



Policy Name:	SEARCHES OF A PERSON		
Policy #:	OP 3.2	Last Updated:	2021-08-11
Issued By:	COMMUNITY POLICING BUREAU	Approved By:	SURREY POLICE BOARD
		Review Frequency:	AS REQUIRED

RELATED POLICIES

AD 3.1 Arrest and Detention

1. PURPOSE

- 1.1. To ensure that all searches of persons conducted by Surrey Police Service (SPS) Members are done lawfully and in a reasonable manner.
- 1.2. To provide SPS Members direction when searching transgender persons to maintain those persons' dignity and privacy.
- 1.3. To provide SPS Members with information on the appropriate handling of cultural and religious artifacts that may be found in a person's possession during a search.
- 1.4. To ensure that searches conducted by Members follow the *Canadian Charter of Rights and Freedoms (Charter)*, federal and provincial statutes, common law and SPS policies.

2. SCOPE

- 2.1. This policy applies to all SPS Members.

3. POLICY

- 3.1. The search of a person under this policy must:
 - i. be authorized by law (common law or statute law); and
 - ii. be conducted in a reasonable manner. That is, searches must not be conducted in an abusive or arbitrary fashion. The use of physical and psychological constraints shall be proportionate

to the objectives sought and other circumstances of the incident. The more intrusive the search the higher the standard of justification required.

3.2. A search may be conducted with a person's informed consent. The person may withdraw this informed consent at any time during the search. Withdrawal of informed consent does not remove the underlying legal authority for police to search a person.

3.3. Searches of persons who come from diverse cultures and religions that possess unique customs, beliefs and traditions are to take into account those customs, beliefs and traditions.

3.4. Searches of persons of another gender or of persons who identify themselves as being transgender or non-binary are to take into account such matters.

4. PROCEDURE

Search Incident to Investigative Detention

4.1. A Member may conduct a Protective "pat-down" Search of a person for weapons incident to an Investigative Detention when the investigative detention is lawful (based on reasonable grounds to suspect that an offence has occurred and that the person is involved with the offence) and the Member has reasonable grounds to believe that their safety or that of others is at risk (see OP 2.1 Arrest and Detention). The search must be conducted in a reasonable manner.

Search Incident to Lawful Arrest

4.2. A Member may conduct a "body search" or "frisk search" of a person incident to a lawful arrest for the following:

- i. items which may be used to harm the police, the public or other members of the criminal justice system who may be in contact with the person;
- ii. items which may aid the person to escape; and
- iii. evidence related to the offence for which the person was arrested.

4.3. A search conducted incident to a lawful arrest may include:

- i. a physical search of the arrested person; and
- ii. a search of the immediate surroundings of the arrest location, which may include:
 - a. items or bags in the arrestee's possession or under their control; and
 - b. vehicles in the arrestee's possession or under their control.

Precautionary Measures

4.4. Members who conduct a search of a person or prisoner should take appropriate precautions to protect themselves and others from possible biohazards (e.g., wearing protective gloves, masks and using appropriate search techniques).

Search Responsibility

4.5. The initial responsibility for searching a prisoner belongs to the Member who arrested the prisoner (the level of the initial search may be limited based on gender) and each additional Member to whom control or custody of the prisoner is given to, prior to them being lodged in cells.

Gender of Searching Member

4.6. A Member shall not search an arrested person or prisoner of another gender, other than cursory searches of clothing, unless:

- i. there is an immediate risk of injury or escape; or
- ii. the arrested person or prisoner identifies themselves as transgender, or the Member believes that the person or prisoner is transgender, and the person or prisoner has requested that a split search be performed and may specify the gender of Members to search either the upper or lower portions of their body. For example, the transgender person may request a female Member to search the upper portions of their body and a male Member to search the lower portion of their body (or vice versa).

Searches of Transgender and Non-Binary Persons

4.7. Where prisoners identify themselves as transgender or non-binary, or a Member has reasonable grounds to believe that the prisoner is of the opposite sex to which they appear, transporting Members shall ensure that the Surrey Cell Block NCO is notified of that information prior to lodging the prisoner in a cell.

4.8. If an arrested person or prisoner is to be strip searched and the searching Member is satisfied that the arrested person or prisoner is transgender or a non-binary person, the arrested person or prisoner may choose the gender of the Member who will conduct the search. The arrested person or prisoner may also choose to have a "split search" with a male Member searching areas with male genitalia and a female Member searching areas with female genitalia and breasts.

4.9. Members should be aware that some transgender people wear special clothing or prosthetics to perform their felt gender. These can include chest binders, undergarments which flatten external genitals, breast forms, wigs, or penile prosthetics. Some transgender people may also have recently undergone gender-affirming genital surgery or chest augmentation which require special care or special garments. If a search of these items is necessary, then after the search the items shall be returned to the prisoner while in police custody (assuming that there are no reasonable concerns that the item could be used as a weapon or for self-harm).

