

## Body searches in detention

Hernán Reyes, MD, Swiss Medical Association (FMH) OB/GYN specialist

### Introduction

Whether carried out for security reasons or to prevent illicit objects or substances from being smuggled in or out, body searches are as closely linked to the realities of prison life as are handcuffs or barred windows. Of course, searches are also performed in many places outside prisons (at airports, security booths set up for special events, entrances to certain buildings, etc.), but they all have one important factor in common: they are carried out by *security or police personnel* and not by medical staff. This article describes the various situations in prisons requiring searches – particularly body searches – and examines exceptional circumstances in which a doctor's participation may be justified. It draws attention to the guidelines for body searches drawn up for medical staff by the World Medical Association and other bodies. Finally, it illustrates the main points developed here with concrete examples drawn from real detention situations.

This article is mainly concerned with searches performed in prisons, rather than with those performed in other security-related contexts.

Several topics must be examined:

- the circumstances justifying various kinds of searches;
- the different types of searches performed by prison staff;
- the precise meaning of “participation of medical staff”;
- the arguments for and against such participation;
- finally, the “doctor-prisoner relationship” in such situations.

### Why are searches performed?

Anyone familiar with prisons (and with prisoners) knows that searches carried out for security reasons are justified. Prisoners all over the world try to smuggle into prison a variety of objects for a variety of (mostly illicit) purposes. The main reason to search prisoners is to prevent them from obtaining anything with which they could inflict injury or other harm upon prison staff, other inmates or themselves. Mere contraband, however, may involve items that, although prohibited, do not endanger a prison's security. Without going into detail, it is obvious that there are many such items. Prison staff are on the lookout for them, since prisoners tend to use all their ingenuity to try to overcome the ban.

**Searches conducted to enhance security must be distinguished from those performed to prevent the introduction of contraband.**

Searches are carried out either in a selective manner, targeting specific prisoners suspected of smuggling or known to be violent, or at random as part of a general effort to combat smuggling. Medical staff, who often have little experience of prison life, need to know that the legitimacy of searches *per se* is not in dispute. However, searches must not be improper – either in quantitative terms (for example, by always targeting the same individual or group of individuals) or in qualitative terms (by being too rough or by failing to respect the dignity of the person searched). Nor must searches ever be used as a means of harassment.

Sometimes a search is performed not to prevent something from illegally *entering* but rather to bar messages or drugs, for example, from *leaving* a prison. Searches may also be performed immediately after arrest<sup>1</sup> and in the very early stages of custody to avert concealment of possible evidence.<sup>2</sup>

Searches in prisons involve not only prisoners but also family members and other visitors, who may be suspected of illegally bringing in or taking out prohibited items. The principles discussed here for prisoners should be all the more applicable to those who come to visit them. Other factors must be taken into consideration in the case of visitors, since they are not under any custodial authority. Searches involving visitors are beyond the scope of this paper, however.

There are several reasons for searching prisoners. Three examples:

- (1) to find and confiscate any object that may be used as a weapon against prison staff, other prisoners or the prisoners who are themselves being searched;
- (2) to seize any illicit substances harmful to health, such as drugs, which inmates attempt to bring in illegally;
- (3) to recover any object that could be used as evidence when one prisoner has been attacked by another.

### **What types of searches are performed on prisoners?**

Most searches performed by prison staff are not body searches. Furthermore, the term “body search” itself has different meanings and implications which are often confused by the general public and sometimes even by medical staff.

Generally speaking, three categories of searches performed on prisoners can be distinguished, by increasing degree of thoroughness:

- pat-down searches of the clothed body;
- searches involving the removal of clothing – “strip searches” – usually performed in two steps (first the upper and then the lower body) but *without* examining body cavities;

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<sup>1</sup> See “Searches of Arrested Persons” on the Americans for Effective Law Enforcement (AELE) website ([www.aele.org/search1.html](http://www.aele.org/search1.html)).

<sup>2</sup> The same holds for crimes committed within a prison.

- body-cavity searches (visual inspection and manual probing).

All three types of searches are supposed to be carried out in a manner that will preserve the dignity of the prisoner. Obviously, the more intrusive the searches the more safeguards are needed to ensure that they are performed in a professional manner causing no trauma.

### **Pat-down searches**

A pat-down search, or “frisk,” is almost a routine occurrence in most custodial situations.<sup>3</sup> Pat-downs range from perfunctory searches (often quite useless, as anyone knows who has had the beeper go off when passing through a metal detector in certain airports) to thorough and even very professional searches exploring every possible hiding place (performed in other airports and in situations where the staff are really and truly looking for something).

A pat-down search involves visual inspection while the palms of the hands are applied in a specified way to various parts of the clothed body. Because there is physical contact, the procedure must be carried out in a professional manner without any equivocal gesture. Clearly, this is particularly important if the pat-down involves – as it should if contraband or weapons are truly what is being sought – the groin and, in women, the breasts.

In the case of prisoners, even this kind of search should ideally be performed by two members of staff – one (of the same sex) doing the actual searching, i.e. the patting down, and the other (of either sex) simply observing and serving as a witness to the procedure. In most cases, owing to a lack of personnel or of time, searches are carried out by just one person.

