

## **Chapter 9 - Custody**

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## Temporary Custody of Adults

### 900.1 PURPOSE AND SCOPE

This policy provides guidelines to address the health and safety of adults taken into temporary custody by members of the Falls Church Police Department for processing prior to being released or transferred to a housing or other type of facility.

Temporary custody of juveniles is addressed in the Temporary Custody of Juveniles Policy. Juveniles will not be permitted where adults in custody are being held.

Custodial searches are addressed in the Custodial Searches Policy.

#### 900.1.1 DEFINITIONS

Definitions related to this policy include:

**Holding cell/cell** - Any locked enclosure for the custody of an adult or any other enclosure that prevents the occupants from being directly visually monitored at all times by a member of the Department.

**Safety checks** - Direct, visual observation by a member of this department performed at random intervals, within time frames prescribed in this policy, to provide for the health and welfare of adults in temporary custody.

**Temporary custody** - The period an adult is in custody at the Falls Church Police Department prior to being released or transported to a housing or other type of facility.

### 900.2 POLICY

The Falls Church Police Department is committed to releasing adults from temporary custody as soon as reasonably practicable, and to keeping adults safe while in temporary custody at the Department. Adults should be in temporary custody only for as long as reasonably necessary for investigation, processing, transfer or release.

### 900.3 GENERAL CRITERIA AND SUPERVISION

No adult should be in temporary custody for longer than six hours but in no case longer than 12 hours (6 VAC 15-40-10).

#### 900.3.1 INDIVIDUALS WHO SHOULD NOT BE IN TEMPORARY CUSTODY

Individuals who exhibit certain behaviors or conditions should not be in temporary custody at the Falls Church Police Department, but should be transported to a jail facility, a medical facility or other type of facility as appropriate. These include:

- (a) Any individual who is unconscious or has been unconscious while being taken into custody or while being transported.
- (b) Any individual who has a medical condition, including pregnancy, that may require medical attention, supervision or medication while in temporary custody.
- (c) Any individual who is seriously injured.

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- (d) Individuals who are a suspected suicide risk (see the Civil Commitments Policy).
  - 1. If the officer taking custody of an individual believes that he/she may be a suicide risk, the officer shall ensure continuous direct supervision until evaluation, release or a transfer to an appropriate facility is completed.
- (e) Individuals who are obviously in crisis, as defined in the Crisis Intervention Incidents Policy.
- (f) Individuals who are under the influence of alcohol, a controlled substance or any substance to the degree that may require medical attention, or who have ingested any substance that poses a significant risk to their health, whether or not they appear intoxicated.
- (g) Any individual who has exhibited extremely violent or continuously violent behavior.
- (h) Any individual who has claimed, is known to be afflicted with or displays symptoms of any communicable disease that poses an unreasonable exposure risk.
- (i) Any individual with a prosthetic or orthopedic device where removal of the device would be injurious to his/her health or safety.

Officers taking custody of a person who exhibits any of the above conditions should notify a supervisor of the situation. These individuals should not be in temporary custody at the Department unless they have been evaluated by a qualified medical or mental health professional, as appropriate for the circumstances.

#### 900.3.2 SUPERVISION IN TEMPORARY CUSTODY

An authorized department member capable of supervising shall be present at all times when an individual is held in temporary custody (6 VAC 15-40-1220). The member responsible for supervising should not have other duties that could unreasonably conflict with his/her supervision. Any individual in custody must be able to summon the supervising member if needed. If the person in custody is deaf or hard of hearing or cannot speak, accommodations shall be made to provide this ability.

No individual in custody shall be permitted to supervise, control or exert any authority over other individuals in custody.

#### 900.3.3 ENTRY RESTRICTIONS

Entry into any location where a person is held in custody should be restricted to:

- (a) Authorized members entering for official business purposes.
- (b) Emergency medical personnel when necessary.
- (c) Any other person authorized by the Watch Commander.

When practicable, more than one authorized member should be present for entry into a location where a person is held in custody for security purposes and to witness interactions.

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#### **900.4 INITIATING TEMPORARY CUSTODY**

The officer responsible for an individual in temporary custody should evaluate the person for any apparent chronic illness, disability, vermin infestation, possible communicable disease or any other potential risk to the health or safety of the individual or others. The officer should specifically ask if the individual is contemplating suicide and evaluate him/her for obvious signs or indications of suicidal intent.

The receiving officer should ask the arresting officer if there is any statement, indication or evidence surrounding the individual's arrest and transportation that would indicate the individual is at risk for suicide or critical medical care. If there is any suspicion that the individual may be suicidal, he/she shall be transported to the City jail or the appropriate mental health facility.

The officer should promptly notify the Watch Commander of any conditions that may warrant immediate medical attention or other appropriate action. The Watch Commander shall determine whether the individual will be placed in a cell, immediately released or transported to jail or another facility.

#### **900.4.1 SCREENING AND PLACEMENT**

The officer responsible for an individual in custody shall:

- (a) Advise the Watch Commander of any significant risks presented by the individual (e.g., suicide risk, health risk, violence).
- (b) Evaluate the following issues against the stated risks in (a) to determine the need for placing the individual in a single cell:
  1. Consider whether the individual may be at a high risk of being sexually abused based on all available known information (28 CFR 115.141), or whether the person is facing any other identified risk.
  2. Provide an individual identified as being at a high risk for sexual or other victimization with heightened protection (6 VAC 15-40-1300). This may include (28 CFR 115.113; 28 CFR 115.141):
    - (a) Continuous, direct sight and sound supervision.
    - (b) Single-cell placement in a cell that is actively monitored on video by a member who is available to immediately intervene.
  3. Ensure individuals are separated according to severity of the crime (e.g., felony or misdemeanor).
  4. Ensure males and females are separated by sight and sound when in cells (6 VAC 15-40-1290).
  5. Ensure restrained individuals are not placed in cells with unrestrained individuals.

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- (c) Ensure that those confined under civil process or for civil causes are kept separate from those who are in temporary custody pending criminal charges.
- (d) Ensure separation, as appropriate, based on other factors, such as age, criminal sophistication, assaultive/non-assaultive behavior, mental state, disabilities and sexual orientation.

#### 900.4.2 CONSULAR NOTIFICATION

Consular notification may be mandatory when certain foreign nationals are arrested. The designated Division Commander will ensure that the U.S. Department of State's list of countries and jurisdictions that require mandatory notification is readily available to department members. There should also be a published list of foreign embassy and consulate telephone and fax numbers, as well as standardized notification forms that can be transmitted and then retained for documentation. Prominently displayed signs informing foreign nationals of their rights related to consular notification should also be posted in areas used for the temporary custody of adults.

Department members assigned to process a foreign national shall:

- (a) Inform the individual, without delay, that he/she may have his/her consular officers notified of the arrest or detention and may communicate with them.
  - 1. This notification should be documented.
- (b) Determine whether the foreign national's country is on the U.S. Department of State's mandatory notification list.
  - 1. If the country is on the mandatory notification list, then:
    - (a) Notify the country's nearest embassy or consulate of the arrest or detention by fax or telephone.
    - (b) Tell the individual that this notification has been made and inform him/her without delay that he/she may communicate with consular officers.
    - (c) Forward any communication from the individual to his/her consular officers without delay.
    - (d) Document all notifications to the embassy or consulate and retain the faxed notification and any fax confirmation for the individual's file.
  - 2. If the country is not on the mandatory notification list and the individual requests that his/her consular officers be notified, then:
    - (a) Notify the country's nearest embassy or consulate of the arrest or detention by fax or telephone.
    - (b) Forward any communication from the individual to his/her consular officers without delay.

