

Fennimore Police Department <b>Strip Searches</b>		
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## PURPOSE

The purpose of this policy is to state the guidelines under which department personnel may perform strip searches or body cavity searches of detained persons. These searches are necessary to prevent contraband or weapons from endangering officers, civilians or the detained person.

Nothing in this policy is meant to prohibit the otherwise lawful collection of evidence from a detained person.

## POLICY AND DISCUSSION

It is the policy of the department that all searches will be conducted with concern for safety, dignity, courtesy, privacy and hygiene in a manner consistent with policy and law to protect the rights of those who are subject to the search.

The strip search of a detained person constitutes an invasion of the person's privacy and must meet the special criteria as enumerated in Wis. Stat. § 968.255. This policy **narrowly regulates** the manner in which strip searches and body cavity searches can be performed.

Searches will not be used for intimidation, harassment, punishment or retaliation. The restrictions outlined in this policy do not apply to strip searches or body cavity searches of crime victims or to other persons who have consented to the search.

## DEFINITIONS

- **Body Cavity Search:** a search that includes 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 for a female person. A person's mouth, nose and ears are not considered body cavities for the purposes of this policy.

- **Custody Search:** an in-custody search of an individual and of his/her property and clothing to remove all weapons, dangerous items, evidence and contraband.
- **Detainee:** any person meeting the criteria of Wis. Stat. § 968.255(1)(a)1-5
- **Strip Search:** a search in which a detainee's genitals, pubic area, buttocks or anus, or a female's breast, is uncovered and exposed to view or is uncovered and touched by a person conducting the search.

## **PROCEDURE**

### **Custody Search**

An officer will ensure a custody search of an individual is completed immediately after his/her arrest and before transporting a person who is in custody in any department vehicle or transferring the person to another officer or department. If an officer received an individual from the custody of another officer or department, the receiving officer will complete a custody search of the individual if the receiving officer cannot verify the individual was already properly searched.

Whenever practicable, a custody search by an officer of the opposite sex of the individual being searched will be recorded by video or witnessed by another officer. Property searched during a custody search will be handled with care. After being searched, property will be left with the owner, at the arrest location or retained as Recovered Property in accordance with the Evidence and Property Policy of the department.

### **Strip Searches**

No person may be the subject of a warrantless strip search unless he/she is arrested or detained in accordance with Wis. Stat. § 968.255(1).

For persons arrested for a felony or misdemeanor listed below – No person shall be subjected to a strip search unless there is reasonable suspicion based upon specific and articulable facts to believe the person has a health condition requiring immediate medical attention or is concealing a weapon, evidence or contraband.

- Wis. Stat. § 167.30(1)
- Wis. Stat. § 940.19
- Wis. Stat. § 941.20(1)

- Wis. Stat. § 941.23
- Wis. Stat. § 941.231
- Wis. Stat. § 941.237
- Wis. Stat. § 941.24
- Wis. Stat. § 948.60
- Wis. Stat. § 948.61

For persons arrested for a violation of state law punishable by forfeiture, any local ordinance, or a misdemeanor offense not listed above - Probable cause to believe the person is concealing a weapon or an item that may constitute evidence of the offense for which the person is arrested is required to complete a strip search.

Factors to be considered in determining reasonable suspicion or probable cause include, but are not limited to:

- The detection of an object during a pat-down search or custody search that may be a weapon or contraband and cannot be safely retrieved without a strip search.
- Circumstances of a current arrest that specifically indicate the person may be concealing a weapon or contraband. A felony arrest charge or being under the influence of a controlled substance should not suffice as reasonable suspicion absent other facts.
- Custody history (past possession of contraband while in custody, assaults on staff, escape attempts).
- The person's actions or demeanor.
- Criminal history (level of experience in a custody setting).

No transgender or intersex detainee shall be searched or examined for the sole purpose of determining the detainee's genital status. If the detainee's genital status is unknown, it may be determined during conversations with the detainee, by reviewing medical records, or, if necessary, as part of a broader medical examination conducted in private by a medical practitioner (28 CFR 115.115).

