



# Cross-gender Searches: A Case Law Survey

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**1<sup>st</sup> Circuit** (Maine, Massachusetts, New Hampshire, Rhode Island, Puerto Rico)

I. Female Correctional Staff/Male Inmate

A. *Successful Agency Defense*

1. *Cookish v. Powell*, 945 F.2d 441 (1st Cir. 1991): A male inmate brought a § 1983 action against prison officials, alleging that a visual body cavity search conducted in the presence of female correctional officers violated his Fourth Amendment rights. The prison officials had a reasonable (although mistaken) belief that exigent circumstances existed. If these circumstances had in fact existed, they would have permitted a visual body cavity search within visual range of officers of the opposite sex. The court found that in this instance, prison officials could not be held liable for a Fourth Amendment violation of the right to be free from unreasonable searches.
2. *James v. Maloney*, 861 N.E.2d 810 (Mass. App. Ct. 2007): A male Muslim inmate filed suit under both the U.S. and Massachusetts Constitutions, alleging that he was subjected to a full body search in view of female correctional officers, who could observe him through large windows and an open door. The court dismissed his claim, holding that the manner in which the search was conducted was due to the unique circumstances of a large prisoner transfer, and therefore not a substantial burden on the inmate's free exercise of religion under the First Amendment.
3. *Sabree v. Conley*, 815 N.E.2d 280 (Mass. App. Ct. 2004): The plaintiff and many other male inmates were subjected to an outdoor strip search, in an outside alcove walled on three sides with a chain link fence on the fourth side. The court concluded that "while strip searches conducted in non-private areas of a prison, viewed by nonessential persons, particularly of the opposite sex, violate the Fourth Amendment unless justified by

legitimate penological interests," the officers in this case were entitled to qualified immunity, as the right to be free from this type of search was not clearly established. The court also rejected the inmate's Eighth Amendment claim, as he was not able to show unnecessary and wanton infliction of pain unrelated to penological necessity.

4. *Roberts v. Department of Correction*, 2002 WL 31677190 (Mass. Super. 2002): The entire male inmate population was searched after a prison yard fight. The male inmates brought suit, complaining that the strip searches were conducted in a prison corridor where the inmates could be seen by both male and female staff as well as civilians. The court rejected the inmate's Fourth Amendment claim due to the emergency situation which justified the immediate search.

## II. Male Correctional Staff/Female Inmate

### A. *Successful Inmate Claim*

1. *Bonitz v. Fair*, 804 F.2d 164 (1st Cir. 1986): Female inmates in a state facility were subjected to invasive body cavity searches, which were conducted in a non-hygienic atmosphere and in the presence of male officers. The court found the searches amounted to a violation of the female inmates' Fourth Amendment right to be free from unreasonable searches.
2. *Ford v. City of Boston*, 154 F. Supp. 2d 131 (D. Mass. 2001): Female inmates brought § 1983 suit challenging the city's policy of transporting all female arrestees who were unable to post bail to a maximum security pre-trial detention facility. Due to this policy, female arrestees were routinely subjected to strip and visual body cavity searches, while male arrestees were not. The court found, therefore, that this policy violated the female arrestees' rights under the Equal Protection Clause.

## B. *Successful Agency Defense*

1. *Collins v. Knox County*, 569 F. Supp. 2d 269 (D. Me. 2008): A female inmate brought a § 1983 claim alleging a violation of her Fourth Amendment right to privacy. The plaintiff alleged that a male officer watched her while she used the toilet. According to the officer, he gave her a choice of using the hole in her cell, waiting for someone else to escort her, or using the toilet in the adjacent cell. When the plaintiff chose to use the adjacent cell, he allowed her to do so, and moved away from her while she used the toilet. The court found that this “limited interaction” did not violate her Fourth Amendment rights.