#### 900.5 SAFETY, HEALTH AND OTHER PROVISIONS

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#### 900.5.1 TEMPORARY CUSTODY LOGS

Any time an individual is in temporary custody at the Falls Church Police Department, the custody shall be promptly and properly documented in a custody log, including (6 VAC 15-40-1250):

- (a) Identifying information about the individual, including his/her name.
- (b) Date and time of arrival at the Department.
- (c) Any charges for which the individual is in temporary custody and any case number.
- (d) Time of all safety checks.
- (e) Any medical and other screening requested and completed.
- (f) Any emergency situations or unusual incidents.
- (g) Any other information that may be required by other authorities, such as compliance inspectors.
- (h) Date and time of release from the Falls Church Police Department.

The Watch Commander should initial the log to approve the temporary custody and should also initial the log when the individual is released from custody or transferred to another facility.

The Watch Commander should make periodic checks to ensure all log entries and safety and security checks are made on time.

#### 900.5.2 TEMPORARY CUSTODY REQUIREMENTS

Members monitoring or processing anyone in temporary custody shall ensure:

- (a) Safety checks and significant incidents/activities are noted on the log.
- (b) Individuals in custody are informed that they will be monitored at all times, except when using the toilet.
  - 1. There shall be no viewing devices, such as peep holes or mirrors, of which the individual is not aware.
  - 2. This does not apply to surreptitious and legally obtained recorded interrogations.
- (c) There is reasonable access to toilets and wash basins (6 VAC 15-40-1360).
- (d) There is reasonable access to a drinking fountain or water.
- (e) There are reasonable opportunities to stand and stretch, particularly if handcuffed or otherwise restrained.
- (f) There is privacy during attorney visits (6 VAC 15-40-1330).
- (g) Those in temporary custody are generally permitted to remain in their personal clothing unless it is taken as evidence or is otherwise unsuitable or inadequate for continued wear while in custody.

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- (h) Clean blankets are provided as reasonably necessary to ensure the comfort of an individual.
  - 1. The supervisor should ensure that there is an adequate supply of clean blankets.
- (i) Adequate shelter, heat, light and ventilation are provided without compromising security or enabling escape.
- (j) Adequate furnishings are available, including suitable chairs or benches.

#### 900.5.3 MEDICAL CARE

First-aid equipment and basic medical supplies should be available to department members. At least one member who has current certification in basic first aid and CPR should be on-duty at all times.

Should a person in custody be injured or become ill, appropriate medical assistance should be sought. A supervisor shall meet with those providing medical aid at the facility to allow access to the person. Members shall comply with the opinion of medical personnel as to whether an individual in temporary custody should be transported to the hospital. If the person is transported while still in custody, he/she will be accompanied by an officer.

#### 900.5.4 ORTHOPEDIC OR PROSTHETIC APPLIANCE

Subject to safety and security concerns, individuals shall be permitted to retain an orthopedic or prosthetic appliance. However, if the appliance presents a risk of bodily harm to any person or is a risk to the security of the facility, the appliance may be removed from the individual unless its removal would be injurious to his/her health or safety.

Whenever a prosthetic or orthopedic appliance is removed, the Watch Commander shall be promptly apprised of the reason. It shall be promptly returned when it reasonably appears that any risk no longer exists.

#### 900.5.5 TELEPHONE CALLS

Every individual in temporary custody shall be allowed to make a reasonable number of completed telephone calls (but at least two) as soon as possible after arrival (6 VAC 15-40-1270).

- (a) Telephone calls may be limited to local calls, except that long-distance calls may be made by the individual at his/her own expense.
  - 1. The Department should pay the cost of any long-distance calls related to arranging for the care of a child or dependent adult (see the Child and Dependent Adult Safety Policy).
- (b) The individual should be given sufficient time to contact whomever he/she desires and to make any necessary arrangements, including child or dependent adult care, or transportation upon release.

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1. Telephone calls are not intended to be lengthy conversations. The member assigned to monitor or process the individual may use his/her judgment in determining the duration of the calls.
  - (c) Calls between an individual in temporary custody and his/her attorney shall be deemed confidential and shall not be monitored, eavesdropped upon or recorded.
  - (d) Reasonable accommodations shall be made for non-English speaking detainees as well as hearing and visually impaired detainees.

#### **900.5.6 RELIGIOUS ACCOMMODATION**

Subject to available resources, safety and security, the religious beliefs and needs of all individuals in custody should be reasonably accommodated. Requests for religious accommodation should generally be granted unless there is a compelling security or safety reason and denying the request is the least restrictive means available to ensure security or safety. The responsible supervisor should be advised any time a request for religious accommodation is denied.

Those who request to wear headscarves or simple head coverings for religious reasons should generally be accommodated absent unusual circumstances. Head coverings shall be searched before being worn.

Individuals wearing headscarves or other approved coverings shall not be required to remove them while in the presence of or while visible to the opposite sex if they so desire. Religious garments that substantially cover the individual's head and face may be temporarily removed during the taking of any photographs.

#### **900.5.7 FIREARMS AND OTHER SECURITY MEASURES**

Firearms and other weapons and control devices shall not be permitted in secure areas where individuals are in custody or are processed. They should be properly secured outside of the secure area. An exception may occur only during emergencies, upon approval of a supervisor.

All perimeter doors to secure areas shall be kept locked at all times, except during routine cleaning, when no individuals in custody are present or in the event of an emergency, such as an evacuation.

#### **900.5.8 DISCIPLINE**

Punishment shall not be used to control an adult in custody (6 VAC 15-40-1340).

#### **900.6 USE OF RESTRAINT DEVICES**

Individuals in custody may be handcuffed in accordance with the Handcuffing and Restraints Policy. Unless an individual presents a heightened risk, handcuffs should generally be removed when the person is in a cell.

The use of restraints, other than handcuffs or leg irons, generally should not be used for individuals in temporary custody at the Falls Church Police Department unless the person presents a heightened risk, and only in compliance with the Handcuffing and Restraints Policy.



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Individuals in restraints shall be kept away from other unrestrained individuals in custody and monitored to protect them from abuse.

#### 900.6.1 PREGNANT ADULTS

Women who are known to be pregnant should be restrained in accordance with the Handcuffing and Restraints Policy.

#### **900.7 PERSONAL PROPERTY**

The personal property of an individual in temporary custody should be removed, inventoried and processed as provided in the Custodial Searches Policy, unless the individual requests a different disposition. For example, an individual may request property (e.g., cash, car or house keys, medications) be released to another person. A request for the release of property to another person must be made in writing. Release of the property requires the recipient's signature on the appropriate form.

Upon release of an individual from temporary custody, his/her items of personal property shall be compared with the inventory, and he/she shall sign a receipt for the property's return. If the individual is transferred to another facility or court, the member transporting the individual is required to obtain the receiving person's signature as notice of receipt. The Department shall maintain a copy of the property receipt.

The Watch Commander shall be notified whenever an individual alleges that there is a shortage or discrepancy regarding his/her property. The Watch Commander shall attempt to prove or disprove the claim.

#### **900.8 HOLDING CELLS**

A thorough inspection of a cell shall be conducted before placing an individual into the cell to ensure there are no weapons or contraband and that the cell is clean and sanitary. An inspection also should be conducted when he/she is released. Any damage noted to the cell should be photographed and documented.

The following requirements shall apply:

- (a) The individual shall be searched (see the Custodial Searches Policy) and anything that could create a security or suicide risk, such as contraband, hazardous items, belts, shoes or shoelaces, and jackets, shall be removed.
- (b) The individual shall constantly be monitored by an audio/video system during the entire custody.
- (c) The individual shall have constant auditory access to department members.
- (d) The individual's initial placement into and removal from a locked enclosure shall be logged.
- (e) Safety checks by department members shall occur no less than every 15 minutes (6 VAC 15-40-1315).

