



C. Ray Drew, Executive Director · Mark Silverstein, Legal Director

August 23, 2010

Ari Zavaras, Executive Director  
Colorado Department of Corrections  
2862 S. Circle Drive  
Colorado Springs, CO, 80906  
Via First Class Mail and facsimile to (719) 226-4755

Dear Director Zavaras:

We write in response to a new and degrading type of body cavity search practiced at Denver Women's Correctional Facility (DWCF). DWCF prisoners – who already submit to strip searches on a routine basis – now must hold open their labia as correctional officers, sometimes using a flashlight, sometimes positioning their faces only inches away from a prisoner's genitals, conduct an inspection. Reports even indicate that some prisoners have been forced to pull back the skin of their clitorises. These searches occur even when the guards have no particularized reason to suspect concealment of contraband – correctional officers search prisoners' body cavities on a frequent basis, after work assignments and visits from friends and family. Guards have threatened prisoners who resist with pepper spray.<sup>1</sup>

The humiliating new procedure provoked such an outcry from prisoners that the Warden responded to complaints *en masse* by posting a memo in the units. The memo rejected all of the prisoners' complaints with a single sentence, and the Department of Corrections (DOC) has rebuffed at least one prisoner's appeal. DOC should reconsider its position and abandon this humiliating policy.

One prisoner describes the new procedure as follows in a letter to the ACLU:

The lift is treated differently by officers, but generally involves spreading your legs and parting your outer labia so an officer can do a visual inspection of your genitals. I have had to perform this procedure simply standing; from a sitting position with my legs spread eagle and having a flashlight shined at my genitals; from a standing position with a foot perched on a toilet and an officer's face inches from my genitals; in front of multiple officers and once in front of an officer and two Life Safety trainees....

---

<sup>1</sup> This information has been relayed to the ACLU in letters from DWCF prisoners and reported in recent news articles. See Pamela White, *Stripped of Dignity: Women Inmates Call Strip Search Procedure Demeaning, Traumatizing*, BOULDER WEEKLY, July 15, 2010; see also Alan Prendergast, 'Labia Lift' and Other Humiliations Described in Letter from Prison, DENVER NEWS, May 24, 2010.

Being a survivor of sexual trauma the new labia-lift procedure encouraged my post-traumatic stress disorder. I had periodic flashbacks .... I have also witnessed women literally crying when they were subjected to the labia lift...<sup>2</sup>

The new search is *in addition to* the intrusive searches that prisoners already endure at DWCF. In light of preexisting search policies, it is virtually inconceivable that the new requirement that prisoners hold open their labia contributes anything to prison security. One prisoner describes the difference between the old and new policy as follows:

[T]he “proper” search (*before the labia lift came about*) is as follows: Remove all clothes, as an officer searches the seams/pockets/waistband and stand completely naked. Open the mouth; sweep fingers around tongue and along gum line. Fold forward ears while turning the head to expose behind them. Run fingers through hair, removing any ties or combs and if needed, bend over to shake long hair. Lift arms and if breasts are large, lift breasts. Turn around; lift each foot, wiggling toes. Turn your back to the officer, bend over, squat, and grab buttocks while coughing. The *addition* of the “labia lift” is to stand or sit, facing the officer, while spreading the labia open wide. (emphasis added.)

The body cavity search policies raise grave concerns under the Fourth and Eighth Amendments to the United States Constitution. While courts generally have upheld visual inspections,<sup>3</sup> in this case, the requirement that prisoners hold open their labia for inspection on a routine basis and without reasonable suspicion – when considered in conjunction with preexisting strip search practices already designed to uncover contraband – becomes so gratuitous as to constitute unnecessary and wanton infliction of pain.<sup>4</sup> Where correctional officers lack reasonable suspicion that a prisoner is concealing contraband, preexisting strip search procedures more than suffice to address security concerns.<sup>5</sup> In such cases, forcing prisoners to hold open their labia only inflicts needless suffering.

Histories of sexual abuse compound the wanton infliction of pain caused by the body cavity searches. According to a leading authority on mental health care in prison, “[a]pproximately 80 percent of women behind bars have been the victims of domestic violence

---

<sup>2</sup> Letters from other prisoners confirm this account of the new body cavity search procedure.

<sup>3</sup> *Bell v. Wolfish*, 441 U.S. 520, 558-60 (1979).

<sup>4</sup> See *Whitley v. Albers*, 475 U.S. 312 (1986) (“unnecessary and wanton” infliction of pain on prisoners violates Eighth Amendment.); *Jordan v. Gardner*, 986 F.2d 1521, 1526-29 (9th Cir. 1993) (even clothed searches of female prisoners by male guards rises to the level of unnecessary and wanton infliction of pain); *Way v. County of Ventura*, 445 F.3d 1157, 1159 (9th Cir. 2006) (search in which jail detainee arrested on drug charges was forced to “spread her labia ... to allow a check of the vaginal area” required reasonable suspicion).

<sup>5</sup> While DOC has asserted that DWCF prisoners attempted to smuggle contraband in their labia, see *White*, *supra* n.1, there is no indication that this occurred frequently, that preexisting strip search practices would not uncover such contraband, or that conducting more invasive searches only on the basis of reasonable suspicion would fail to address the perceived problem. It should also be noted that low rates of violence among women prisoners further diminish security concerns. DR. TERRY KUPERS, *PRISON MADNESS: THE MENTAL HEALTH CRISIS BEHIND BARS AND WHAT WE MUST DO ABOUT IT* 113-14 (1999) (stating that most women in prison were convicted of non-violent crimes).

and physical abuse at some time prior to their conviction.”<sup>6</sup> Courts have stated that the severe sexual abuse suffered by many women prisoners adds to the trauma caused by invasive strip searches and heightens the constitutional violation.<sup>7</sup> Prisoners at DWCF have complained that the new breed of search exacerbates prior sexual trauma – an effect no doubt compounded by threats of being doused with pepper spray for noncompliance.