## 2<sup>nd</sup> Circuit (Connecticut, New York, Vermont)

### I. Female Correctional Staff/Male Inmate

#### A. *Successful Inmate Claim*

1. *Harnage v. Murphy*, 2012 WL 447658 (Conn. Super, Jan. 23, 2012): A male inmate claimed that he was strip searched in the presence of female correctional employees. The court allowed the plaintiff's constitutional claim for injunctive relief to proceed, while denying the plaintiff's claim for monetary relief based on sovereign immunity.

#### B. *Successful Agency Defense*

1. *Baker v. Welch*, 2003 WL 22901051 (S.D.N.Y. Dec. 10, 2003): A male parolee was required to urinate into a cup for a drug test while a female parole officer was present. The court dismissed the plaintiff's Fourth Amendment claim on a motion for summary judgment, finding that the officer was entitled to qualified immunity. The court found that the right to be free from cross-gender viewing was not clearly established at the time of the incident, relying on both the lack of Supreme Court precedent and the circuit split on the issue. The court noted in dicta court that parole officers are now on notice that the law is "clearly established" in forbidding "close" observation of a parolee's genitals during a urine test by a parole officer of the opposite sex.

### II. Male Correctional Staff/Female Inmate

#### A. *Successful Inmate Claim*

1. *Hartline v. Gallo*, 546 F.3d 95 (2d Cir. 2008): A female arrestee brought a § 1983 action against jail officials,



claiming that jail officials violated her Fourth Amendment rights by strip searching her and telecasting video of that strip search to male officers. The court found there was a genuine issue of material fact regarding whether the jail's surveillance system did in fact telecast the strip search of the female arrestee elsewhere in the police station, precluding summary judgment in favor of police department.

2. *Nelson v. City of Stamford*, 2012 WL 233994 (D. Conn. Jan. 25, 2012): During a search of a female detainee, one male officer in a jail facility assisted with the removal of the detainee's clothing, and another male officer placed his hands inside her pants and touched her buttocks. The court refused to dismiss the detainee's Fourth Amendment claim on a motion for summary judgment, as a reasonable jury could find that the removal of the inmate's shirt and brassiere by a female and a male officer and the touching of her buttocks underneath her pants by a male officer, could constitute an unreasonable search.
3. *Forde v. Baird*, 720 F. Supp. 2d 170 (D. Conn. 2010): A female Muslim inmate was subjected to cross-gender searches, due to a prison policy allowing for non-emergency pat searches of female inmates by male officers. The female inmate brought suit under the Religious Freedom Restoration Act (RFRA) and the First Amendment. The court allowed the plaintiff's RFRA claim to survive a motion for summary judgment, as the prison's interest in staffing were not sufficiently compelling to justify the burden on the inmate's right of free exercise of religion. The court did not reach the First Amendment claim, finding it could adequately address her case on the RFRA claim alone.
4. *Bolden v. Village of Monticello*, 344 F. Supp. 2d 407 (S.D.N.Y. 2004): Male police officers authorized and witnessed body



cavity searches of two women in front of male officers during a series of searches conducted with unreasonable force. The court denied the defendant's motion for summary judgment on the plaintiff's § 1983 claim, finding triable issues of fact as to whether the search was constitutionally valid.

5. *Colman v. Vasquez*, 142 F. Supp. 2d 226 (D. Conn. 2001): Female inmate in a federal facility in a special unit for victims of sexual abuse filed § 1983 action against prison officials claiming Fourth and Eighth Amendment violations inherent in the prison's practice of permitting male officers to conduct pat searches of female inmates. The court denied the officer's motion to dismiss the Fourth Amendment claim, requiring factual findings as to the legitimate penological reason for the search. The court also denied the motion to dismiss the Eighth Amendment claim, due to the special vulnerability of the inmate.

