanding Officer Responsibilities

38. If a lieutenant is unavailable, approve/disapprove requests by subordinates to conduct Strip Searches. Pay particular attention to:
 - 38.1. The strength of the Probable Cause justification that the person is concealing contraband or a dangerous weapon.
 - 38.2. Whether the member gave the person the opportunity to voluntarily produce the suspected item.
 - 38.3. Whether any exigency could be alleviated.
39. Receive and review the Supplemental Report, Form 7, and all body-worn camera footage pertaining to the Probable Cause for the Strip Search within 48 hours. Receive and review reports related to any Body Cavity Search within 48 hours of the search.
40. For Body Cavity Searches, ensure an after-action discussion is completed with involved members to address any questions or concerns that arose, to identify gaps in training or to discuss ways to reduce conflict or embarrassment in the future.

Considerations for Youth

41. Youth offenders transported to the Juvenile Booking Facility (JBF) may undergo a Strip Search, in accordance with the JBF's Standard Operating Procedure.
42. If the arresting member and/or BPD JBF member reasonably believes a Body Cavity Search is needed for a youth arrestee, and the youth is in BPD custody, the member shall consult with the BPD JBF supervisor to determine whether Probable Cause exists to seek a search warrant for a Body Cavity Search.
43. Upon receipt of a search and seizure warrant for any youth in BPD custody subjected to a Body Cavity Search, regardless of whether they are transported to JBF, the youth must be transported to the hospital to be searched.

BPD Juvenile Booking Facility Supervisor Responsibilities

44. Approve/Disapprove requests to seek a warrant to conduct Body Cavity Searches for youths in the custody of BPD.

NOTE: The decision to seek a search warrant shall recognize that a Body Cavity Search is highly invasive of personal privacy and is reasonable only where the suspected offense is of a serious nature and/or poses a threat to the safety of members or others and/or the security of the JBF. Adolescents are particularly vulnerable to harm associated with intrusive searches.

45. Ensure only same-Gender Searches, or searches where the person's preference regarding the member's gender is honored, are conducted unless exigent circumstances exist.
46. Ensure an administrative report is written and attached to the youth's file.
47. Ensure all Body Cavity Searches are documented on a Supplement Report, Form 7, and a copy is attached to the youth's file.

48. Collect, review, and approve reporting.

ASSOCIATED POLICIES

Policy 720, *Interactions with Lesbian, Gay, Bisexual, Transgender, Queer/Questioning (LGBTQ) Individuals*
Policy 824, *Body-Worn Camera*
Policy 1007, *Search and Seizure Warrants*
Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches*
Policy 1401, *Control of Property and Evidence*

RESCISSION

Remove and destroy/recycle Policy 1013, *Strip Searches and Body Cavity Searches*, dated 1 July 2016.

COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.