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1. Safety checks should be at varying times.
2. All safety checks shall be logged.
3. The safety check should involve questioning the individual as to his/her well-being.
4. Individuals who are sleeping or apparently sleeping should be awakened.
5. Requests or concerns of the individual should be logged.
6. Obstructions preventing staff from being able to see the entire cell shall be removed.

#### **900.9 SUICIDE ATTEMPT, DEATH OR SERIOUS INJURY**

The Operations Division Commander will ensure procedures are in place to address any suicide attempt, death or serious injury of any individual in temporary custody at the Falls Church Police Department. The procedures should include:

- (a) Immediate request for emergency medical assistance if appropriate.
- (b) Immediate notification of the Watch Commander, Chief of Police and Services Division Commander. The Chief of Police should also notify the Critical Incident Response Team (CIRT) of any in-custody death or serious injury.
- (c) Notification of the spouse, next of kin or other appropriate person.
- (d) Notification of the appropriate prosecutor.
- (e) Notification of the City Attorney.
- (f) Notification of the Medical Examiner.
- (g) Evidence preservation.
- (h) Initial report of death to the local facilities supervisor or designee of the Compliance and Accreditation Unit, Department of Corrections within 24 hours (6 VAC 15-40-1350).

#### **900.10 RELEASE AND/OR TRANSFER**

When an individual is released or transferred from custody, the member releasing the individual should ensure:

- (a) All proper reports, forms and logs have been completed prior to release.
- (b) A check has been made to ensure that the individual is not reported as missing and does not have outstanding warrants.
- (c) It has been confirmed that the correct individual is being released or transported.
- (d) All property, except evidence, contraband or dangerous weapons, has been returned to, or sent with, the individual.

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- (e) All pertinent documentation accompanies the individual being transported to another facility (e.g., copies of booking forms, medical records, an itemized list of his/her property, warrant copies).
- (f) The individual is not permitted in any nonpublic areas of the Falls Church Police Department unless escorted by a member of the Department.
- (g) Any known threat or danger the individual may pose (e.g., escape risk, suicide potential, medical condition) is documented, and the documentation transported with the individual if he/she is being sent to another facility.
  - 1. The department member transporting the individual shall ensure such risks are communicated to intake personnel at the other facility.
- (h) Generally, persons of the opposite sex, or adults and juveniles, should not be transported in the same vehicle unless they are physically separated by a solid barrier. If segregating individuals is not practicable, officers should be alert to inappropriate physical or verbal contact and take appropriate action as necessary.
- (i) Transfers between facilities or other entities, such as a hospital, should be accomplished with a custodial escort of the same sex as the person being transferred to assist with his/her personal needs as reasonable.

#### **900.10.1 ESCAPE DURING TRANSPORT**

The Operations Division Commander will ensure procedures are in place to address any escape of an individual during transport by the Falls Church Police Department. The procedures should include:

- (a) Further actions to be taken by the officers conducting the transport.
- (b) Notifications of the escape.
- (c) Written reports by the officers conducting the transport.

#### **900.11 ASSIGNED ADMINISTRATOR**

The designated Division Commander will ensure any reasonably necessary supplemental procedures are in place to address the following issues:

- (a) General security
- (b) Key control
- (c) Sanitation and maintenance (6 VAC 15-40-1370)
- (d) Emergency medical treatment (6 VAC 15-40-1310)
- (e) Escapes
- (f) Evacuation plans
- (g) Fire and life-safety
- (h) Disaster plans
- (i) Building and safety code compliance
- (j) Documentation of serious events related to adults in custody (6 VAC 15-40-1350)

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- (k) Mental health care (6 VAC 15-40-1310)
- (l) Photographing and fingerprinting, and reports to the Virginia Central Criminal Records Exchange, as required by state law (Va. Code § 19.2-390)

#### **900.12 TRAINING**

Department members should be trained and familiar with this policy and any supplemental procedures.

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## Temporary Custody of Juveniles

### 901.1 PURPOSE AND SCOPE

This policy provides guidelines consistent with the Juvenile Justice and Delinquency Prevention Act for juveniles taken into temporary custody by members of the Falls Church Police Department (34 USC § 11133).

#### 901.1.1 DEFINITIONS

Definitions related to this policy include:

**Juvenile non-offender** - An abused, neglected, dependent, or alien juvenile who may be legally held for the juvenile's own safety or welfare. This also includes any juvenile who may have initially been contacted for an offense that would not subject an adult to arrest (e.g., fine-only offense) but was taken into custody for the juvenile's protection or for purposes of reuniting the juvenile with a parent, guardian, or other responsible person.

**Juvenile offender** - A juvenile 17 years of age or younger who is alleged to have committed an offense that would subject an adult to arrest (a non-status offense). It also includes unlawful possession or transportation of a handgun or assault firearms under Va. Code § 18.2-308.7 (28 CFR 31.303).

**Non-secure custody** - When a juvenile is held in the presence of an officer or other department member at all times and is not placed in a locked room, cell, or behind any locked doors. Juveniles in non-secure custody may be handcuffed but not to a stationary or secure object. Personal supervision, through direct visual monitoring and audio two-way communication, is maintained. Monitoring through electronic devices, such as video, does not replace direct visual observation.

**Safety checks** - Direct visual observation by a member of this department performed at random intervals, within time frames prescribed in this policy, to provide for the health and welfare of juveniles in temporary custody.

**Secure custody** - When a juvenile offender is held in a locked room, a set of rooms, or a cell. Secure custody also includes being physically secured to a stationary object.

Examples of secure custody include:

- (a) A juvenile left alone in an unlocked room within the secure perimeter of the adult temporary holding area.
- (b) A juvenile handcuffed to a rail.
- (c) A juvenile placed in a room that contains doors with delayed egress devices that have a delay of more than 30 seconds.
- (d) A juvenile being processed in a secure booking area when a non-secure booking area is available.
- (e) A juvenile left alone in a secure booking area after being photographed and fingerprinted.

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- (f) A juvenile placed in a cell within the adult temporary holding area, whether or not the cell door is locked.
- (g) A juvenile placed in a room that is capable of being locked or contains a fixed object designed for cuffing or restricting movement.

**Sight and sound separation** - Located or arranged to prevent any physical or sustained visual or auditory contact.

**Sight** - Clear visual contact between adult inmates and juveniles within close proximity to each other.

**Sound** - Direct oral communication between adult inmates and juvenile offenders.

**Status offender** - A juvenile suspected of committing a criminal violation of the law that would not be a criminal violation but for the age of the offender. Examples may include running away, underage possession of tobacco, curfew violation, and truancy. A juvenile in custody on a court order or warrant based upon a status offense is also a status offender. Juvenile status offenders who violate a valid court order cannot be securely held in any adult jail or lockup for any length of time. The term status offender includes a child in need of supervision and a child in need of services as defined in Va. Code § 16.1-228.

#### **901.2 POLICY**

The Falls Church Police Department is committed to releasing juveniles from temporary custody as soon as reasonably practicable and to keeping juveniles safe while in temporary custody at the Department. Juveniles should be held in temporary custody only for as long as reasonably necessary for processing, transfer, or release.

The Falls Church Police Department is committed to the development and perpetuation of programs designated to prevent and control juvenile delinquency.