As a matter of prison routine, pat-down searches are freely permitted when prisoners return from work (to prevent tools, for example, from being stolen from the workplace) or as they make their way to and from the visiting area, in cases where direct contact with visitors is possible.<sup>4</sup> The question of whether pat-down searches can be performed with propriety by staff of the opposite sex has been much debated. Some prison systems have decided that female guards may frisk male inmates when there are no male staff available to do so. In such cases, the rules usually specify that the search must be carried out in a way that shows proper respect for the sensitivities of members of the opposite sex. Whenever possible, metal detectors (walk-through or hand-held) replace the need for pat-down searches, if the contraband is supposed to be metallic. However, because substances and other objects prohibited in prisons are not necessarily metallic, systematic or random frisking remains necessary.

Pat-down searches do not require the participation of medical staff. These searches would be of concern to a doctor only if a prisoner – particularly a female prisoner –

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<sup>3</sup> Confusion sometimes arises from the use by certain prison services of the expressions “pat-down body search” and “clothed-body search,” since such searches are in fact not intrusive. The word “body” should therefore be used only for “real” body searches involving internal probing. See below.

<sup>4</sup> If the visiting area is equipped with intercoms and glass panes, so that there is no possible contact between prisoners and visitors, no search is needed.

complained in the privacy of a medical consultation of having been mistreated while undergoing a pat-down search. This would be the case, for example, if a female prisoner had been groped by a male or female member of staff during a pat-down search, especially if the aim had been sexual harassment. In such a case the situation could be so embarrassing for the woman that she might only be willing to talk about it privately with a doctor. The doctor would then have a duty to ascertain as far as possible whether the incident had indeed occurred and, if so, whether it was an isolated incident or a common practice attributable to the system or to an individual or a group of individuals. If the allegations were borne out the doctor would need to enter into contact with the administration at the appropriate level and attempt to have the situation corrected.

Exceptionally, a pat-down search may involve visual inspection of the mouth.

### **Strip searches**

Strip searches and body searches are different procedures, but the terms are often confused by the general public as well as by medical staff unfamiliar with prisons.

Both procedures need to be defined. In addition, since they intrude on personal privacy, a clear justification needs to be given for each. Most prison systems have set down guidelines for this purpose.<sup>5</sup>

A strip search involves viewing and inspecting an unclothed body *in a non-intrusive manner*, i.e. without any physical contact between the prisoner and the staff member conducting the search. In some cases, the search may even consist of nothing more than systematic observation of prisoners undressing. Strip-search procedures vary from one country to another, sometimes even from one prison to another. A prisoner may only be required to strip to his underwear. In most cases, however, a strip search requires that all clothing be removed. It is usually carried out in two steps. The prisoner is never asked to undress completely. Rather, he must first remove all clothes above the waist to allow visual inspection and then, after having put them back on, all clothes below the waist. Usually, a strip search also involves certain procedures that the prisoner is instructed to perform so as to provide an unobstructed view of possible hiding places on the body (the groin and, in women, under the breasts). When these further procedures are required, the strip search is occasionally called, as in some prison systems, a “visual body-cavity search.” This term is misleading, however, since it leads to confusion with the body-cavity search properly so called, which as explained below is intrusive, while a strip search, by its very definition, is not.

The purpose of a strip search is to locate objects or substances that could escape detection in a perfunctory pat-down search. Persons subjected to strip searches are required to open their mouths and – when the searches are properly conducted – roll their tongues back and pull away each lip, one at a time, from the gums. Male prisoners must spread their legs and raise their penises and testicles with one hand

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<sup>5</sup> See for example the detailed instructions issued by the Federal Bureau of Prisons of the United States Department of Justice (12).

so as to provide an unobstructed view of the groin area.<sup>6</sup> Female prisoners, stripped to the waist, must lift and separate their breasts for inspection; then, stripped from the waist down but with the upper body clothed again, they must spread their legs for inspection of the genital area. Members of both sexes are usually required to bend over and spread the “cheeks” of their buttocks. Prisoners may also be instructed to cough several times in this position (or squatting down, sometimes over a mirror) to determine whether anything is concealed in the anal canal.

If the staff member conducting the strip search sees an object or substance in an orifice of the prisoner’s body, the prisoner will be requested to remove it manually. If the prisoner refuses, the staff member will make no attempt to remove it himself, but will interrupt the strip search and, through proper channels, request authorization to proceed with a body-cavity search.

Even though strip searches involve no physical contact with the person searched, they are understandably considered degrading and humiliating.<sup>7</sup> Strip searches must therefore never be ordered without good cause, nor must they become routine.

There is no valid reason for medical staff to participate in strip searches, which are clearly undertaken for security reasons and not out of concern for prisoners’ health.<sup>8</sup> Modesty has occasionally been advanced as a reason by prisoners (usually women, but sometimes men) for declaring that they would submit to a strip search “only if performed by a doctor.” This reason cannot be accepted in the absence of a truly *medical* justification. Cases of this kind are rare, but when they do occur it may often be simply because they offer a way for prisoners – who know that there is generally no doctor available in places where searches are carried out – to procrastinate.

Although searches may well be humiliating and degrading, there is no reason to think that they have a negative impact on the health of prisoners.

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<sup>6</sup> In some prisons, uncircumcised inmates may be instructed to pull back their foreskins to show that they are not using them as hiding places for drugs.

<sup>7</sup> The humiliating nature of strip searches is now generally recognized both by authorities responsible for security and by medical professionals. See for example the Police and Criminal Evidence Act of 1984 (PACE) (2) of the United Kingdom: “The [strip] search shall be conducted with proper regard to the sensitivity and vulnerability of the detainee in these circumstances and every reasonable effort shall be made to secure the detainee’s co-operation and minimise embarrassment.”