We also understand that body cavity searches may have occurred in some instances following visits with attorneys. Intrusive searches under such circumstances are particularly unwarranted. Visits with attorneys pose extremely limited risks because of the low probability that an attorney would agree to smuggle narcotics or weapons into a prison.<sup>8</sup> Body cavity searches may even deter prisoners from meeting with their attorneys, compromising legal representation.

DWCF’s new policies also threaten to make Colorado less safe by undermining the rehabilitation of its prisoners. On its website, DOC asserts, “[b]eginning with their first day in prison to their last day of community supervision, our management system is designed to assist offenders’ successful re-entry into society and to reduce the likelihood of future victims”<sup>9</sup> – but humiliating strip searches compromise these goals. First, exacerbating mental illnesses with traumatizing searches of body cavities will make reentry into society more difficult, and thus recidivism more likely, when sentences expire.<sup>10</sup> Second, to avoid post-visit searches, prisoners have refused visits from friends and family – another factor likely to increase recidivism. Time and again, “studies have shown that family contact during incarceration is associated with lower recidivism rates.”<sup>11</sup> Of course, deterring visits also harms prisoners’ families. Eighty percent of women in prison have children, and visits are the only means these children have to see their mothers.<sup>12</sup>

---

<sup>6</sup> KUPERS, *supra* n.5, at 114 (1999). Over 50% of women detained in jails report being physically or sexually abused – a rate five times that of male jail detainees. DORIS J. JAMES, BUREAU OF JUSTICE STATISTICS REPORT: PROFILE OF JAIL INMATES 2002, U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/pji02.pdf>.

<sup>7</sup> *Jordan v. Gardner*, 986 F.2d 1521, 1525-26 (9th Cir. 1993) (noting that past sexual abuse of women prisoners increases the suffering caused by searches conducted by male guards and stating “[t]he record in this case, including the depositions of several inmates and the live testimony of one, describes the shocking histories of verbal, physical, and, in particular, sexual abuse endured by many of the inmates prior to their incarceration at [a women’s prison] ... Eighty-five percent of the inmates report a history of serious abuse to [prison] counselors, including rapes, molestations, beatings, and slavery.”); *see also* *Everson v. Michigan Dep’t of Corrections*, 222 F. Supp. 2d 864, 885 (E.D. Mich. 2002) (citing testimony regarding abuse faced by women prisoners), *rev’d on other grounds*, 391 F.3d 737 (6th Cir. 2004).

<sup>8</sup> *See Wood v. Hancock County*, 245 F. Supp. 2d 231, 239 (D.Me. 2003) (finding insufficient evidence of a security need for strip searches after visits, “let alone” after “visits with attorneys”).

<sup>9</sup> Colorado Department of Corrections website, <http://www.doc.state.co.us/> (last viewed Aug. 13, 2010).

<sup>10</sup> *See* KUPERS, *supra* n. 5, at 135 (stating that humiliating treatment of women in prison can worsen mental illness and make reentry more difficult).

<sup>11</sup> Nancy G. La Vinge, et al., *Examining the Effect of Incarceration and In-Prison Family Contact on Prisoners’ Family Relationships*, 21 J. OF CONTEMP. CRIM JUST. 314, 316 (2005) (citations omitted); *see also* Rebecca L. Naser & Christy A. Visher, *Family Members Experiences with Incarceration and Reentry*, 7 W. CRIMINOLOGY REV. 20, 21 (2006) (“[A] remarkably consistent association has been found between family contact during incarceration and lower recidivism rates.”) (citations omitted). Family contact is also associated with better behavior during incarceration. “Inmates who maintain family ties are less likely to accept norms and behavior patterns of hardened criminals and become part of a prison subculture.” Shirley R. Klein et al., *Inmate Family Functioning*, 46 INT’L J. OF OFFENDER THERAPY AND COMP. CRIMINOLOGY 95, 99 (2002) (citations omitted).

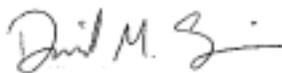
<sup>12</sup> KUPERS, *supra* n.5, at 115.

Forcing prisoners at DWCF to hold open their labia for inspection, in the absence of any reason to suspect contraband, inflicts needless suffering and undermines rehabilitation. DOC should abandon the new policy.<sup>13</sup> We look forward to your response and would welcome the opportunity to discuss this matter with you.

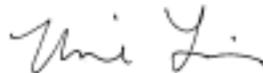
Sincerely,



Mark Silverstein  
Legal Director  
ACLU of Colorado  
400 Corona St.  
Denver, CO 80218



David M. Shapiro  
Staff Attorney  
National Prison Project  
ACLU Foundation  
915 15th Street, N.W.  
7th Floor  
Washington, DC 20003



Mie Lewis  
Senior Staff Attorney  
Women's Rights Project  
ACLU Foundation  
125 Broad Street  
18th Floor  
New York, NY 10004

---

<sup>13</sup> Abandoning the procedure would not require any change in administrative regulations. Under the relevant regulation, the definition of a strip search includes a “visual inspection of body cavities.” Colorado Department of Corrections Administrative Regulation 300-06, § III.P (emphasis added). Such language certainly does not require correctional officers to *hold open* their bodily cavities.