#### **901.3 JUVENILES WHO SHOULD NOT BE HELD**

Juveniles who exhibit certain behaviors or conditions should not be held at the Falls Church Police Department. These include:

- (a) Unconsciousness or having been unconscious while being taken into custody or transported.
- (b) Serious injuries or a medical condition requiring immediate medical attention.
- (c) A suspected suicide risk or showing obvious signs of severe emotional or mental disturbance (see the Civil Commitments Policy).
  - 1. If the officer taking custody of a juvenile believes that he/she may be a suicide risk, the officer shall ensure continuous direct supervision until evaluation, release, or transfer to an appropriate facility is completed.
- (d) Significant intoxication or showing signs of having ingested any substance that poses a significant risk to their health, whether or not they appear intoxicated.
- (e) Extremely violent or continuously violent behavior.

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- (f) Afflicted with, or displaying symptoms of, a communicable disease that poses an unreasonable exposure risk.

Officers taking custody of a juvenile exhibiting any of the above conditions should take reasonable steps to provide medical attention or mental health assistance and should notify a supervisor of the situation. These juveniles should not be held at the Department unless they have been evaluated by a qualified medical or mental health professional, as appropriate for the circumstances.

#### **901.4 CUSTODY OF JUVENILES**

Officers should take custody of a juvenile and temporarily hold the juvenile at the Falls Church Police Department when there is no other lawful and practicable alternative to temporary custody. Refer to the Child Abuse Policy for additional information regarding detaining a juvenile who is suspected of being a victim.

No juvenile should be held in temporary custody at the Department without authorization of the arresting officer's supervisor or the Watch Commander. Juveniles taken into custody shall be held in non-secure custody unless otherwise authorized by this policy.

Any juvenile taken into custody shall be released to the care of the juvenile's parent, legal guardian, or other responsible adult, or transferred to a juvenile custody facility or to other authority as soon as practicable. In no event shall a juvenile be held beyond six hours from the time of his/her entry into the Department (34 USC § 11133).

##### **901.4.1 CUSTODY OF JUVENILE NON-OFFENDERS**

Non-offenders taken into protective custody in compliance with the Child Abuse Policy should generally not be held at the Falls Church Police Department. Custodial arrangements should be made for non-offenders as soon as reasonably possible. Juvenile non-offenders may not be held in secure custody (34 USC § 11133).

##### **901.4.2 CUSTODY OF JUVENILE STATUS OFFENDERS**

Status offenders should generally be released on a summons or with a warning rather than taken into temporary custody. However, officers may take custody of a status offender if requested to do so by a parent or legal guardian in order to facilitate reunification (e.g., transported home or to the station to await a parent). Juvenile status offenders may not be held in secure custody (34 USC § 11133).

A juvenile who has run away should be released to the institution, facility, or residence from which he/she ran away. If not released, the officer should contact an intake officer to determine whether the juvenile should be detained pursuant to a warrant or detention order (Va. Code § 16.1-247).

Out-of-state runaways can be securely held for up to 24 hours for the purpose of returning the juvenile to proper custody outside of the state of Virginia. Juveniles held pursuant to the Interstate Compact on Juveniles can be held longer.

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#### 901.4.3 CUSTODY OF JUVENILE OFFENDERS

Juvenile offenders should be held in non-secure custody while at the Falls Church Police Department unless another form of custody is authorized by this policy or is necessary due to exigent circumstances.

- (a) Juvenile offenders may be taken into custody under the following circumstances (Va. Code § 16.1-246):
  1. When the juvenile has committed a crime in the presence of an officer and the officer believes that custody is necessary for the protection of the public interest.
  2. When the officer has probable cause based on the reasonable complaint of a person who observed the misdemeanor offense of:
    - (a) Shoplifting in violation of Va. Code § 18.2-103.
    - (b) Assault and battery.
    - (c) Carrying a weapon on school property in violation of Va. Code § 18.2-308.1.
  3. When the officer has probable cause to believe that the juvenile has committed an offense which if committed by an adult would be a felony.
  4. Pursuant to a detention order or warrant.
- (b) Juvenile offenders should be released to a responsible adult unless there is reason to believe the juvenile offender (Va. Code § 16.1-248.1):
  1. Committed an act that would be a felony or Class 1 misdemeanor committed by an adult and either:
    - (a) There appears to be a threat to the juvenile, property, or others.
    - (b) The juvenile has threatened to abscond or has a record of failing to appear at court hearings within the prior year.
  2. Violated the terms of their probation or parole that was based on a felony or Class 1 misdemeanor charge and either:
    - (a) There appears to be a threat to the juvenile, property, or others.
    - (b) The juvenile has threatened to abscond or has a record of failing to appear at court hearings within the prior year.
  3. Possessed or transported a firearm in violation of Va. Code § 18.2-308.7 and either:
    - (a) There appears to be a threat to the juvenile, property, or others.
    - (b) The juvenile has threatened to abscond or has a record of failing to appear at court hearings within the prior year.
  4. Has absconded from a detention facility.
  5. Is a fugitive from another state.
  6. Has failed to appear in court.



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7. Is also in need of supervision.

If the juvenile offender is not released, the officer shall contact the intake officer and provide the intake officer written notice, including the reasons the juvenile was taken into custody, and shall also ensure notice is given to the juvenile's parent, guardian, legal custodian, or other person standing in loco parentis.

#### **901.4.4 CUSTODY RESTRICTIONS**

Adjudicated juveniles cannot be held in any law enforcement lockup. Additionally, no juvenile shall be detained or confined in any jail or lockup for adults except as provided for under this policy.

#### **901.5 ADVISEMENTS**

Juveniles are entitled to *Miranda* warnings the same as adults. Officers should consider whether the age, mental capacity, education, or experience warrant explaining these rights in the presence of a parent or other responsible adult.

#### **901.6 NOTICE TO SCHOOLS**

The Chief of Police or the authorized designee should disclose to the school principal that a juvenile is a suspect or has been charged with any of the following (Va. Code § 16.1-301):

- (a) A violent juvenile felony specified in subsections B and C of Va. Code § 16.1-269.1
- (b) A violation of any of the provisions of Va. Code § 18.2-77 et seq. (arson-related crimes)
- (c) A violation of law involving any weapon as described in subsection Va. Code § 18.2-308(A)
- (d) Any of the crimes described in subsection G of Va. Code § 16.1-260

The member making the disclosure is responsible for ensuring notice is provided to the principal within the time frames provided in Va. Code § 16.1-301.

Additionally, an officer shall report to the principal of a school, or the principal's designee, the commission of any of the offenses covered under Va. Code § 22.1-279.3:1 when any such offense is committed by a student enrolled at the school.

The School Resource Officer has the responsibility to assist in juvenile-related cases originating within the school system or with City School students, and should be notified of cases or arrests involving either the schools or students. This notification should be made by the officer taking the incident report, and the notification shall be documented in the report narrative.

#### **901.7 JUVENILE CUSTODY LOGS**

Any time a juvenile is in temporary custody at the Falls Church Police Department, the custody shall be promptly and properly documented in the juvenile custody log, including:

- (a) Identifying information about the juvenile.
- (b) Date and time of arrival and release from the Department.

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- (c) Watch Commander notification and approval to temporarily hold the juvenile.
- (d) Any charges for which the juvenile is being held and classification of the juvenile as a juvenile offender, status offender, or non-offender.
- (e) Any changes in status (e.g., emergency situations, unusual incidents).
- (f) Time of all safety checks.
- (g) Any medical and other screening requested and completed.
- (h) Circumstances that justify any secure custody.
- (i) Any other information that may be required by other authorities, such as compliance inspectors or a local juvenile court authority.

The Watch Commander should initial the log to approve the temporary custody, including any secure custody, and should initial the log when the juvenile is released.