<sup>8</sup> Unless there are improprieties similar to those described above in the section on pat-down searches. See Ronald G. Turner, *Tennessee Bar Journal*, August 2000 (3): “[...] male officers often take advantage of routine activities such as mandatory pat-frisks [...] to ‘grope women’s breasts, buttocks and vaginal areas and to view them inappropriately while in a state of undress [...]’”

Some examples of “legitimate” reasons for performing a strip search in a prison:

- (1) a member of the prison staff has reasonable cause (such as information received from an informer or from a staff member keeping watch over prison visits) to suspect that the prisoner has received an illicit object or substance from a visitor;
- (2) the prisoner was freely able (during a transfer for example) to associate with other individuals likely to have illicit items on their persons – especially in cases where the prisoner is known to be involved in this kind of traffic;
- (3) a person must be detained with other prisoners, and there is a strong risk that acts of violence (against others or against that person himself) will occur in the event that any kind of object likely to be used as a weapon is illegally obtained.

### **Rationales for strip searches**

Many prison systems impose strip searches on all prisoners entering an institution for more than a temporary stay. A search may be conducted to comply with security requirements if there are substantial reasons to believe that the person in custody has concealed a dangerous object and that security is seriously at risk. The officer requiring such searches must take responsibility for them to ensure that the procedure is not misused, for example by having certain prisoners searched not for security reasons but as a form of harassment.

If an arrestee is not housed with the rest of the prison population but kept in a temporary cell by himself, there may be no reason to require a strip search. Similarly, prisoners transferred from one secure place to another, or to and from court, should not be strip searched unless there is valid reason to believe they may have acquired an illicit object making a such a search necessary.<sup>9</sup>

Security staff will often invoke security requirements to object to such principles, which they view as constraints. It is of course in everyone’s interest to be cautious. It should be borne in mind, however, that strip searches have been used in the past – and are still used, or rather *misused* – by prison staff as a form of harassment, precisely because of their degrading nature.

Female prisoners may understandably find themselves in a more vulnerable position than male prisoners. Men, especially hardened prisoners, may or may not find strip searches degrading. Views on such matters vary from one individual to another and according to the situation.<sup>10</sup> Cultural values and sensitivities and even religion may also influence perceptions, so that strip searches – even when performed, as required under international rules, by staff of the same sex as the person being

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<sup>9</sup> “[A] strip search, regardless how professionally and courteously conducted, is an embarrassing and humiliating experience.” *Hunter v. Auger* (U.S. Court of Appeals for the Eighth Circuit, 1982), quoted in *Daugherty v. Campbell* (6th Cir. 1994) and subsequently in Turner 2000 (*op. cit.*) (3).

<sup>10</sup> “Men... are used to being around each other naked ... Women are taught to undress in private and be modest.” A male warden quoted in Kathryn Watterson Burkhart, *Women in Prison* (Garden City N.Y., 1973) and subsequently in Turner 2000 (*op. cit.*) (3).

searched – are seen as an insult specifically aimed at the person submitting to the search.

Rules vary on physical contact in strip searches. In some prison systems, staff are authorized to conduct a *manual* inspection of the private parts; in others, all physical contact is prohibited.<sup>11</sup> Whatever practices are authorized, every search must be performed in a professional manner that preserves the dignity of the person searched.

In high-security prisons, strip searches are often conducted systematically, for security reasons. The principle in itself is not at issue here. It is undeniable that prisons can be very violent places, and it is perfectly clear that some prisoners do try to sneak in weapons or dangerous substances. This fact does not, however, provide a blanket excuse for carrying out strip searches without any form of accountability. Harassment of prisoners can and does occur even in high-security prisons.<sup>12</sup>

Doctors working in prisons should be aware of these issues and sensitive to the potential for abuse. As in the case of pat-down searches, doctors should not become involved in procedural matters except to take action in response to any justified complaint of degrading practices undertaken with the express aim of humiliating the prisoner. Doctors should never be present during strip searches, because in the eyes of the prisoners they would then be associated with prison security measures and thus lose their credibility as medical professionals.

### **The sex of staff performing searches**

Whatever the context, it would be difficult to deny that strip searches undermine the dignity of the individual concerned as well as common decency. Even in the best of cases, they involve exposing areas of the body in a demeaning way. Various recommendations, guidelines and operating procedures stipulate that all searches must be conducted by staff of the same sex as the person searched. Although this stipulation would seem to be obvious, it warrants further explanation and concrete examples illustrating how the procedures can be misused.

Strip searches, even when performed by female staff, are considered particularly humiliating for women. Prison officials have been known to justify the almost systematic strip searches of political prisoners by arguing that “prostitutes don't seem to object to them, why then should so-called political prisoners complain so much?”<sup>13</sup> This argument cannot be accepted. The mere fact that prostitutes are more accustomed to exposing their bodies than, say, militant female workers or university co-eds certainly does not justify routine strip searches of all prisoners! Furthermore, the fact that some women may sometimes object less to this degrading procedure in no way justifies proceeding with strip searches in a tactless manner. The issue of

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<sup>11</sup> For an example of detailed guidelines, see [www.cincinnati-oh.gov/police/downloads/police\\_pdf7950.pdf](http://www.cincinnati-oh.gov/police/downloads/police_pdf7950.pdf) (5).

<sup>12</sup> Author's experience visiting prisoners on behalf of the ICRC over a period of 20 years and on five continents.

<sup>13</sup> Comment to author by the director of a high-security prison in a European country during an ICRC visit in the late 1980s. The country cannot be specified for reasons of confidentiality.

strip searches was widely publicized by the media in Europe during the 1980s. It could be said, not without reason, that the scandal surrounding the searches was exploited politically by certain political movements. However that may be, using the procedure *arbitrarily* and *without justification* is unacceptable.