4.10. The search of transgender persons shall be done in a reasonable manner which does not impair healing, cause unnecessary pain, and which protects the person's privacy as much as possible.

Searches of Cultural, Religious and Personal Effects

4.11. Persons arrested may come from diverse cultures and religions that possess unique customs, beliefs and traditions. In the course of their duties Members may be required to search arrested and detained persons in possession of cultural, religious or spiritual items. These items may pose unique considerations for Members when balancing the need to ensure safety, enforce the law

and conduct criminal investigations with preserving the person's dignity and respecting the sanctity of their culture or religion.

4.12. Members need to be aware that the manner of handling certain significant items may cause offense or compromise the sanctity of the item. Members should ensure that they observe cultural sensitivities relating to these artifacts without compromising the public safety, the safety of the arrested person or Members. For guidance on handling specific cultural and religious items see SPS document: *Cultural and Religious Considerations for Searches of a Person*.

Strip Searches

4.13. A Strip Search has a higher degree of intrusion and therefore requires a higher justification. A Strip Search shall only be conducted under the following conditions:

- i. the search is incident to lawful arrest;
- ii. the search is related to the reason for arrest;
- iii. the Member conducting a Strip Search must have reasonable grounds to believe that the strip search will provide evidence of the offence for which the person to be searched was arrested;
- iv. the search is conducted for the specific purpose of discovering weapons, ensuring the safety of the police, the public and the prisoner, and the discovering and protection of evidence; and
- v. the search must be authorized by a Supervisor.

4.14. When determining if a Strip Search is to be authorized, the Supervisor shall consider the following factors:

- i. information received from other persons, including the arresting or transporting Members, witnesses, other prisoners, etc.;
- ii. the prisoner's demeanor and behaviour;
- iii. the prisoner's criminal history and information retrieved from police records;
- iv. information provided by the prisoner;
- v. the likelihood of discovering evidence related to the offence that the prisoner was arrested for; and
- vi. any other factors deemed relevant.

4.15. No more Members are to be involved in the Strip Search than is reasonably necessary, and the force used to conduct a Strip Search must be reasonable in the circumstances; any application of force must be both necessary and proportional and recorded in detail.

4.16. The prisoner shall be given the opportunity to remove their own clothing and the search shall be conducted as quickly as possible and in stages to ensure the person is not completely undressed at any one time.

4.17. The search is to be conducted in a private area with either video monitoring or closed circuit television (CCTV) switched off or in areas where no video monitoring or CCTV is installed. This is

to ensure that individuals not involved in the search do not observe the search and maximum privacy possible is achieved.

- 4.18. Genital, anal, buttocks, and breast areas are to be inspected visually without any physical contact. If evidence (besides a weapon) is located, the prisoner must be given the option of removing the evidence themselves. If the evidence is located in a body cavity, the prisoner has the option of removing the evidence themselves. If not, see s. 4.24 “Body Cavity Searches” below.
- 4.19. If a prisoner has body parts that prevent the Member from obtaining an unobstructed view of the entire area in question (e.g., overhanging abdominal area), a Member may instruct the prisoner to lift those body parts to provide a brief visual inspection.
- 4.20. If a prisoner is wearing a prosthetic (e.g., arm or leg) or has false teeth, a Member may instruct the prisoner to remove the prosthetic or false teeth so that it can be inspected and then returned to the prisoner if it does not pose a safety risk.

Field Strip Search

- 4.21. Strip Searches shall not be conducted outside police buildings or detention facilities (“Field Strip Search”) unless there are exigent circumstances whereby a Member has reasonable grounds to believe that it is necessary to conduct the search in the field rather than at police facilities. A Field Strip Search can only be justified where:
- i. there is a demonstrated necessity and urgency to search for weapons or objects that could threaten the safety of the accused, the arresting officer, or other individuals; and
 - ii. the Member conducting a Field Strip Search has reasonable grounds to believe that the search will provide evidence of the offence for which the person to be searched was arrested.
- 4.22. The Field Strip Search must be conducted in private and in a manner that ensures the health and safety of all involved. Members must always be mindful of the privacy and dignity of the person being searched.
- 4.23. Members involved in a Strip Search shall document in a PRIME General Occurrence Report details of the search including, but not limited to:
- i. the reason for the search;
 - ii. the NCO that authorized the search;
 - iii. the manner in which the Strip Search was undertaken;
 - iv. the length of time to conduct the search;
 - v. the location of the search;
 - vi. all members present for the search;
 - vii. the reason for an exigent search in the field if applicable; and
 - viii. the results of the search.