#### **901.8 NO-CONTACT REQUIREMENTS**

Sight and sound separation shall be maintained between all juveniles and adults while in custody at the Falls Church Police Department (34 USC § 11133). There should also be sight and sound separation between non-offenders and juvenile and status offenders.

In situations where brief or accidental contact may occur (e.g., during the brief time a juvenile is being fingerprinted and/or photographed in booking), a member of the Department shall maintain a constant, immediate, side-by-side presence with the juvenile or the adult to minimize any contact. If inadvertent or accidental contact does occur, reasonable efforts shall be taken to end the contact.

Accused or adjudicated delinquent offenders, status offenders, and non-offenders shall have no contact with adult inmates. Brief and inadvertent contacts between juvenile offenders in secure detention and adult inmates in nonresidential areas of the facility do not violate this policy.

Juvenile offenders who have been transferred, waived or otherwise under the jurisdiction of a criminal court do not have to be separated from adult inmates. However, juvenile offenders who have been transferred, waived or otherwise under the jurisdiction of a criminal court would have to be held sight and sound separated.

#### **901.9 TEMPORARY CUSTODY REQUIREMENTS**

Members and supervisors assigned to monitor or process any juvenile at the Falls Church Police Department shall ensure:

- (a) The Watch Commander is notified if it is anticipated that a juvenile may need to remain at the Department more than four hours. This will enable the Watch Commander to ensure no juvenile is held at the Department more than six hours.
- (b) Safety checks and significant incidents/activities are noted on the log.
- (c) Juveniles in custody are informed that they will be monitored at all times, except when using the toilet.

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1. There shall be no viewing devices, such as peep holes or mirrors, of which the juvenile is not aware.
  2. This does not apply to surreptitious and legally obtained recorded interrogations.
- (d) A member of the same sex will supervise personal hygiene activities and care, such as changing clothing or using the restroom, without direct observation to allow for privacy.
  - (e) There is reasonable access to toilets and wash basins.
  - (f) There is reasonable access to a drinking fountain or water.
  - (g) Food is provided if a juvenile has not eaten within the past four hours or is otherwise in need of nourishment, including any special diet required for the health of the juvenile.
  - (h) There are reasonable opportunities to stand and stretch, particularly if handcuffed or otherwise restrained.
  - (i) There is privacy during family, guardian, and/or attorney visits.
  - (j) Juveniles are generally permitted to remain in their personal clothing unless it is taken as evidence or is otherwise unsuitable or inadequate for continued wear while in custody.
  - (k) Clean blankets are provided as reasonably necessary to ensure the comfort of an individual.
    1. The supervisor should ensure that there is an adequate supply of clean blankets.
  - (l) Adequate shelter, heat, light, and ventilation are provided without compromising security or enabling escape.
  - (m) Adequate furnishings are available, including suitable chairs or benches.
  - (n) Juveniles have the right to the same number of telephone calls as adults in temporary custody (see the Temporary Custody of Adults Policy).
  - (o) Discipline is not administered to any juvenile, nor will juveniles be subjected to corporal or unusual punishment, humiliation, or mental abuse.

#### **901.10 RELIGIOUS ACCOMMODATION**

Juveniles have the right to the same religious accommodation as adults in temporary custody (see the Temporary Custody of Adults Policy).

#### **901.11 USE OF RESTRAINT DEVICES**

Juvenile offenders may be handcuffed in accordance with the Handcuffing and Restraints Policy. A juvenile offender may be handcuffed at the Falls Church Police Department when the juvenile presents a heightened risk. However, non-offenders and status offenders should not be handcuffed unless they are combative or threatening.

Other restraints shall only be used after less restrictive measures have failed and with the approval of the Watch Commander. Restraints shall only be used so long as it reasonably appears necessary for the juvenile's protection or the protection of others.

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Juveniles in restraints shall be kept away from other unrestrained individuals in custody and monitored to protect them from abuse.

#### 901.11.1 PREGNANT JUVENILES

Juveniles who are known to be pregnant should be restrained in accordance with the Handcuffing and Restraints Policy.

#### **901.12 PERSONAL PROPERTY**

The personal property of a juvenile shall be processed in the same manner as an adult in temporary custody (see the Temporary Custody of Adults Policy).

#### **901.13 SECURE CUSTODY**

Only juvenile offenders 14 years of age or older may be placed in secure custody. Watch Commander approval is required before placing a juvenile offender in secure custody.

Secure custody should only be used for juvenile offenders when there is a reasonable belief that the juvenile is a serious risk of harm to him/herself or others.

Members of this department should not use secure custody for convenience when non-secure custody is, or later becomes, a reasonable option.

When practicable, handcuffing one hand of a juvenile offender to a fixed object while otherwise maintaining the juvenile in non-secure custody should be considered as the method of secure custody. A member must be present at all times to ensure the juvenile's safety while secured to a stationary object.

Generally, juveniles should not be secured to a stationary object for more than 60 minutes. Supervisor approval is required to secure a juvenile to a stationary object for longer than 60 minutes and every 30 minutes thereafter. Supervisor approval should be documented.

#### 901.13.1 LOCKED ENCLOSURES

A thorough inspection of the area shall be conducted before placing a juvenile into the locked enclosure to ensure there are no weapons or contraband and that the area is clean and sanitary. An inspection should be conducted when he/she is released. Any damage noted to the area should be photographed and documented.

The following requirements shall apply:

- (a) Anything that could create a security or suicide risk, such as contraband, hazardous items, belts, shoes or shoelaces, and jackets, shall be removed.
- (b) The juvenile shall constantly be monitored by an audio/video system during the entire temporary custody.
- (c) The juvenile shall have constant auditory access to department members.
- (d) The juvenile's initial placement into and removal from a locked enclosure shall be logged.

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- (e) Unscheduled safety checks by department members shall occur no less than every 15 minutes.
  - 1. All safety checks shall be logged.
  - 2. The safety check should involve questioning the juvenile as to his/her well-being.
  - 3. Juveniles who are sleeping or apparently sleeping should be awakened.
  - 4. Requests or concerns of the juvenile should be logged.
- (f) Males and females shall not be placed in the same locked room.
- (g) Juvenile offenders should be separated according to severity of the crime (e.g., felony or misdemeanor).
- (h) Restrained juveniles shall not be placed in a cell or room with unrestrained juveniles.

#### **901.13.2 SECURE DETENTION PROHIBITED**

Secure detention of status offenders is prohibited. Examples of status offenses include: truancy, curfew, runaways, under age possession /consumption of tobacco products.

Status offenders, non-offenders, alien juveniles or civil-type juvenile offenders are also prohibited from being securely held in jails and lockups.

Juvenile status offenders who violate a valid court order (VCO) cannot be securely held in an adult jail or lockup for any length of time.

#### **901.14 SUICIDE ATTEMPT, DEATH, OR SERIOUS INJURY**

The Operations Division Commander will ensure procedures are in place to address any suicide attempt, death, or serious injury of any juvenile held at the Falls Church Police Department. The procedures should include:

- (a) Immediate request for emergency medical assistance if appropriate.
- (b) Immediate notification of the Watch Commander, Chief of Police, and Services Division Commander. The Chief of Police may notify the Critical Incident Response Team (CIRT) as appropriate.
- (c) Notification of the parent, guardian, or person standing in loco parentis of the juvenile.
- (d) Notification of the appropriate prosecutor.
- (e) Notification of the City Attorney.
- (f) Notification of the Medical Examiner.
- (g) Notification of the juvenile court.
- (h) Evidence preservation.