A strip search, when authorized, should be carried out:

- i by a person of the same sex;
- i in a place where the person being searched cannot be seen by anyone not required to be present;
- i in a professional and dignified manner showing consideration for the sensitivities and the vulnerability of the person being searched and minimizing embarrassment;
- i in suitable hygienic conditions;
- i under the authority (and possibly also the supervision) of a superior.

Wherever strip searches must be performed by staff of the same sex as the person being searched, it should also be a firm requirement that no other staff of the opposite sex should be allowed in the same room.<sup>14</sup> In some countries, strip searches – and even body-cavity searches – are required to be video-taped (to allow supervision by the authorities and for possible use as evidence). This practice cannot be generally condoned, even if it takes place with the consent of the person being searched, for prisoners, both male and female, are already subject to all sorts of pressures, and are usually not in a position to consent freely. The obvious possibility that graphic material could be used improperly also argues against any such practice. The best means of ensuring proper supervision is to have strip searches and pat-down searches monitored by a higher authority known to be responsible and obliged to provide written account.

The stipulation that strip searches must be performed by staff of the same sex as the prisoner would seem to be based on the assumption that sexual harassment is committed by people of the opposite sex. This is not always the case, however, especially in prisons.<sup>15</sup> Male prisoners fear sexual abuse by other male prisoners, whether they be homosexuals or mere “predators.”<sup>16</sup> Strip searches carried out in the presence of other prisoners may induce a sense of vulnerability to sexual abuse.

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<sup>14</sup> Any security-related exception to this rule should only be used with as much tact as possible – and there should always be an obligation to provide written account. See (3) and (5).

<sup>15</sup> See Amy Kapczynski, *Yale Law Journal*, 2003 (6). The right of prisoners to have guards of the same sex perform strip searches is discussed and various US court decisions are cited.

<sup>16</sup> A review of the various types of male homosexuality in prisons would be beyond the scope of this paper. The phenomena of male homosexuality and men who have sex with men (MSM) in prisons have been mentioned in the literature. There are of course situations in which guards abuse prisoners sexually, but sexual abuse between prisoners occurs much more frequently.



**The sensitivities of the different sexes must be respected,  
as stipulated in all international rules on body-cavity searches.**

In conclusion, strip searches may in no circumstances be considered mere administrative procedures, especially when the prisoner's culture places a higher value on modesty than many Western cultures do.

One prisoner category – transvestites and transsexuals – raises particularly delicate issues. Because there are gaps regarding such people in the usual guidelines, some bodies such as the London police have adopted specific guidelines for dealing with so-called “trans-people.”<sup>17</sup> The basic principle is to recognize that those subjected to strip searches and body-cavity searches are put in a situation that is awkward, to say the least. In difficult situations such as these, there could be circumstances in which it would be justified to ask a doctor to examine someone who belongs to such a group by virtue of surgery.

### **Body-cavity searches**

Intimate searches of the human body's natural orifices (searches involving the examination of body cavities) are intrusive explorations of the vagina or the anus.<sup>18</sup> The accepted term is “body-cavity search.”

All that was said above about the sensitive and intimate nature of strip searches applies *a fortiori* to body-cavity searches, which are much more intrusive. A body-cavity search should be required only when there is reasonable cause to believe that a *serious* breach of security has occurred, i.e. a breach likely to *endanger people's lives*. A body-cavity search may, for example, be warranted if there is good reason to believe that plastic explosives such as Semtex or gelignite have been smuggled. On the other hand, suspecting that someone is hiding a condom full of heroin in the lower rectum would not justify a body-cavity search, since there are other, less intrusive, ways of retrieving any heroin, which moreover would not represent any immediate danger to others.<sup>19</sup>

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<sup>17</sup> The advice for officers dealing with transsexuals and transvestites issued by the Metropolitan Police Service (7) defines a transvestite as “a person who dresses in the clothes of the opposite sex,” and a transsexual as “a person who has the physical characteristics of one sex, but with certain characteristics of the other sex. Surgery may have taken place and a person may exhibit the features of both sexes [...]” According to the guidelines, “[i]f there is doubt as to a person's sex, they should be asked what sex they consider themselves to be and what sex they would prefer to be treated as.” In addition, “transvestites and transsexuals must always be accommodated in a cell or detention room on their own.” The guidelines recognize the possibility that a technical breach of the law may take place when an officer carrying out a strip search is of “the opposite sex to the person being searched (by birth) and yet is preferred by the subject. However, if this action most appropriately takes into account the sensitivity of the subject and reduces their embarrassment, it is believed that such a breach [...] can be shown to be justified [...]”

<sup>18</sup> By definition, a body-cavity search cannot involve a “search of the rectum” – an expression which nevertheless is often used in the literature, both medical and non-medical. Only the anal canal and a very small part of the distal rectum can be probed in a *per rectum (sic)*.

<sup>19</sup> The exception would be if there were any doubt as to the contents leaking out into the rectum. See the Chapter on “Body Packs” (transportation of drugs in sealed “pellets” inside the alimentary canal) by D. Bertrand and R. La Harpe.