#### B. *Successful Agency Defense*

1. *Forts v. Ward*, 621 F.2d 1210 (2d Cir. 1980): Male correctional officers were permitted to view female inmates while they were sleeping, changing clothes, or using the toilet. The Second Circuit, assuming without deciding that the female prisoners had a privacy right, concluded that their right could be adequately protected by permitting inmates to cover their cell windows for fifteen minute intervals and by issuing suitable nighttime garments.





### 3<sup>rd</sup> Circuit (Delaware, New Jersey, Pennsylvania)

#### I. Female Correctional Staff /Male Inmate

##### A. *Successful Inmate Claim*

1. *Brothers v. Lawrence County Prison Bd.*, 2008 WL 146828 (W.D. Pa. Jan 14., 2008): A male Muslim inmate was forced to strip in front of two female correctional employees for a medical examination, after repeatedly requesting a male employee oversee the examination. The plaintiff brought suit against the individual officers involved and the Warden. The court found the plaintiff's First and Fourth Amendment claims were sufficient to withstand a motion to dismiss.

##### B. *Successful Agency Defense*

1. *Ansell v. Ross Tp.*, 2012 WL 1038825 (W.D. Pa. Mar. 28, 2012): A male detainee claimed he was strip searched in the presence of female inmates. The court agreed that such a search would violate the inmate's rights, however, the court found that the inmate failed to show the Sheriff had instituted a policy or custom permitting such searches, and therefore dismissed his claim.
2. *Shaw v. Freeman*, 1991 WL 225010 (E.D. Pa. Oct. 29, 1991): While a male inmate was being strip searched, a female correctional employee entered the room. The court rejected the inmate's § 1983 claim, finding that "[t]he inadvertent, momentary exposure of one's genitals to a corrections officer of the opposite sex at the end of a reasonable penological strip search does not amount to a constitutional violation."
3. *Johnson v. Pa. Bureau of Corr.*, 661 F. Supp. 425 (W.D. Pa. 1987): Female correctional officers were permitted to view



naked male inmates. The court recognized that “[p]rison inmates retain certain rights of privacy under the Fourth Amendment, including the right not to be viewed naked by member of the opposite sex, but that right of privacy is not unlimited.” The court therefore found that the policy against assigning opposite sex corrections officers to posts where they would view unclothed inmates, and the policy requiring officers to announce their presence, were reasonable accommodations of the inmate’s privacy interests. The court also rejected a Muslim inmate’s First Amendment claim, finding his claim regarding his religious belief was not sincere.

## II. Male Correctional Staff/Female Inmate

### A. *Successful Inmate Claim*

1. *Delandro v. Cnty. of Allegheny*, 2007 WL 81061 (W.D. Pa. Jan. 8, 2007): A female detained arrested on non-felony charges was strip searched by a female officer in a location where male and female detainees who were also being strip searched could see. The court refused to grant defendant’s motion to dismiss, finding that if true, plaintiff’s allegations were sufficient to find that defendants had violated her Fourth Amendment right to be free from unreasonable searches.



## 4<sup>th</sup> Circuit (Maryland, North and South Carolina, Virginia, West Virginia)

### I. Female Correctional Staff/Male Inmate

#### A. *Successful Inmate Claim*

1. *X v. Bratten*, 32 F.3d 564 (4th Cir. 1994): A male inmate filed a § 1983 claim against various prison officials, alleging that he was strip searched while a female officer was present. He contended that the officer “was standing off looking and disapprovingly shaking her head from side to side,” while the officer asserted she had turned her back to avoid seeing the search. The court found that the contradictory assertions precluded a motion for summary judgment.
2. *Jones v. Murphy*, 470 F. Supp. 2d. 537 (D. Md. 2007): Male arrestees brought a § 1983 action under the Fourth and Fourteenth Amendments against mayor, municipal council, and police wardens at a central booking and intake center. Arrestees claimed that they were strip searched, and that the searches violated their Equal Protection rights, in that male arrestees were strip searched, either fully or down to their underwear, while similarly situated females were not. The court denied the wardens’ motion to dismiss, as the right to be free from invasive strip searches that were not conducted on similarly situated female detainees was clearly established.

