



SUBMISSION

Consultation on Regulatory Framework for Searches of People in Custody in Ontario's Adult Correctional Institutions



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About the John Howard Society of Ontario

For more than 90 years, we've worked to keep the humanity in justice.

Today we continue to build a safer Ontario by supporting the people and communities affected by the criminal justice system. Our 19 local offices deliver more than 80 evidence-based programs and services focused on prevention, intervention and re-integration across the province. These range from helping youth develop the life skills that will let them achieve their full potential, to helping families navigate issues of criminal justice, to providing job training for those leaving incarceration so they can contribute to their community in a meaningful way. We promote practical, equitable policies while raising awareness of the root causes of crime and calling on Ontarians to share responsibility for addressing them. Within the system itself, we advocate for the fair treatment of every individual. Each year, our work impacts the lives of more than 100,000 Ontarians.

Please accept this document as the submission of the John Howard Society of Ontario (JHSO) to the Consultations on a Regulatory Framework for Searches of People in Ontario's Adult Correctional Institutions.

We commend the Ministry of the Solicitor General for seeking to reduce the use and increase oversight of strip searches in adult correctional institutions. JHSO is supportive of the principles and objectives outlined for the framework. It is suggested that in addition to evidence and best practices, the framework also complies with international standards and guidance. According to the United Nations Standard Minimum Rules for the Treatment of Prisoners, intrusive searches, which include strip and body cavity searches, should only be undertaken if absolutely necessary and conducted in private, by trained staff of the same sex as the prisoner.¹ The United Nations Counter Terrorism Implementation Task Force has also produced guidance on searches of persons indicating that searches must be conducted by the least intrusive means possible, and fully conform with the prohibition of cruel, inhuman or degrading treatment.²

With the objective of continuing to expand the use of less intrusive search methods, tools and technologies, there is the opportunity to move away from strip searches in favour of prison management techniques and technology like the body scanners that are present inside all provincial institutions. The Ministry should seek to eliminate the use strip searches in favour of less intrusive search methods. Until strip searches can be eliminated, there should be strict limits on their use.

Finally, human rights and dignity are of utmost importance for this framework. As noted by the Supreme Court of Canada, strip searches are "inherently humiliating and degrading for detainees regardless of the manner in which they are carried out".³ They are particularly traumatic and psychologically damaging for individuals who have experienced abuse and sexual assault.

Our feedback below outlines suggested limits to the use of strip searches and guidelines to reduce the harms associated with strip searches.

Eliminate routine strip searches and use less intrusive measures wherever possible

An important starting point for the framework would be to limit the circumstances where a strip search can take place with an eye to phasing out the use of strip searches in favour of less intrusive measures.

Due to the inherent harms associated with strip searches, their use should be limited, especially considering the availability of body scanners to address safety concerns and identify the presence of contraband. This would bring Ontario in line with international standards stating that searches, where necessary, must be conducted with the least intrusive means possible.

¹ United Nations Office on Drugs and Crime. (n.d.) The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Retrieved from: https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

² United Nations Counter-Terrorism Implementation Task Force. (2014) Basic Human Rights Reference Guide: The Stopping and Searching of Persons in the Context of Countering Terrorism. Retrieved from: https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/stoppingandsearching_en.pdf

³ *R. v. Golden*, 2001 SCC 83 at para 90.

The current model allows for strip searches to be done weekly, daily or at an officer's discretion. There is an opportunity in this framework to bring Ontario in line with other jurisdictions in Canada and elsewhere by eliminating the use of suspicion-less strip searches. In federal prisons in Canada, routine strip searches are only when entering or leaving a segregation area or where there is a likelihood of access to contraband that could be hidden on the body, or under exceptional circumstances.⁴ Legislation in Nova Scotia, limits routine strip searches to "situations in which the person has been in a place where there was a likelihood of access to contraband that is capable of being hidden on the body".⁵ British Columbia, Saskatchewan, Quebec, New Brunswick and the Yukon all limit routine strip searches to particular situations.⁶

Routine strip searches and suspicion-less strip searches should be eliminated. Strip searches should only be done when there are reasonable grounds to believe the individual has hidden contraband on their body. A model that limits the use of strip searches to situations where the individual has been in a place where there is a likelihood of access to contraband that can be hidden on the body would provide necessary limits to its use while still maintaining safety and security of the institution.

Allow for individuals inside correctional institutions to opt for a body scan in lieu of a strip search

When there are circumstances that warrant a search of the individual for safety and security reasons, the incarcerated individual should be able to opt to have a body scan rather than a strip search. Body scans are an effective means of identifying contraband and can ensure safety and security of the institution while avoiding the humiliating and traumatic experience of a strip search.

Measures to preserve dignity of individuals and reduce harms

Strip searches are traumatizing and humiliating to individuals, particularly those who have experienced sexual violence and abuse. Studies have found that half of the people in Canadian prisons have experienced abuse during childhood with high rates of sexual abuse.⁷ Strip searches re-traumatize individuals who have experienced abuse. Strip searches have been described as akin to "visual rape".⁸

In cases where it is found that strip searches are absolutely necessary and unavoidable, there should be procedural requirements put in place to mitigate harms to the incarcerated individual. All incarcerated individuals should be made aware of their rights and the applicable legal, policy and regulatory standards for the use of strip searches. The search should always be done by one or two staff members at the most and ensure the staff members are the same gender as

⁴ Independent Review of Ontario Corrections. (2017) Corrections in Ontario: Directions for Reform. Retrieved from: https://files.ontario.ca/solgen-corrections_in_ontario_directions_for_reform.pdf

⁵ *Correctional Services Act*, SNS 2005, c37, s. 61

⁶ Independent Review of Ontario Corrections. (2017) Corrections in Ontario: Directions for Reform. Retrieved from: https://files.ontario.ca/solgen-corrections_in_ontario_directions_for_reform.pdf

⁷ McMaster University. (2019) Half of people in Canadian prisons were abused as children: McMaster research. Retrieved from: <https://healthsci.mcmaster.ca/learningtechlab/news/2019/01/24/half-of-people-in-canadian-prisons-were-abused-as-children-mcmaster-research>

⁸ *R v. Golden*, 2001 SCC 83 at para 90.

the incarcerated individual. For LGBTI people that are incarcerated, there should be special considerations and respect given to the incarcerated individual's choice of staff gender to conduct the search.

Finally, the search should be done in stages to avoid full nudity and limit humiliation. The top half should be covered while the bottom half is exposed and vice versa. Strip searches should be done in private, away from other incarcerated individuals.

Ensure documentation of strip searches

There should be documentation of all strip searches so that Ministry staff can review and ensure compliance with policy and regulation. Documentation of each strip search should include the justification for the search and confirmation that the individual was offered a body scan but declined.

We appreciate the opportunity to provide input to these consultations on searches inside Ontario's correctional institutions. We would be happy to answer any questions you may have.