The British Medical Association (8) has issued guidelines on what it calls “intimate body searches,” which it defines as searches consisting of “a physical examination of a person’s body orifices other than the mouth.” According to Americans for Effective Law Enforcement, body-cavity searches are “considered by the courts to be the most offensive kind of search.” One court described body-cavity searches as “demeaning, dehumanizing, undignified, terrifying, unpleasant, embarrassing and repulsive.”<sup>20</sup>

All definitions of body-cavity searches recognize that the procedure is intrusive both physically and psychologically. It should therefore be used only in cases where a serious breach of security is suspected. According to some definitions, a body-cavity search may be conducted by means of an (unspecified) instrument .

When a security breach is suspected a body-cavity search *may* be justified, but only as a last resort. Most police forces and prison services specify that *all other measures must be employed first*. In most cases, a less intrusive procedure (such as a strip search) is sufficient and a body-cavity search is therefore unnecessary.

Since smuggled items are often metallic, metal detectors such as the hand-held wands used in airports should be employed before even considering a body-cavity search. An ultrasound examination – certainly a more dignified way of ensuring security – could also be used. To be sure, using ultrasound requires not only equipment that can be costly in many countries but also a certain amount of cooperation on the part of the suspect – and therefore his consent. Ultrasound can be used to detect any sort of object, whether metallic or not.

Some public safety departments stipulate that a prisoner suspected of a serious security breach must first be notified of the *intent* to have a body-cavity search conducted, thus giving the prisoner the opportunity to voluntarily surrender the suspected contraband.<sup>21</sup> This very reasonable proposal can be effective in many situations, thus avoiding embarrassment for all involved.

Before deciding, then, that a body-cavity search is necessary, there should *first* be a full pat-down search of the clothed body, a search with a metal detector (if available) and, finally, a strip search.

### **Alternative measures**

For prison systems that can afford them, sophisticated electronic devices are available that can perform a non-intrusive inspection of the body orifices, including the mouth and nasal cavity. The BOSS chair (Body Orifice Security Scanner), for example, is specifically designed to detect objects – both metal and non-metal – concealed in body cavities. Some even more sophisticated models display detected objects on a screen.

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<sup>20</sup> *Op. cit.*, note 1.

<sup>21</sup> For example, see the guidelines for searching prisoners issued by the public safety department of Spartanburg, South Carolina ([http://206.25.214.107/SPSD\\_Main\\_Policies/policies/go8102a.htm](http://206.25.214.107/SPSD_Main_Policies/policies/go8102a.htm)), especially paragraph D 1. The guidelines set out detailed instructions for the three kinds of searches described in this chapter.

Most prison systems clearly cannot afford the luxury of a BOSS chair.<sup>22</sup> Depending on the urgency of the situation and on the precise nature of the object being sought, they must therefore consider alternative measures. In cases where there is a credible suspicion, the first measure to be taken is to isolate the prisoner. There may be real urgency, as when a prisoner is suspected of concealing explosives and a detonator. If these materials are hidden in the restricted volume of the rectum or vagina, however, using them to achieve an explosion would be a complicated matter. Without going into specifics, such a case – which could indeed justify a body-cavity search – would be so truly exceptional that it could not be used as a universal excuse for carrying out wholesale body-cavity searches, even of suspects apprehended during a period of political violence and terrorist attacks.

A body search can be avoided simply by having the suspect wait, alone and under surveillance. With the passage of time, the natural body processes will expel or dislodge the substance or object, at least from the lower rectum. It may be necessary to have a special toilet system to recover whatever substances are passed. Such toilets do exist in many prisons, making it impossible to flush away contraband or evidence.

Whereas any substance in the lower rectum will eventually be passed, the same is not true for substances concealed in the vagina,<sup>23</sup> where time plays less of a role in excretion. This should not however be used as a pretext to keep women longer in solitary confinement, or to force them to accept routine and mandatory vaginal probes. An ultrasound exam could be the solution if it can be carried out in practice and if the suspect is willing to cooperate. A body-cavity search should be necessary only in exceptional cases. Such an invasion of privacy should never be undertaken lightly, and a search request should always follow a recorded procedure. The circumstances of captivity, the time passed and events occurring in captivity as well as decisions taken, why and by whom should all be noted in writing. These precautions protect not only prisoners but also prison staff.

A clear distinction needs to be made here between smuggling and a medical situation where an unknown quantity of drugs may have been swallowed or concealed in the rectum. In the latter case, mere observation may not suffice, since guards may not recognize the symptoms or other signs of any drug “leakage.” Cases of this kind are treated in a separate chapter.<sup>24</sup>

### **Rationales for body-cavity searches**

Prison staff often have to deal with potentially dangerous security situations, on one hand, and extreme bad faith and manipulation, on the other. There is certainly no room for naivety in prison situations, as prison doctors know only too well. Even prison directors may not be above attempting to justify a search procedure by giving a pseudo-medical reason and calling upon a doctor. Prison doctors should do their utmost to safeguard their professional independence and their credibility in the eyes of all persons concerned, especially their patients, i.e. the prisoners.

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<sup>22</sup> At the time of writing, the devices cost more than US\$ 5,000 (10).

<sup>23</sup> Unless menstruation occurs.

<sup>24</sup> See Chapter on Body Packs by D. Bertrand and R. La Harpe

If a body-cavity search is the sole means of dispelling a genuine concern that security may have been breached, the search must be authorized in writing by a responsible authority and carried out by qualified personnel, i.e. by staff trained in the basics of anatomy and hygiene. Body-cavity searches should never be left to untrained subordinates.

Visits involving direct contact between prisoners and visitors do take place in prisons. Such visits may sometimes be arranged by prisoners solely for the purpose of introducing drugs, weapons or explosives. In all prisons – especially in high-security prisons – measures must be taken to maintain security by detecting any such item being smuggled in. Body-cavity searches, however, should be considered only for dangerous prisoners. They should not be a routine procedure.