#### B. *Successful Agency Defense*

1. *Mitchell v. Strickland*, 87 F.3d 1309 (4th Cir. 1996): An inmate filed a written grievance with the prison administrator, stating that he had been subjected to a cross-gender search. The prison official discussed the grievance with the inmate, informing him that cross-gender searches were permissible. The inmate later filed an Eighth Amendment claim against the



official. The court dismissed the claim, finding that the official had properly addressed the inmate's grievance.

2. *Jackson v. Wiley*, 352 F. Supp. 2d. 666 (E.D. Va. 2004): Male inmate was strip searched as a part of the prison intake process, while two female nurses were present, having already been in the room in order to perform a routine medical exam on the inmate. The court found that a corrections officer did not violate a male prisoner's constitutional right to privacy in his genitals by carrying out a "routine" strip search during the intake process. The court distinguished the case at hand from other cross-gender strip searches, noting that medical personnel routinely examine patients of the opposite sex.

## II. Male Correctional Staff /Female Inmate

### A. *Successful Inmate Claim*

1. *Lee v. Downs*, 641 F.2d 1117 (4th Cir. 1981): Female plaintiff filed suit for incident where a female nurse removed her undergarments in the presence of male correctional officers, after the plaintiff had expressed willingness to remove her underclothing if the male officers left. The court affirmed the jury verdict for the plaintiff's § 1983 claim, finding that "[m]ost people ... have a special sense of privacy in their genitals, and involuntary exposure of them in the presence of people of the other sex may be especially demeaning and humiliating. When not reasonably necessary, that sort of degradation is not to be visited upon those confined in our prisons."
2. *Amaechi v. West*, 237 F.3d 356 (4th Cir. 2001): Female arrestee was subject to cross-gender search in public. The arrestee was handcuffed and forced to stand on the street



with her dress open, in view of her family and the public. The arresting officer slightly penetrated her genitalia and kneaded her buttocks. She was arrested for a misdemeanor noise violation, and no other circumstances suggested a security risk or risk of weapons concealment. The plaintiff sued under § 1983, asserting claims for assault and battery and for unconstitutional search. The court denied the defendant's motion for summary judgment, finding that the arrestee had stated a viable claim for unreasonable search under the Fourth Amendment, and that the officer's conduct could be a violation of state law.

B. *Successful Agency Defense*

1. *Bryan v. Fultz*, 2009 WL 334441 (E.D. Va. Feb. 10, 2009): A female detainee was subjected to cross-gender strip searches while incarcerated. The weekend following her release, she cried all night, saw a counselor who diagnosed her as suffering from acute stress disorder, and refrained from having intimate relations with her husband for several months. However, she went to work and suffered no lost wages, did not attend regular counseling or seek any other medical attention, and led mostly a "normal life." The court dismissed the plaintiff's claim for intentional infliction of emotional distress, because a jury could not find, on the basis of her allegations, that her emotional distress was too severe for a reasonable person to endure.



## 5<sup>th</sup> Circuit (Louisiana, Mississippi, Texas)

### I. Female Correctional Staff/Male Inmate

#### A. *Successful Inmate Claim*

1. *Moore v. Carwell*, 168 F.3d 236 (5th Cir. 1999): A male inmate claimed correctional officers performed repeated cross-gender searches and body cavity searches on him. The Fifth Circuit held that when a female officer conducts a strip search of a male inmate, in the absence of an emergency or extraordinary circumstances, the plaintiff can raise a viable Fourth Amendment claim. The court rejected an Eighth Amendment claim, finding the Fourth Amendment is the proper venue for a cross-gender strip search claim. Finally, the court remanded on the inmate's First Amendment claims, as the inmate had stated his Baptist beliefs prevented him from being viewed naked by a female other than his wife.