#### **901.15 INTERVIEWING OR INTERROGATING**

No interview or interrogation of a juvenile should occur unless the juvenile has the apparent capacity to consent, and does consent, to an interview or interrogation.

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#### **901.15.1 PARENTAL NOTIFICATION AND CONTACT**

Prior to a custodial interrogation of a juvenile offender taken into custody under Va. Code § 16.1-246(C), (C1), or (D), an officer shall notify the juvenile's parent, guardian, or custodian and allow the juvenile to have contact with that parent, guardian, or custodian, unless (Va. Code § 16.1-247.1):

- (a) That parent, guardian, or custodian:
  - 1. Is a co-defendant with the juvenile in the offense.
  - 2. Is a suspect for a crime against the juvenile.
  - 3. Cannot be located or refuses contact with the juvenile.
- (b) The information sought is necessary to protect persons or property from imminent danger and the questions are limited to that information.

#### **901.16 RESTRICTION ON FINGERPRINTING AND PHOTOGRAPHING**

Fingerprints and photographs shall only be taken if the juvenile is charged with a delinquent act which, if committed by an adult, is required to be reported to Central Criminal Records Exchange (CCRE) pursuant to Va. Code § 19.2-390(A) or if the juvenile is 14 years of age or older and charged with a violent juvenile felony under Va. Code § 16.1-228 (Va. Code § 16.1-299).

Juvenile fingerprint cards and photographs should be separately and securely maintained. Copies of fingerprints shall be filed with the juvenile court on forms provided by the CCRE.

Fingerprint cards and photographs shall be destroyed under the following circumstances (Va. Code § 16.1-299):

- (a) If no petition or warrant is filed within 60 days against a juvenile whose fingerprints or photographs have been taken in connection with an alleged violation of law.
- (b) Pursuant to a court order.

#### **901.17 TRANSPORTING JUVENILES**

No juvenile should be transported with an adult accused of any criminal act (Va. Code § 16.1-254).

#### **901.18 TRAINING**

Department members should be trained on and familiar with this policy and any supplemental procedures.

## 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 Falls Church Police Department facility. 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

An officer will 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, unless impracticable.

Whenever practicable, a custody search should be conducted by an officer of the same sex as the person being searched. If an officer of the same sex is not reasonably available, a witnessing officer should be present during the search.

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#### **902.4 SEARCHES AT POLICE FACILITIES**

Custody searches shall be conducted on all individuals in custody, upon entry to the Falls Church Police Department 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. Perishable items, alcohol or other beverages, lighters or other flammable items will not be stored as safekeeping unless held as evidence.

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 Property Room Policy.

All property shall be inventoried by objective description (this does not include an estimated value). The individual from whom it was taken shall be required to sign the completed inventory. If the individual's signature cannot be obtained, the inventory shall be witnessed by another department member (6 VAC 15-40-1260). The inventory should include the case number, date, time, member's Falls Church Police Department identification number and information regarding how and when the property may be released.

##### **902.4.2 VERIFICATION OF MONEY**

All money shall be counted in front of the individual from whom it was received. When possible, the individual shall initial the dollar amount on the inventory. Additionally, all money should be placed in a separate envelope and sealed. Negotiable checks or other instruments and foreign currency should also be sealed in an envelope with the amount indicated but not added to the cash total. All envelopes should clearly indicate the contents on the front. The department member sealing it should place his/her initials across the sealed flap. Should any money be withdrawn or added, the member making such change shall enter the amount below the original entry and initial it. The amount of money in the envelope should always be totaled and written on the outside of the envelope.

#### **902.5 STRIP SEARCHES**

No individual in temporary custody at any Falls Church Police Department 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. Factors to be considered in determining reasonable suspicion include but are not limited to:



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- (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.
- (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).

A strip search of an individual 17 years of age or under or who is in custody solely for one or more of the following offenses shall only be permitted if an officer determines there is reasonable cause to believe the individual is concealing a weapon (Va. Code § 19.2-59.1; 6 VAC 15-40-1230):

- Traffic infraction
- Class 3 or Class 4 misdemeanor
- Violation of a city, county, or town ordinance, which is punishable by no more than 30 days in jail

#### 902.5.1 STRIP SEARCH PROCEDURES

Strip searches at Falls Church Police Department facilities shall be conducted as follows (28 CFR 115.115):

- (a) Written authorization from the Watch Commander shall be obtained prior to the strip search.
- (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 (Va. Code § 19.2-59.1).
- (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.

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- (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 the Watch Commander.
  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.
- (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.

#### 902.5.2 SPECIAL CIRCUMSTANCE FIELD STRIP SEARCHES

A strip search may be conducted in the field only with Watch Commander 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, except that the Watch Commander authorization does not need to be in writing.

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#### **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 written approval of the Watch 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 medically trained personnel may conduct a physical body cavity search (Va. Code § 19.2-59.1).
- (c) Except for the medically trained personnel conducting the search, persons present must be of the same sex as the individual being searched. 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 condition requirements, are the same as required for a strip search (Va. Code § 19.2-59.1).
- (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 Watch 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.
- (f) A copy of the written authorization shall be retained and shall be made available to the individual who was searched or other authorized representative upon request.

#### **902.7 TRAINING**

The Training Coordinator 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.

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- (c) Conducting searches in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

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## Prison Rape Elimination

### 903.1 PURPOSE AND SCOPE

This policy provides guidance for compliance with the Prison Rape Elimination Act of 2003 (PREA) and the implementing regulation that establishes standards (PREA Rule) to prevent, detect and respond to sexual abuse and sexual harassment (28 CFR 115.111).

#### 903.1.1 DEFINITIONS

Definitions related to this policy include:

**Intersex** - A person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development (28 CFR 115.5).

**Sexual abuse** - Any of the following acts, if the individual in custody does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

- Contact between the penis and the vulva or the penis and the anus, including penetration, however slight
- Contact between the mouth and the penis, vulva or anus
- Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object or other instrument
- Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh or the buttocks of another person, excluding contact incidental to a physical altercation

Sexual abuse also includes abuse by a member of the Department or a contractor, with or without consent of the individual in custody, as follows:

- Contact between the penis and the vulva or the penis and the anus, including penetration, however slight
- Contact between the mouth and the penis, vulva or anus
- Contact between the mouth and any body part where the department member or contractor has the intent to abuse, arouse or gratify sexual desire
- Penetration of the anal or genital opening, however slight, by a hand, finger, object or other instrument, that is unrelated to official duties, or where the department member or contractor has the intent to abuse, arouse or gratify sexual desire
- Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh or the buttocks, that is unrelated to official duties, or where the member or contractor has the intent to abuse, arouse or gratify sexual desire

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- Any attempt, threat or request by the department member or contractor to engage in the activities described above
- Any display by the department member or contractor of his/her uncovered genitalia, buttocks or breast in the presence of an individual in custody
- Voyeurism by the department member or contractor (28 CFR 115.6)

**Sexual harassment** - Repeated and unwelcome sexual advances; requests for sexual favors; verbal comments, gestures or actions of a derogatory or offensive sexual nature by one individual in custody that are directed toward another; or repeated verbal comments or gestures of a sexual nature to an individual in custody by a member of the Department or contractor, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures (28 CFR 115.6).

**Transgender** - A person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth (28 CFR 115.5).

#### **903.2 POLICY**

The Falls Church Police Department has zero tolerance with regard to all forms of sexual abuse and sexual harassment (28 CFR 115.111). The Department will not tolerate retaliation against any person who reports sexual abuse or sexual harassment, or who cooperates with a sexual abuse or sexual harassment investigation.

The Falls Church Police Department will take immediate action to protect those in its custody who are reasonably believed to be subject to a substantial risk of imminent sexual abuse (28 CFR 115.162).