A body-cavity search should never be imposed by force. A coercive search is comparable to ill-treatment.<sup>25</sup> A prison doctor who is aware that searches are being imposed by force should attempt to prevent them (to the extent possible in the circumstances).

In more “normal” situations, it sometimes happens that by speaking to a prisoner privately a doctor can persuade him to simply hand over the item in question, or to accept a search performed calmly by prison staff assigned to this task (by no means necessarily by the doctor himself).

Security staff often are not aware of the psychological trauma that can result from a body-cavity search (justified or not), especially in cases where the subject may have suffered a traumatic sexual experience in the past.<sup>26</sup>

### **Who should perform a body-cavity search?**

Body-cavity searches are not medical acts, any more than strip searches are: neither kind of search is performed for the benefit of a prisoner’s health! There is no *medical* reason to have a *medical doctor* carry out a search when its sole purpose is to respond to security needs.

There is still some confusion, however, in various prison regulations concerning just *who* exactly ought to perform a body-cavity search when such a procedure is the only way to prevent a serious security breach. The confusion stems from a failure to distinguish between the medical issue of “body packers” and other, security-related issues. Body-cavity searches are thus mistakenly put in the same category as other, clearly medical, acts such as stomach pumping.<sup>27</sup> Confusion of this kind often leads

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<sup>25</sup> As part of its work in prisons in various countries the ICRC has spoken out many times against such coercive procedures.

<sup>26</sup> Many women in prisons have been sexually abused in the course of their lives and are therefore particularly vulnerable; submitting to this type of search is deeply distressing for them psychologically.

<sup>27</sup> See for example the Michigan Commission on Law Enforcement Standards (11), which lump the two together.

to the stipulation that body-cavity searches must be carried out by doctors. It is hoped that the points made here will help to distinguish clearly between very different situations.

### **Is it ever justified to have a doctor perform a body-cavity search?**

In many countries, doctors are required by law to participate in body-cavity searches,<sup>28</sup> which clearly puts them in a difficult position. They are forced to participate in a police act, i.e. a non-medical act. This requirement was much discussed within the World Medical Association's Ethics Committee as part of the groundwork that led to the adoption in 1993 of its Statement of Body Searches of Prisoners.<sup>29</sup> Many medical associations initially felt that such intimate acts as a rectal probe or an examination *per vaginam* should be left to doctors only.<sup>30</sup> The World Medical Association acknowledges in its statement that body searches "are performed for security reasons and not for medical reasons," and that they constitute a "non-medical act." It also says, however, that such searches "should not be done by anyone other than a person with appropriate medical training." They must be done by someone with at least enough training to proceed properly and professionally.

The Council of Europe has issued guidelines on body-cavity searches (16):<sup>31</sup>

*72. Body searches are a matter for the administrative authorities and prison doctors should not become involved in such procedures. However, an intimate medical examination should be conducted by a doctor when there is an objective medical reason requiring her/his involvement.*

Is there such a thing as an "objective medical reason" for doctors to become involved? Two separate cases need to be considered:

- the *detaining authority* asks a doctor to participate (for a valid reason and not simply to comply with the law);<sup>32</sup>
- the *prisoner* requests that a doctor perform the search (for a valid reason and not simply to gain time).

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<sup>28</sup> In its 1998 statement on health care for prisoners, the American Medical Association (AMA) stipulated clearly that searches of body orifices had to be by doctors, adding that, such searches should be performed by health care personnel other than those employed to provide care to inmates. (13). In the same statement, the AMA also dealt with examinations of "drug mules" – which may explain the confusion of roles. (See the new AMA revised statement on body searches : [http://www.ama-assn.org/apps/pf\\_new/pf\\_online?f\\_n=browse&doc=policyfiles/HnE/H-430.999.HTM](http://www.ama-assn.org/apps/pf_new/pf_online?f_n=browse&doc=policyfiles/HnE/H-430.999.HTM))

<sup>29</sup> The World Medical Association Statement on Body Searches of Prisoners (14) (<http://www.wma.net/e/policy/b5.htm>).

<sup>30</sup> It became clear during the debates that a police medical orderly can be trained to perform certain tasks (such as retrieving a key from the vaginal cavity or verifying that no Semtex is concealed in the anal canal) in a manner that is proper, hygienic and respectful of the dignity of the person searched. See Reyes (15).

<sup>31</sup> Recommendation No R (98) 7 concerning the ethical and organisational aspects of health care in prison ([http://www.coe.int/T/E/Social\\_Cohesion/Health/Activities/Vulnerable\\_groups/Prisoners/03%20Recommendation%20No%20R%20\(98\)%207.asp](http://www.coe.int/T/E/Social_Cohesion/Health/Activities/Vulnerable_groups/Prisoners/03%20Recommendation%20No%20R%20(98)%207.asp)).

<sup>32</sup> Whether a doctor's first duty is to uphold the medical code of ethics or to obey the law of the land is a relevant issue that is beyond the scope of this chapter. See Reyes (17).

In the first case, many valid reasons may be given. For example, a prisoner may be ill, or suffer from a condition such as severe haemorrhoids that could make a body-cavity search dangerous. A pregnant female prisoner suspected of concealing something in her vagina would be another example.

A doctor asked to perform a body-cavity search has a duty to make sure that:

- (1) such a search is indeed – as best he can determine – the *only* way of proceeding, i.e. that all other, less intrusive alternatives have not produced or cannot produce the desired result, and furthermore that the search has been authorized in writing and not simply as the easy thing to do;
- (2) the prisoner, with whom the doctor *must* be allowed to speak in private, has freely consented to the search.