#### B. *Successful Agency Defense*

1. *Sinclair v. Stadler*, 78 F. Appx. 987 (5th Cir. 2003): A male inmate challenged the use of female officers in living areas as a violation of his Eighth Amendment rights. The court granted summary judgment for the defendant, finding the use of female officers to supervise living areas occasions was nothing more than a brief postponement of the necessary functions of urination and/or defecation, rather than the unnecessary and wanton infliction of pain required for a constitutional violation; and is reasonably related to penological objections including flexibility in security personnel staffing and equal employment opportunities.
2. *Oliver v. Scott*, 276 F.3d. 736 (5th Cir. 2002): A state jail inmate challenged the practice of permitting female officers to



monitor male inmates in bathrooms and showers. He complained that female prison employees conducted strip searches of male inmates and observed male inmates showering and using the toilet. The Fifth Circuit held that these claims did not show a violation of the right to privacy or a violation of equal protection, in that female inmates were not subjected to the same type of cross-gender observation. The court found that the male inmates were not similarly situated to the female inmates, as the facility had six times as many men as women, male transfer inmates had been convicted of violent crimes while female inmates had been convicted of low level felonies, and male units were more prone to sexual predation. The Fifth Circuit also noted that while the inmate did not raise a claim of cruel and unusual punishment under the Eighth Amendment, "his decision to forego this argument is wise, given that we have refused to extend the Eighth Amendment to strip searches."

3. *Petty v. Johnson*, 193 F.3d 518 (5th Cir. 1999): The Fifth Circuit rejected a male inmate's challenge to the facility's policy allowing female officers to be present when male inmates shower.
4. *West v. Parker*, 68 F.3d 466 (5th Cir. 1995): A male inmate complained a female officer was given "unrestricted access" to male inmate's dormitory. The court stated that because the inmate failed to argue that her presence was unnecessary to maintain security, there was no basis for a constitutional claim under the Fourth or Eighth Amendments.
5. *Letcher v. Turner*, 968 F.2d 508 (5th Cir. 1992): A female correctional employee witnessed strip searches of male inmates. The court found there was no basis for a constitutional violation, as the presence of female officers was

required to protect a legitimate government interest of maintaining security at a correctional facility.

6. *Davis v. Chairman, Texas Bd. of Corrections*, 2011 WL 2669327 (E.D. Tex. Jul. 6, 2011): A male inmate alleged he was strip searched in front of a female officer. The court found that the Fifth Circuit had never adopted the theory that a cross-gender strip search was *per se* unreasonable. The court did note that a strip search conducted by a female officer, in a non-emergency situation, could be unreasonable *per se*. As the inmate did not make such an allegation, the court dismissed his claim.
7. *Hamer v. Jones*, 2010 WL 4569963 (S.D. Tex. Nov. 5, 2010): A male inmate alleged he was strip searched by a female correctional officer. The Fifth Circuit dismissed the claims against the Warden, as he was not personally involved in the incident. On remand, the District Court dismissed the remaining claims against the individual officers, as the inmate had not met the specificity requirement of the grievance procedure under the PLRA.
8. *Mitchell v. Quarterman*, 2010 WL 2330382 (E.D. Tex. May 11, 2010): A male inmate brought claims under the First and Fourth Amendment, complaining that female officers could watch him in the shower or while using the toilet. The court dismissed his claim, as the inmate could not show that the “practice of stationing female officers in areas where they can observe male inmates showering or using the toilets is not reasonably related to the legitimate penological interests of maintaining security and providing for equal employment opportunities.”
9. *Collins v. Scott*, 961 F. Supp. 1009 (E.D. Tex. 1997): Male Muslim inmate brought claims under the Religious Freedom





Restoration Act (RFRA) and § 1983 arising from strip search conducted by a female officer. The inmate refused to strip in front of a female officer. He was then tasered and forcibly stripped. After a bench trial, the court found that prison officials did not violate RFRA, even assuming that the inmate's exercise of religion was substantially burdened, as the officials had a compelling governmental interest in security, and a strip search was the least restrictive means of furthering that interest.

