

Memorandum

TO: ALL DEPARTMENT PERSONNEL

FROM: Anthony Mata
Chief of Police

**SUBJECT: DUTY MANUAL REVISIONS:
SEARCHES OF TRANSGENDER
OR INTERSEX INDIVIDUALS**

DATE: May 25, 2022

APPROVED

Memo# 2022-023

BACKGROUND

On March 1, 2022, the CNA Corporation presented a report to the City Council entitled, [21st Century Policing Assessment of the San José Police Department \(link\)](#).

Recommendation #2.12.1 in this report reads, “Revise Duty Manual (*sic*) to discuss gender limitations when conducting a search of transgender individuals as part of the arrest process.”

ANALYSIS

The Duty Manual has been revised to reflect changes described below. Additions are shown in *italics and underlined*. Deletions are shown in ~~strike-through~~ form.

L 4901 WARRANTLESS SEARCHES - LIMITS AT TIME OF ARREST: *Revised 05-25-22*

When an arrest occurs, the officers making the arrest may perform a limited search within the area under control of the arrestee. This *includes the arrestee's person and* ~~means~~ an area within which the arrestee could obtain a weapon or gain possession of evidence. Lacking the presence of emergency circumstances, further warrantless searches will not be conducted.

A transgender or intersex arrestee may request a search of their person incident to arrest be conducted by an officer of a preferred sex or gender. If circumstances permit, officers should abide by this request. However, searches incident to arrest of transgender or intersex individuals may be conducted by an officer of any sex or gender.

EXCEPTION: There are exceptions when searching the interior of a vehicle. See DM Section L 5200 titled "Warrantless Searches and Seizures of Vehicles" for pertinent procedures.

L 4904 EMERGENCY SEARCHES:
No Change – Included for Continuity

When an officer reasonably believes there is an imminent and substantial threat to life, health or property, such officer may conduct a search and seizure for the purpose of controlling or eliminating the imminent threat.

L 4905 SCOPE OF EMERGENCY SEARCH:
Revised 05-25-22

Officers involved in emergency searches will assess whether the manner and extent of the search is reasonably justified and related to the emergency prompting the search.

EXAMPLE: Entry into a dwelling place to seek a fleeing felon would not authorize rummaging through a dresser drawer.

~~Laws governing search and seizure make no distinction between treatment of men and women. Officers may conduct a search of any either sex or gender incident to an arrest. When an officer has some reason to believe a subject of the opposite sex should be searched for evidence or weapons, the officer should handcuff the subject's hands behind their back. An officer of the same sex may then be called to the scene of arrest to make the search, or the subject may be transported to a female officer at the station or the jail.~~

A transgender or intersex individual may request that a search of their person incident to arrest or emergency be conducted by an officer of a preferred sex or gender. If circumstances permit, officers should abide by this request. However, searches incident to arrest or emergency of transgender or intersex individuals may be conducted by an officer of any sex or gender.

Officers may search any subject if they have articulable facts to believe the subject has a weapon that can be used, or the subject has concealed evidence or contraband and there is a possibility they may be able to dispose of it before a same-sex, preferred sex, or preferred gender officer may respond to the scene. ~~Under any circumstances, an officer of the opposite sex must be certain before searching that immediate action is unquestionably necessary.~~

When justification for an emergency search is lacking, officers will discontinue the search until a search warrant is obtained.

L 5110 CURSORY SEARCHES OF TRANSGENDER OR INTERSEX INDIVIDUALS:
Revised 05-25-22

Officers shall not search an individual for the purpose of viewing or assigning gender based on the person's anatomy or genitalia. Searches of transgender or intersex individuals shall not be more or less invasive than those of other individuals, nor shall they be conducted for any demeaning or harassing purpose.

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A transgender or intersex individual may request to be searched by ~~an male or female~~ officer of a preferred sex or gender. If circumstances permit, officers should abide by this request. However, cursory searches of transgender or intersex individuals may be conducted by an officer of any ~~either~~ gender.

ORDER

Effective immediately, all Department personnel shall adhere to the above Duty Manual sections.

A handwritten signature in black ink, appearing to read 'A. Mata', is positioned above the printed name and title.

Anthony Mata
Chief of Police

AM:SD:CM