

For Input: Modernizing the Regulatory Framework for Searches of People in Custody in Ontario's Adult Correctional Institutions

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Context: Safety and Security

- Searches of people in custody are one of many critical tools used in correctional facilities for limiting the presence and movement of contraband, including use of technology (e.g., cell phone detectors, ion scanners and metal detectors), control measures (e.g., limiting points of entry), screening of mail, background checks for potential staff, and cooperation with law enforcement partners.
- The most intrusive type of search conducted on people in custody requires the removal of clothing to allow a visual inspection of the body for the purposes of detecting contraband.
- In recent years, there have been improvements in the ability to prevent and detect contraband through investments in tools and technology, and regulatory amendments that enhance the ability to routinely search staff and visitors.
- Building on this work, the Ministry of the Solicitor General is proposing to create an updated regulatory framework under the *Ministry of Correctional Services Act* (MCSA) for strip searches of people in custody in adult correctional institutions.

Maintaining the health and safety of staff, visitors and people in custody, and the security of correctional institutions, in a manner that respects the constitutional and human rights of all concerned, is of primary importance to the ministry.

Current State

- The *Ministry of Correctional Services Act* (MCSA) and Regulation 778 under the MCSA provides Superintendents with the authority to authorize searches of people in custody, including strip searches.
- Regulation 778 requires a written record be made of every search of a person in custody, and specifies that searches must not be conducted by a person of the opposite sex unless,
 - (a) the person is a health care professional; or
 - (b) the person is an officer who has reasonable cause to believe that an immediate search is necessary because the person in custody is concealing contraband that is dangerous or harmful.
- Regulation 778 and the ministry's operational policy require that strip searches are conducted in a place and manner such that the person being searched is not subject to embarrassment or humiliation.
- The ministry's operational policy provides additional guidance including defining what a strip search is, and outlining when and how a strip search should be conducted. The policy:
 - Defines a strip search as a procedure during which a person in custody is required to undress completely in front of a correctional officer for a visual search of their person to ensure that they do not possess contraband (does not involve the officer touching the person being searched);
 - Establishes circumstances in which strip searches may be conducted; for example, on admission to an institution, returning from a temporary absence, after a visit in which there is contact between a visitor and a person in custody, and when a person in custody is isolated due to being considered a risk to themselves or others; and,
 - Provides guidance on conducting strip searches in a respectful manner, accommodating Human Rights Code-related needs, and respectful handling of items people in custody may require to meet their medical, religious, spiritual, and gender expression needs.

Jurisdictional Research



- No Canadian jurisdictions expressly prohibit strip searches in legislation or regulation.
- Most Canadian jurisdictions have legislative or regulatory provisions outlining the specific circumstances in which strip searches may be permitted.
- The majority of these jurisdictions permit strip searches in the following circumstances:
 - **Without individualized suspicion** (e.g., upon entry, admission, or return from an area in which there may have been access to contraband); and,
 - **With suspicion** to suspect a person in custody possesses contraband.
- Most Canadian jurisdictions also establish limitations and controls similar to those in Ontario's regulation and operational policy, including:
 - Requiring searches be conducted by a corrections officer of the same sex/gender as the person being searched;
 - Requiring written records when a strip search is conducted;
 - Respecting dignity and/or not subjecting individuals to embarrassment or humiliation.

Scope

Goal

Safely reduce the use and strengthen oversight of strip searches of people in the custody of Ontario's adult correctional institutions

Guiding Principles



**Informed by
Evidence and Best
Practices**



**Protect Staff and People in
Custody, and Ensure Security
of Institutions**



**Respect
Human Rights
and Dignity**

Objectives

**Detect and deter
contraband**

**Increase oversight
and accountability**

**Continue
expanding the use
of less intrusive
search methods,
tools and
technologies**

**Reduce bias and
discrimination**

Proposal

- Proposed changes are intended to reduce the number of strip searches but with a view to still protecting the safety of staff and people in custody, maintaining the security of institutions, enhancing oversight and accountability, improving human rights protections, and ensuring that individuals are treated with sensitivity and dignity when strip searches are conducted.
- To address the objectives outlined on slide 5, the ministry is considering regulatory changes in the following areas:
 - The definition of “strip search”
 - Specifying when strip searches may be conducted with suspicion and without suspicion
 - Providing guidance on the manner in which strip searches are conducted; and
 - Requiring more robust data collection and reporting.
- Feedback received through the Regulatory Registry will inform any potential regulatory amendments.

Discussion Questions

1

Do you have any additions to, or comments on, the principles and objectives the ministry has identified for strip searches of people in custody?

2

What opportunities and challenges should be considered as the ministry explores changes to the framework for strip searches of people in custody?

3

How can the dignity and human rights of those in custody be supported during strip searches of people in custody?

4

How can institutional safety and security be maintained while supporting the dignity and human rights of those in custody during strip searches?