10. *Thompson v. Stansberry*, 2002 WL 1362453 (Tex.App.-Tyler, Jun. 21, 2002): Male inmate brought action against correctional officer, former prison warden, and former director of Texas Department of Criminal Justice--Institutional Division alleging that a prison regulation allowing cross-gender searches violated his First Amendment rights. The court found the regulation allowing was rationally related to State's legitimate penological interests to ensure inmates and staff safety, and to reduce presence of contraband, and thus regulation, which was contrary to prisoner's religious faith, did not violate prisoner's right to free exercise of religion. There were no alternative means available, due to the constraints of the prison's personnel pool and the large number of searches.

## II. Male Correctional Staff /Female Inmate

### A. *Successful Agency Defense*

1. *Soto v. City of Haltom City*, 106 F.Appx. 903 (5th Cir. 2004): Female detainee claimed her constitutional rights were violated when she was allegedly strip searched by male officers "without good cause." The court affirmed the lower court's decision granting the defendant's motion to dismiss, because the detainee did not claim that the city had a policy



or custom of allowing “baseless cross-gender strip searches,” so that the city could not be held liable. The court also added that the Constitution does not require jails that house female detainees either to staff more than one jailer at a time or to hire a female jailer.

2. *Washington v. City of Shreveport*, 2006 WL 1778756 (W.D. La. Jun. 26, 2006): A female participant in a work release program brought a § 1983 claim against the city, claiming that the city's policy of allowing male city workers to closely supervise and search female inmates participating in a work release program was unconstitutional. The court found that the city could not be held liable under § 1983, as the plaintiff had not alleged any deprivation of rights inflicted due to the city's policy.



## 6<sup>th</sup> Circuit (Kentucky, Michigan, Ohio, Tennessee)

### I. Female Correctional Staff/Male Inmate

#### A. *Successful Inmate Claim*

1. *Cornwell v. Dahlberg*, 963 F.2d 912 (6th Cir. 1992): The court held that an inmate successfully stated a Fourth Amendment privacy claim, where he was subjected to an outdoor strip search in the presence of several female correctional officers following a prison disturbance.
2. *Kent v. Johnson*, 821 F.2d 1220 (6th Cir. 1987): A male inmate claimed female correctional officers had unlimited viewing access of male inmates. The court reversed the district court's dismissal of the male inmate's § 1983 claim and found that inmate had a viable claim under the First, Fourth, and Eighth Amendments. The court permitted his First Amendment claim, as the inmate alleged he was deprived of his rights to free exercise of religion, as he could not practice the modesty tenant of his Christian faith while female officers could view him naked. The Fourth Amendment was upheld due to the unnecessary exposure to female officers. The court also allowed his Eighth Amendment claim, as the plaintiff alleged that female prison officers began viewing him at close range and for extended periods of time in retaliation for asserting his right to privacy.
3. *Wilson v. City of Kalamazoo*, 127 F. Supp. 2d 855 (W.D. Mich. 2000): Male arrestees detained in a city jail without any clothing or covering for between six and eighteen hours, with at least limited exposure to viewing by members of the opposite sex, stated claims for violation of their right of privacy under the Fourth Amendment; even if they were

deprived of clothing as a suicide prevention measure. The court found the removal of their underclothing was not adequately justified.