Internal (Body Cavity) Searches

4.24. Body Cavity or Internal Searches (e.g., rectal or vaginal searches) are a significant intrusion to an individual's privacy and dignity and shall only be conducted in a medical facility by a qualified medical practitioner and shall only occur when:

- i. When a Member has reasonable grounds to believe evidence or weapons are being carried in an internal body cavity of the prisoner;
- ii. in cases of considerable significance and the merits of the case outweigh the intrusive nature of cavity searches;
- iii. there is a threat to the safety of the prisoner, Members, or others;
- iv. the prisoner has refused or is incapable of removing the evidence or weapon on their own; and
- v. the Internal Search has been authorized by the Duty Officer.

4.25. The Surrey Cell Block NCO is responsible for making arrangements with the designated medical facility for the Internal Search of a prisoner and for transportation by BC Ambulance Service, with a Member escort in the ambulance.

4.26. When a Member receives authorization for an Internal Search of a prisoner, the Member shall notify the treating physician of the specific search requested and the specific grounds for the search. The search shall not exceed that which is supported by the grounds (e.g., rectal searches shall not be conducted when the grounds support a vaginal search only).

4.27. The Member is to take all reasonable steps to avoid or minimize the intrusiveness of the search by explaining the process, offering alternatives, and providing assistance to the prisoner in contacting legal counsel.

4.28. If practicable, a Member of the same gender as the prisoner shall be present for Internal Searches.

4.29. Members involved in an Internal Search shall document in a PRIME General Occurrence Report details of the search including, but not limited to:

- i. name of the prisoner;
- ii. circumstances of the case, including the grounds for the search;
- iii. name of the Duty Officer who authorized the search;
- iv. name of the qualified medical practitioner who conducted the search;
- v. date and time the prisoner was transported to the hospital;
- vi. date and time the prisoner arrived at the hospital;
- vii. time the search was commenced;
- viii. time the search was completed; and
- ix. the results of the search.

4.30. When a Member has reasonable grounds to believe that a person has consumed drugs or other evidence, or has inserted those drugs and/or evidence into their rectum, the person may be arrested and held in custody when:

- i. a Member has reasonable grounds to believe evidence has been consumed or inserted by the suspect;
- ii. the case is of considerable significance and the merits of the police investigation outweigh the continued detention of the suspect;
- iii. there is a threat to the health or safety of the suspect, Members, or others;
- iv. the suspect has refused or is incapable of removing the evidence or weapon on their own;
- v. the prisoner is monitored by a medical practitioner or nurse until such time that the drugs and/or evidence is recovered by police; and
- vi. the procedure has been authorized by the Duty Officer.

4.31. If the prisoner must be detained in police custody for longer than 24 hours to await expulsion of the drugs and/or evidence from the prisoner's rectum, a Member must apply to a Justice of the Peace before the expiry of the 24 hours since arrest for a remand in police or hospital custody to await safe expulsion of the drugs and/or evidence.

APPENDIX A: DEFINITIONS

“Body Cavity Search” or “Internal Search” means a search of a person’s rectum and/or vagina and shall only be conducted by a medical practitioner.

“Body Search” or “Frisk Search” means a thorough search of an arrested person’s clothing, pockets, handbags or any other object in their possession that may contain a weapon, evidence related to the offence for which they were arrested, or a means to escape. Police have the lawful authority to search all arrested persons and the area within their immediate control at the time of arrest.

“Field Strip Search” means conducting a Strip Search of a person outside police buildings or detention facilities.

“Non-Binary” means an individual who identifies as non-binary and may live without gender assignment (agender) or may move between genders (gender-fluid).

“PRIME” means Police Records Information Management Environment, the provincial police records management system.

“Protective Search” or “Safety Search” means patting down a person who has been detained by police when there are reasonable grounds to believe the person may be in possession of an item that poses a safety risk. The scope of the search is limited to exterior patting of clothing such as pockets, waistband or areas that may reasonably conceal such items.

“Split Search” means a systematic search of a transgender person in which male Members are utilized to search areas near the male genitalia of the body and female Members are utilized to search the areas near the female breasts and female genitalia.

“Strip Search” means a thorough search of a person’s clothing and body including the removal or rearrangement of some or all the clothing of a person to permit a visual inspection of a person’s private areas, namely, genitals, buttocks, breasts or chest, or undergarments. A Strip Search has a higher degree of intrusion and therefore requires a higher justification.

“Transgender” is an umbrella term referring to a person born with the physical characteristics of one sex who emotionally and psychologically identifies as a person of the opposite sex. The term includes but is not limited to people who identify as transgender, trans women (male-to-female MTF), trans men (female-to-male FTM), transsexual, or gender nonconforming, gender variant, gender queer, or non-binary.

APPENDIX B: REFERENCES

Canadian Charter of Rights and Freedoms

Surrey Police Service, 2021. *Cultural and Religious Considerations in Searches of a Person*

Regina v. Golden 2001 SCC 83