Strip searches completed by Fennimore Police Department employees shall be conducted as follows (Wis. Stat. § 968.255):

- Written authorization from the law enforcement administrator of the jurisdiction where the person is detained shall be obtained prior to the strip search unless there is probable cause to believe the person is concealing a weapon.

- All employees involved with the strip search shall be of the same sex as the person being searched, unless the search is conducted by authorized medical personnel (28 CFR 115.115).
- 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 persons not participating in the search.
- The search shall not be reproduced through a visual or sound recording.
- Whenever possible, a second law enforcement officer of the same sex should be present during the search for security and as a witness to the finding of evidence.
- Employees conducting a strip search shall not touch the breasts, buttocks or genitalia of the person being searched.

### **Special Circumstances Field Strip Searches**

When the above requirements are met, a strip search conducted outside of a law enforcement facility may only be authorized by the administrator of the appropriate jurisdiction and only in exceptional circumstances, such as when:

- There is probable cause to believe that the arrestee is concealing a weapon or other dangerous item that cannot be recovered by a custody search.
- There is probable cause to believe that the arrestee is concealing controlled substances or evidence that cannot be recovered by a custody search and there is no reasonable alternative to ensure the arrestee cannot destroy or ingest the substance during transportation to a law enforcement facility.

### **Body Cavity Search**

No person may be subjected to a body cavity search without a search warrant. A search warrant may be requested if there is probable cause to believe the person to be searched is concealing evidence of the commission of a criminal offense, including fruits or tools of a crime, contraband or a deadly weapon that could not otherwise be recovered or there is a legitimate medical or hygienic reason. Medical procedures performed as part of the person's medical treatment plan are not considered body cavity searches.

Body cavity searches of detainees require recorded or written approval of the law enforcement administrator where the person is detained.

No person other than a physician, physician assistant or registered nurse licensed to practice in this state may conduct a body cavity search. The search will be conducted at a law enforcement or medical facility. A physician, physician assistant, or registered nurse acting under this section, the employer of any such person, and any health care facility where the search is conducted have immunity from civil or criminal liability under Wis. Stat. § 895.535.

A body cavity search at a law enforcement or medical facility may be conducted as follows:

- A search warrant shall be obtained.
- Written or recorded authorization from the Chief of Police or Assistant Chief of Police shall be obtained prior to the body cavity search.
- Written or recorded authorization from the law enforcement administrator where the person is detained shall be obtained.
- The body cavity search shall be conducted by a physician, physician assistant or registered nurse.
- The search shall be conducted under sanitary conditions.
- All employees involved with the search shall be of the same sex as the person being searched, except for medical personnel.
- The search shall be conducted in a secure area of privacy so that the search cannot be observed by persons not involved with the search.
- Department employees involved with the search shall not touch the breasts, buttocks or genitalia of the person being searched.

### **Required Reports**

The primary employee conducting a strip search or body cavity search shall prepare a written report identifying the person detained, all persons conducting the search, the time, date and place of the search and the written authorization from law enforcement administrator of the jurisdiction where the person is detained. A copy of this report shall be provided to the subject of the strip search.

In addition to the information listed above, department incident reports will document.

- The facts that led to the decision to perform a strip search or body cavity search.
- The reasons less intrusive methods of searching were not used or were insufficient.
- A list of the items, if any, recovered during the search.
- The facts upon which the employee based his/her belief that the person searched was

concealing a weapon or controlled substance, if the person was not arrested for a felony.

### **Search of Disabled Person**

A search of a physically disabled who requires an assistive device for mobility, including, but not limited to, a wheelchair, brace, crutch or artificial limb shall be conducted in a careful manner. If a search of a physically disabled person requires the removal of an assistive device or involves a person lacking sensation in some portion of his or her body, the search shall be conducted with extreme care by a person who has had training in handling physically disabled persons.

### **DISCLAIMER**

This policy is for department use only and does not apply in any criminal or civil proceeding. Department policy should not be construed as the creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violation of this policy will only form the basis for departmental administrative sanctions and is not intended for use in courts of civil or criminal jurisdiction.

/s/ Christopher J. French

09/22/2020

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Christopher J. French  
Chief of Police

Date