#### **903.3 PREA COORDINATOR**

The Chief of Police shall delegate certain responsibilities to a PREA coordinator. The coordinator shall be an upper-level manager appointed by and directly responsible to the Operations Division Commander or the authorized designee. The coordinator must have sufficient time and authority to develop, implement and oversee department efforts to comply with PREA standards (28 CFR 115.111).

The responsibilities of the coordinator shall include, but are not limited to:

- (a) Developing and maintaining procedures to comply with the PREA Rule.
- (b) Ensuring that any contract for the confinement of individuals in custody includes the requirement to adopt and comply with applicable provisions in PREA and the implementing regulations, including the obligation to provide incident-based and aggregated data, as required in 28 CFR 115.187 (28 CFR 115.112).
- (c) Developing a staffing plan to provide adequate levels of staffing and video monitoring, where applicable, in order to protect those in custody from sexual abuse (28 CFR 115.113).

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1. This includes documenting deviations and the reasons for deviations from the staffing plan, as well as reviewing the staffing plan a minimum of once per year.
- (d) Developing methods for department members to privately report sexual abuse and sexual harassment of individuals in custody (28 CFR 115.151).
- (e) Developing a written plan to coordinate response among department members, medical and mental health practitioners, investigators, command staff and other first responders to an incident of sexual abuse (28 CFR 115.165).
- (f) Ensuring a protocol is developed for investigating allegations of sexual abuse. The protocol shall include (28 CFR 115.121; 28 CFR 115.122):
  1. Evidence collection practices that maximize the potential for obtaining usable physical evidence based on the most recent edition of the U.S. Department of Justice's (DOJ) Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents" or a similarly comprehensive and authoritative protocol.
  2. A process to ensure a criminal or administrative investigation is completed on all allegations of sexual abuse or sexual harassment.
  3. A process to document all referrals to other law enforcement agencies.
  4. Access to forensic medical examinations, without financial cost, for all victims of sexual abuse where appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The efforts to provide SAFEs or SANEs shall be documented.
  5. In accordance with security needs, provisions to give, to the extent available, individuals in custody access to victim advocacy services if the individual is transported for a forensic examination to an outside hospital that offers such services.
- (g) Ensuring that individuals with limited English proficiency and disabilities have an equal opportunity to understand and benefit from efforts to prevent, detect and respond to sexual abuse and sexual harassment. This includes access to appropriate interpreters and written materials in formats or through methods that provide effective communication to those with disabilities (e.g., limited reading skills; intellectual, hearing, speech or vision disabilities) (see the Limited English Proficiency Services and Communications for Persons with Disabilities policies) (28 CFR 115.116).
  1. The Department shall not rely on other individuals in custody for assistance except in limited circumstances where an extended delay in obtaining an appropriate interpreter could compromise the individual's safety, the

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performance of first-response duties under this policy, or the investigation of an individual's allegations of sexual abuse, harassment or retaliation.

- (h) Publishing on the department website:
  - 1. Information on how to report sexual abuse and sexual harassment on behalf of an individual in custody (28 CFR 115.154).
  - 2. A protocol describing the responsibilities of the Department and any other investigating agency responsible for conducting sexual abuse or sexual harassment investigations (28 CFR 115.122).
- (i) Establishing a process that includes the use of a standardized form and set of definitions to ensure accurate, uniform data is collected for every allegation of sexual abuse at facilities under the direct control of this department (28 CFR 115.187).
  - 1. The data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence, conducted by DOJ, or any subsequent form developed by DOJ and designated for lockups.
  - 2. The data shall be aggregated at least annually.
- (j) Ensuring audits are conducted pursuant to 28 CFR 115.401 through 28 CFR 115.405 for all department facilities used to house individuals in custody overnight (28 CFR 115.193).
- (k) Ensuring those who work in department facilities where individuals are held in custody are informed of the department zero-tolerance policy regarding sexual abuse and sexual harassment of individuals in custody (28 CFR 115.132).

#### **903.4 REPORTING SEXUAL ABUSE AND HARASSMENT**

Individuals in custody may make reports verbally, in writing, privately or anonymously of any of the following (28 CFR 115.151):

- Sexual abuse
- Sexual harassment
- Retaliation by other individuals in custody or department members for reporting sexual abuse or sexual harassment
- Department member neglect or violation of responsibilities that may have contributed to sexual abuse or sexual harassment

Individuals in custody shall be notified of the department zero-tolerance policy regarding sexual abuse and sexual harassment, and of at least one way to report abuse or harassment to a public or private entity that is not part of the Department and that is able to receive and immediately



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forward a report of sexual abuse or sexual harassment to department supervisors and command staff. This allows the individual to remain anonymous (28 CFR 115.132; 28 CFR 115.151).

#### **903.4.1 MEMBER RESPONSIBILITIES**

Department members shall accept reports from individuals in custody and third parties, and shall promptly document all reports (28 CFR 115.151).

All members shall report immediately to the Watch Commander any knowledge, suspicion or information regarding:

- (a) An incident of sexual abuse or sexual harassment.
- (b) Retaliation against the individual or the member who reports any such incident.
- (c) Any neglect or violation of responsibilities on the part of any department member that may have contributed to an incident or retaliation (28 CFR 115.161).

No member shall reveal any information related to a sexual abuse report to anyone other than to the extent necessary to make treatment and investigation decisions.

#### **903.4.2 WATCH COMMANDER RESPONSIBILITIES**

The Watch Commander shall report to Falls Church Police Department designated investigators all allegations of sexual abuse, harassment, retaliation, neglect or violations leading to sexual abuse, harassment or retaliation. This includes third-party and anonymous reports (28 CFR 115.161).

If the alleged victim is under the age of 18 or considered a dependent adult, the Watch Commander shall also report the allegation as required under mandatory reporting laws and department policy.

Upon receiving an allegation that an individual in custody was sexually abused while confined at another facility, the Watch Commander shall notify the head of that facility or the appropriate office of the agency where the alleged abuse occurred. The notification shall be made as soon as possible but no later than 72 hours after receiving the allegation. The Watch Commander shall document such notification (28 CFR 115.163).

If an alleged victim is transferred from the Department to a jail, prison or medical facility, the Watch Commander shall, as permitted by law, inform the receiving facility of the incident and the individual's potential need for medical or social services, unless the individual requests otherwise (28 CFR 115.165).

#### **903.5 INVESTIGATIONS**

The Department shall promptly, thoroughly and objectively investigate all allegations, including third-party and anonymous reports, of sexual abuse or sexual harassment. Only investigators who have received department-approved special training shall conduct sexual abuse investigations (28 CFR 115.171).

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#### 903.5.1 FIRST RESPONDER RESPONSIBILITIES

The responsibilities of the first officer to respond to a report of sexual abuse or sexual assault shall include, but are not limited to (28 CFR 115.164):

- (a) Separating the parties.
- (b) Establishing a crime scene to preserve and protect any evidence.
- (c) Identifying and securing witnesses until steps can be taken to collect any evidence.
- (d) Requesting that the alleged victim and suspect not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating if the abuse occurred within a time period that still allows for the collection of physical evidence.

If the first responder is not an officer, he/she shall request that the alleged victim not take any actions that could destroy physical evidence and should then notify an officer (28 CFR 115.164).