If any doubt subsists on one point or the other, the doctor *must not* proceed with the search; instead, he must arrange for further guidance from a higher authority.

In the second case – when it is the *prisoner* himself requesting that a doctor perform the body-cavity search – the prison authorities or the police should ask a doctor (or at least a nurse or orderly) to determine whether the request is justified. To be realistic, it has to be recognized that everything depends on the circumstances. In most countries, for example, it is unlikely that a doctor will be readily available for people in the custody of the police. In such situations, prisoners should whenever possible be taken to a medical facility where the staff will be able to determine if there is a genuine medical reason to call in a doctor.

A prison doctor could find himself faced with conflicting loyalties if he is both the prisoners' care provider and the only doctor available to perform a duly requested search. If he participates in the search, it will be in the role of a medical expert and not in that of a care provider.<sup>33</sup> This should be clearly explained to the prisoner. It should also be explained that one consequence is that the usual conditions of medical confidentiality do not apply with respect to the search; in particular, the prisoner cannot expect the doctor to conceal any contraband discovered.

**When participating in a body-cavity search, a doctor's role is that of a medical expert, not that of a care provider.**

According to the American Medical Association:

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<sup>33</sup> For further discussion of this dichotomy of roles, in specific cases where no outside doctor or other medical practitioner is available, see references. See Reyes (15).

*Since searches of body orifices are conducted for security and not medical reasons, there is usually no need for them to be performed by medical personnel and, as a general rule, it is preferable that they be performed by correctional personnel who have been given special training. (18)*

Non-medical staff performing body-cavity searches should at the very least be trained in human anatomy – both male and female – so that the searches will cause as little trauma as possible. The staff should also be aware of the psychological impact that searches can have.

Further recommendations made by the American Medical Association include having searches conducted by personnel of the same sex as the person being searched.

*Where searches of body orifices to discover contraband are conducted by non-medical personnel, the following principles should be observed: (a) the persons conducting these searches should receive training from a physician or other qualified health care provider regarding how to probe body cavities so that neither injuries to the tissue nor infections from unsanitary conditions result; (b) searches of body orifices should not be performed with the use of instruments; and (c) the search should be conducted in privacy by a person of the same sex as the inmate.<sup>34</sup>*

In its guidelines for prisoner medical care, the United States Department of Justice makes a clear distinction between *when* a body-cavity search must be performed (a legal issue) and *who* must actually carry it out (a professional issue that could affect the patient-doctor relationship).

*At first glance, it may seem appropriate that body-cavity searches be conducted by the [prison's] health professionals because they are more likely to be adept and considerate of the inmate's feelings. However, doing so compromises the health professional's neutral role with respect to correctional functions and may jeopardize subsequent health encounters with the inmate.<sup>35</sup>*

This problem of conflicting loyalties has been recognized by other bodies, including the United Kingdom's Royal College of Psychiatrists, which states that when a doctor is required for a search:

*[...] the responsibility for performing the examination lies with the forensic physician and not the hospital doctor.<sup>36</sup>*

The American Medical Association distinguishes clearly between the role of medical expert and that of care provider:

*Where state laws or agency regulations require that body cavity searches be conducted only by physicians or other medical personnel such as physician's assistants, nurses or nurse practitioners, such searches should be performed*

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<sup>34</sup> AMA *op. cit.* [???

<sup>35</sup> US Department of Justice: Correctional Health Care (19) .

<sup>36</sup> Royal College of Psychiatrists. Ils reprennent les mêmes références déjà citées de la BMA. Voir BMA (8)

*by health care personnel other than those employed to provide care to inmates.*

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (20) recognizes that doctors are faced with a dilemma when prisoners are transferred by custodial authorities to a hospital for internal searches:

*The hospital staff are then put into the dilemma of carrying out invasive procedures for non-medical purposes [...]. They might have difficulties differentiating between prison doctors' duties towards authorities and their medical duties toward their "patients."*

According to the Committee:

*A prison doctor acts as a patient's personal doctor. He should not carry out body searches or examinations requested by an authority, except in an emergency when no other doctor can be called in.*

This principle is also confirmed by the World Medical Association in its statement on body searches of prisoners:

*If the search is conducted by a physician, it should not be done by the physician who will also subsequently provide medical care to the prisoner.<sup>37</sup>*

## **Consent**

In prisons, consent is obviously problematic, for the loss of freedom is entirely a matter of being subject to varying degrees of compulsion. That is why any "consent" given by a prisoner – especially in a situation that may involve coercion – is relative, and every doctor must take this into consideration.

When prisoners are informed that they must submit to a body search – or face alternatives such as spending several days in solitary confinement or being deprived of certain privileges until they give their consent – they very frequently accept the search. In such cases it is clear that their consent is not altogether freely given. Because they are in prison, however, no one expects anything different or finds such situations unacceptable.

If a prisoner refuses to submit to a search, the responsibility for taking whatever measures may be justified should be borne by a higher authority who is held to account, and should not be delegated to or forced upon a doctor.

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<sup>37</sup> AMA *Op. cit.* (18).



A doctor called in to perform a body-cavity search must not allow himself to be manipulated – either by the prisoner requesting a doctor or by the prison authority that called for him. Both the prison authority and the prisoner must be clearly informed about the role of medical expert imposed upon the doctor in connection with the search. With respect to all other aspects of the relationship between the doctor and the prisoner, including especially any personal information shared by the prisoner with the doctor, medical confidentiality must be upheld.

