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WESTCHESTER COUNTY

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WESTCHESTER COUNTY COURTHOUSE
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March 17th, 2021

Mr. Glenn Scott
Commissioner of Public Safety
Mount Vernon Police Department
2 Roosevelt Square North
Mount Vernon, New York 10550

Dear Commissioner Scott:

As the chief law enforcement officer of Westchester County elected to represent all the residents of this County, I write to express my serious concern that certain members of the Mount Vernon Police Department may have illegally performed strip searches and body cavity searches of individuals as a matter of routine procedure incident to their arrests prior to my taking office on January 4, 2021. My concern arises not from a single, isolated complaint, but from a number of them from 2012-20, making similar allegations of certain police officers illegally or inappropriately conducting these highly invasive searches without the high legal and/or factual predicate thresholds having been satisfied. These and other incidents remain under investigation by my office.

Strip and body cavity searches are the exception, never the routine. They must occur only as allowed under the controlling law and executed in a reasonable manner that respects the dignity and privacy of the suspect. To my knowledge, the MVPD written policy governing strip and body cavity searches has been in effect unchanged since 1993 and does not, in our view, adequately lay out the extremely high factual and legal thresholds that must be met before such searches are undertaken. Moreover, the number of complaints reviewed by this Office in connection with these types of searches, suggests that in prior cases the written policy is not being followed or enforced in letter or spirit. My hope is that briefly reviewing these controlling principles will facilitate more strict standards and compliance, and, ultimately, help foster greater trust and faith by the residents of Mount Vernon in its police department.

At issue are “three distinct and increasingly intrusive types of bodily examinations undertaken by law enforcement after certain arrests”: a strip search, a visual body cavity inspection, and, finally, a manual body cavity search (*People v Hall*, 10 NY3d 303, 306 [2008]). Since each of these distinct searches is highly intrusive, police may only conduct them if certain required individualized, factual predicates are present. Importantly, furthermore, because such searches are “uniquely intrusive” (*Sloley v VanBramer*, 945 F3d 30, 37-38 [2d Cir. 2019] [writing about strip searches]), they are not treated as a “routine” police procedure (*id.*), but, scrutinized to ensure lawful compliance by law enforcement.

Police may only conduct this search if they possess “an individualized reasonable suspicion that a[n] . . . arrestee is concealing weapons or other contraband based on the crime charged, the particular characteristics of the arrestee, and/or the circumstances of the arrest” (*id.* at 37-38; *see also, e.g., Hall*, 10 NY3d at 310-311 [holding the same]). Notably, as well, the police must conduct the search in a reasonable manner.

Advancing, the next greater intrusion is a visual body cavity search. Described as “invasive,” “degrading,” and inflicting “a significant harm to a person’s bodily integrity” (*Soley*, 945 F3d at 38), a visual body cavity search is considered more intrusive than a strip search (*see id.*; *Hall*, 10 NY3d at 311). It occurs when police observe a suspect’s body cavities without touching them by, for example, asking the suspect to bend over or squat while naked (*see, e.g., Soley*, 945 F3d at 36-37; *Hall*, 10 NY3d at 306). Police may only conduct a visual body cavity search if they “have a specific, articulable factual basis supporting a reasonable suspicion to believe the arrestee secreted evidence *inside a body cavity* and the visual inspection *must be conducted reasonably*” (*Hall*, 10 NY3d at 311 [*italics in original and supplied*]; *Soley*, 945 F3d at 38).

Finally, the greatest intrusion is the manual body cavity search. This occurs when the police insert something into a person’s body cavity or take something out (*see, e.g., Soley*, 945 F3d at 36-37; *Hall*, 10 NY3d at 311). Before the police may perform this search, they must possess probable cause to do so and obtain a search warrant from a judge absent exigent circumstances (*see, e.g., Hall*, 10 NY3d at 311).

What bears emphasis is that beyond the high factual predicates required before these searches can occur is the added requirement that police conduct them reasonably. This means a search that appropriately, and sensitively, accommodates the privacy and dignity of the suspect. Reasonableness involves an examination of the location of the search, by whom, the gender and sex of the officers and suspect involved, among others. For example, “courts have universally condemned public strip searches as unreasonable” (*United States v Peters*, __ Fed Appx ___, 2021 WL 357762, *2 [2d Cir 2021]). Indeed, police departments throughout the country, including your own, have recognized the uniquely intrusive nature of these searches by prescribing internal guidelines for when they may be conducted including where, by whom, how, and only if supervisory approval is obtained.

My Office expects that members of MVPD when conducting such searches will fully and broadly comply with all of these legal and ethical principles and standards. Otherwise, a failure of strict compliance will result in the loss of evidence, dismissal of cases, and, most seriously, erosion of the community’s confidence in the administration of justice and its own police department.

Very truly yours,



MIRIAM E. ROCAH
DISTRICT ATTORNEY

Cc: Mayor Shawyn Patterson Howard
Deputy Commissioner Ernest Morales III
Deputy Commissioner Jennifer Lackard