#### 903.5.2 INVESTIGATOR RESPONSIBILITIES

The responsibilities of investigators shall include, but are not limited to (28 CFR 115.171):

- (a) Gathering and preserving direct and circumstantial evidence, including any available physical and biological evidence and any available electronic monitoring data.
- (b) Interviewing alleged victims, suspects and witnesses.
- (c) Reviewing any prior complaints and reports of sexual abuse involving the suspect.
- (d) Conducting compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.
- (e) Assessing the credibility of the alleged victim, suspect or witness on an individual basis and not by the person's status as an individual in custody or a member of the Falls Church Police Department.
- (f) Documenting in written reports a description of physical, testimonial, documentary and other evidence, the reasoning behind any credibility assessments, and investigative facts and findings.
- (g) Referring allegations of conduct that may be criminal to the Commonwealth Attorney for possible prosecution, including any time there is probable cause to believe an individual in custody sexually abused another individual in custody at the department facility (28 CFR 115.178).
- (h) Cooperating with outside investigators and remaining informed about the progress of any outside investigation.

#### 903.5.3 ADMINISTRATIVE INVESTIGATIONS

Administrative investigations shall include an effort to determine whether department member actions or failures to act contributed to the abuse. The departure of the alleged abuser or victim

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from the employment or control of this department shall not be used as a basis for terminating an investigation (28 CFR 115.171).

#### **903.5.4 SEXUAL ASSAULT AND SEXUAL ABUSE VICTIMS**

No individual in custody who alleges sexual abuse shall be required to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of such an allegation (28 CFR 115.171(e)).

Victims of sexual abuse shall receive timely, unimpeded access to emergency medical treatment. Treatment services shall be provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident (28 CFR 115.182).

#### **903.5.5 CONCLUSIONS AND FINDINGS**

All completed investigations shall be forwarded to the Chief of Police, or if the allegations may reasonably involve the Chief of Police, to the City Manager. The Chief of Police or City Manager shall review the investigation and determine whether any allegations of sexual abuse or sexual harassment have been substantiated by a preponderance of the evidence (28 CFR 115.172).

All department members shall be subject to disciplinary sanctions up to and including termination for violating this policy. Termination shall be the presumptive disciplinary sanction for members who have engaged in sexual abuse. All discipline shall be commensurate with the nature and circumstances of the acts committed, the member's disciplinary history and the sanctions imposed for comparable offenses by other members with similar histories (28 CFR 115.176).

All terminations for violations of this policy, or resignations by members who would have been terminated if not for their resignation, shall be criminally investigated unless the activity was clearly not criminal and reported to any relevant licensing body (28 CFR 115.176).

Any contractor who engages in sexual abuse shall be prohibited from contact with individuals in custody and reported to any relevant licensing bodies (28 CFR 115.177). The Chief of Police shall take appropriate remedial measures and consider whether to prohibit further contact with individuals in custody by a contractor.

#### **903.6 RETALIATION PROHIBITED**

All individuals in custody and department members who report sexual abuse or sexual harassment or who cooperate with sexual abuse or sexual harassment investigations shall be protected from retaliation (28 CFR 115.167). If any other person who cooperates with an investigation expresses a fear of retaliation, appropriate measures shall be taken to protect that person.

The Watch Commander or the authorized designee shall employ multiple protection measures, such as housing changes or transfers for victims or abusers, removal of alleged abusers from contact with victims, and emotional support services for individuals in custody or members

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who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

A member of the Department shall be identified by the Watch Commander or the authorized designee to monitor the conduct and treatment of individuals in custody or members who have reported sexual abuse, and of those who were reported to have suffered sexual abuse. The member shall act promptly to remedy any such retaliation. In the case of individuals in custody, such monitoring shall also include periodic safety checks.

### **903.7 REVIEWS AND AUDITS**

#### **903.7.1 INCIDENT REVIEWS**

An incident review shall be conducted at the conclusion of every sexual abuse investigation, unless the allegation has been determined to be unfounded. The review should occur within 30 days of the conclusion of the investigation. The review team shall include command staff and seek input from supervisors and investigators (28 CFR 115.186).

The review shall (28 CFR 115.186):

- (a) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect or respond to sexual abuse.
- (b) Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender or intersex identification, status or perceived status; gang affiliation; or other group dynamics at the department facility.
- (c) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse.
- (d) Assess the adequacy of staffing levels in that area during different shifts.
- (e) Assess whether monitoring technology should be deployed or augmented to supplement supervision by department members.

The review team shall prepare a report of its findings, including any determinations made pursuant to this section and any recommendations for improvement. The report shall be submitted to the Chief of Police and the PREA coordinator. The Chief of Police or the authorized designee shall implement the recommendations for improvement or shall document the reasons for not doing so (28 CFR 115.186).

#### **903.7.2 DATA REVIEWS**

The PREA coordinator shall conduct an annual review of collected and aggregated incident-based sexual abuse data. The review should include, as needed, data from incident-based documents, including reports, investigation files and sexual abuse incident reviews (28 CFR 115.187).

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The purpose of these reviews is to assess and improve the effectiveness of sexual abuse prevention, detection and response policies, practices and training. An annual report shall be prepared that includes (28 CFR 115.188):

- (a) Identification of any potential problem areas.
- (b) Identification of any corrective actions taken.
- (c) Recommendations for any additional corrective actions.
- (d) A comparison of the current year's data and corrective actions with those from prior years.
- (e) An assessment of the progress in addressing sexual abuse.

The report shall be approved by the Chief of Police and made readily available to the public through the department website. Material may be redacted from the reports when publication would present a clear and specific threat to the safety and security of the facility. However, the nature of the redacted material shall be indicated.

All aggregated sexual abuse data from department facilities and private facilities with which it contracts shall be made readily available to the public at least annually. Before making aggregated sexual abuse data publicly available, all personal identifiers shall be removed (28 CFR 115.189).

#### **903.8 RECORDS**

The Falls Church Police Department shall retain all written reports from administrative and criminal investigations pursuant to this policy for as long as the alleged abuser is in custody or is a member of the Department, plus five years (28 CFR 115.171).

All other data collected pursuant to this policy shall be securely retained for at least 10 years after the date of the initial collection unless federal, state or local law requires otherwise (28 CFR 115.189).

#### **903.9 TRAINING**

All department members and contractors who may have contact with individuals in custody shall receive department-approved training on the prevention and detection of sexual abuse and sexual harassment within the department facility.

- (a) The Training Coordinator shall be responsible for developing and administering this training as appropriate, covering at a minimum (28 CFR 115.131):
  - 1. The department zero-tolerance policy and the right of individuals in custody to be free from sexual abuse and sexual harassment and from retaliation for reporting sexual abuse or harassment.
  - 2. The dynamics of sexual abuse and harassment in confinement settings, including which individuals in custody are most vulnerable.

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3. The right of individuals in custody and department members to be free from sexual abuse and sexual harassment, and from retaliation for reporting sexual abuse or harassment.
  4. Detecting and responding to signs of threatened and actual abuse.
  5. Communicating effectively and professionally with all individuals in custody.
  6. Compliance with relevant laws related to mandatory reporting of sexual abuse to outside authorities.
- (b) Investigators assigned to sexual abuse investigations shall also receive training in conducting such investigations in confinement settings. Training should include (28 CFR 115.134):
1. Techniques for interviewing sexual abuse victims.
  2. Proper use of *Miranda* and *Garrity* warnings.
  3. Sexual abuse evidence collection in confinement settings.
  4. Criteria and evidence required to substantiate a case for administrative action or prosecution referral.

The Training Coordinator shall maintain documentation that department members, contractors and investigators have completed required training and that they understand the training. This understanding shall be documented through individual signature or electronic verification.

All current department members who may have contact with individuals in custody shall be trained within one year of the effective date of the PREA standards. The Department shall provide annual refresher information to all such members to ensure that they understand the current sexual abuse and sexual harassment policies and procedures.