According to guidelines produced by a group of experts working for the Physicians for Human Rights and the University of Cape Town, South Africa:

*[IV.A.15.] The health professional should not participate in police acts like body searches [...] unless there is a specific medical indication for doing so or [...] unless the individual in custody specifically requests that the health professional participate. In such cases, the health professional will ascertain that informed consent has been freely given, and will ensure that the prisoner understands the health professional's role becomes one of medical examiner rather than that of clinical health professional.*<sup>38</sup>

In guidelines issued for doctors asked to perform intimate body searches, the British Medical Association and the Association of Forensic Physicians<sup>39</sup> state clearly that they:

*“do not considerate it appropriate for doctors to be involved in forced intimate searches and believe that doctors should only agree to participate where the individual has given consent or where the situation is life-threatening.”*

The BMA affirms that informed consent is a *sine qua non* condition for any participation of medical personnel in a Body search.

*“...such searches should be carried out by a doctor only when the individual has given consent. If consent is not given, the doctor should refuse to participate and have no further involvement in the search.”*<sup>40</sup>

To take part in a purely police operation carried out with force would amount to assault, and would moreover be contrary to the most basic tenet of medical ethics, first of all, do no harm<sup>41</sup>.

Nurses also need guidelines for body searches. According to the International Council of Nurses:

*Nurses employed in prison health services [must] not assume functions of prison security personnel, such as body searches for the purpose of prison security.*<sup>42</sup>

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<sup>38</sup> Dual loyalty & human rights. (20)

<sup>39</sup> formerly Association of Police Surgeons

<sup>40</sup> BMA *Op Cit* (8).

<sup>41</sup> *primum non nocere*

<sup>42</sup> Nurses' role in the care of detainees and prisoners.

It is necessary to insist on the importance of obtaining consent and of using alternatives to searches because of the improper use that is made, even now, in many countries, of strip searches and body-cavity searches.<sup>43</sup>

Body-cavity searches are always degrading. This is true in all cultures, but especially so in some particularly sensitive ones. The more sexual and religious taboos there are, and cultural bans on sexual matters, including homosexuality, the more certain procedures such as rectal probes are considered offensive and humiliating. When such searches are strictly necessary, they should be explained to prisoners in a language they understand, and carried out in a humane way with as much privacy as possible.

The European Committee for the Prevention of Torture has found that body-cavity searches can form part of a systematic policy of harassment:

*"...Allegations have been made of improper use of searches [...] and the use of searches for the specific intent of intimidation and degradation."*

*"...The humiliation of nudity is often used by torturers and insertion of objects into body orifices is also used as a torture method."*

*"[...] All types of searches can be intimidating and degrading. In the prison setting there is the danger that searches [may be] motivated by the intent of intimidation. Even in cases where other indications exist, i.e. suspicion of drug smuggling without specific need for a search, a search is carried out anyway, because of the intimidation factor. Objection may not be a realistic option for the prisoner. There should not be undue coercion or pressure to consent to intimate body searches."<sup>44</sup>*

Doctors working in prisons should be aware that body-cavity searches can be used as a form of harassment. Prison guards have been known to systematically single out individuals for strip searching and body-cavity probing as punishment for misbehaviour (whether real or apparent).<sup>45</sup>

Improper use of body-cavity searches can be a form of deliberate humiliation. This is particularly true in countries where homosexual acts are a crime, and men are arrested for any suspected homosexual conduct or persecuted for "debauchery." Anal examinations have been found to be performed – by forensic doctors – systematically and using force, always under the pretext of investigating "outrages against decency" and "pederasty and sodomy."<sup>46</sup> Fortunately, cases of this kind, such

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<sup>43</sup> Source: confidential ICRC reports on prison visits which mention such abuse.

<sup>44</sup> CPT :Body Searches: the problems and guidelines for solutions (24) See also from the CPT Lycke Ellingsen: Examination of Bodily Orifices ..

<sup>45</sup> Although the "Stop strip searching" campaign in Northern Ireland at the end of the 1980s clearly had political overtones, it was set in motion by searches carried out on a certain category of prisoners and perceived as a form of harassment.

<sup>46</sup> Human Rights Watch report (26).

as one investigated by Human Rights Watch, are not common.<sup>47</sup> However, the fact that doctors can be misled into participating in body-cavity searches imposed by force shows how important it is for clear guidelines from a higher body such as the World Medical Association to be issued and followed.

In conclusion, body searches, like strip searches, are sometimes necessary. They should, however, be used only after all other means of investigation have been employed. Doctors have no role to play in strip searches. In exceptional cases, when requested by the authorities or the prisoner for a valid reason, their participation in body-cavity searches may be justified. In such cases, the doctor's role will be that of medical expert, which should not compromise his role as care provider. In all cases, the prisoner's consent for such a procedure is required. Every request for a body search must be duly recorded. The search must be performed by a person of the same sex as the person searched. Finally, it must be carried out in a manner that preserves the dignity of the person searched and that causes as little trauma as possible.

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<sup>47</sup> *Ibid.* The case is all the more tragic in that it involves not only the use of "new, advanced methods" and electricity to investigate what is termed "anoreceptivity," but also many doctors who willingly participated in examinations imposed by force.

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**Author:**

Hernán Reyes, MD,

FMH Specialist in Gynaecology and Obstetrics

medical coordinator for Health in Detention for the International Committee of the Red Cross, Geneva

[hreyes@icrc.org](mailto:hreyes@icrc.org)