*B. Successful Agency Defense*

1. *Roden v. Sowders*, 84 F.Appx. 611 (6th Cir. 2003): Strip search of male prisoner in the presence of female sergeant, who allegedly laughed at prisoner when he was naked, did not violate prisoner's Fourth Amendment privacy rights nor his Eighth Amendment rights. Even if the sergeant did laugh, verbal insults of any inmate were not actionable, and search was conducted in response to allegations that prisoner had been smoking marijuana and was reasonably related to legitimate penological interest of security and order.
2. *Muhammad v. Bush*, 1997 WL 434382 (6th Cir. July 31, 1997): A Muslim male inmate claimed pat down searches by female officers violated his First Amendment rights. The court found that the policy protected security concerns, and the need for spontaneous pat down searches overrode the inmate's First Amendment right to free exercise of religion.
3. *Johnson v. Kalamazoo*, 124 F. Supp. 2d 1099 (W.D. Mich. 2000): The court found that holding male detainees in their underwear for a limited time period in the presence of female officers did not violate detainees' Fourth Amendment privacy expectations, nor their Fourteenth Amendment due process rights.

II. Male Correctional Staff /Female Inmate

*A. Successful Inmate Claim*



1. *Mead v. Cty. of St. Joseph*, 2008 WL 441129 (W.D. Mich. Feb. 13, 2008): A female detainee was strip searched by male officers. She told them that she did not want to undress in front of them, and that she had been sexually abused in the past. The officers then told her that if she did not take her own clothes off, they would forcibly strip her. The court found that the plaintiff could sustain a Fourth Amendment claim, as a reasonable fact finder could find that defendant's executed an unreasonable search. The court also permitted the plaintiff to bring an Eighth Amendment claim against the individual officer, as well as a state tort claim of assault and battery. The court dismissed the county as a party, as there was no evidence the county had a policy condoning such behavior, or that the need for a policy prohibiting the behavior was inherently obvious.
2. *Neal v. Dep't of Corr.*, 2009 WL 187813 (Mich. App. Jan. 27, 2009): Female inmates in the Michigan Department of Corrections (MDOC) alleged that the MDOC assigns male officers to the housing units of all women's facilities without providing any training related to cross-gender supervision. The complaint further alleged that the "women are forced to dress, undress, and perform basic hygiene and body functions in the open with male officers observing; that defendants allow male officers to observe during gynecological and other intimate medical care; that defendants require male officers to perform body searches of women prisoners that include pat downs of their breasts and genital areas." The court found that the director and the prison warden had adequate notice of the hostile environment, and could be held liable.
3. *Rushing v. Wayne County*, 462 N.W.2d 23 (1990): Pretrial detainee brought action under § 1983 against county and county employees. For four days, detainee was permitted to wear only panties, and repeatedly exposed to members of

opposite sex. The court found that the detainee adequately stated a claim for invasion of privacy or deprivation of liberty without due process, as she was repeatedly subjected to unnecessary viewing by males, including officers, a janitor, and a group of ten to twelve students visiting the jail.



## 7<sup>th</sup> Circuit (Illinois, Indiana, Wisconsin)

### I. Female Correctional Staff /Male Inmate

#### A. *Successful Inmate Claim*

1. *Calhoun v. DeTella*, 319 F.3d 936 (7th Cir.2003): Male state prisoner sued prison employees under § 1983, alleging that a strip search conducted in the presence of female correctional officers constituted cruel and unusual punishment, as the officers made explicit gestures and forced him to perform sexually provocative acts. The court held that the complaint stated an Eighth Amendment claim. The court noted, however, that the search of a male inmate by a female officer for a legitimate penological purpose would not violate the Eighth Amendment.
2. *Stewart v. Lyles*, 66 F.Appx. 18 (7th Cir.2003): Two male officers entered the "tailorshop" where plaintiff worked and ordered all 130 male inmates present to strip while several female supervisors were present. The plaintiff informed them that absent an emergency, the search was unconstitutional. The officers returned the next day, and subjected him to an anal cavity inspection. The court held that a strip search performed in front of opposite sex is not *per se* unconstitutional, unless it is "calculated harassment unrelated to prison" needs. The court permitted the plaintiff to proceed in both his Eighth Amendment claim, and his First Amendment claim for retaliation.
3. *Canedy v. Boardman*, 16 F.3d 183 (7th Cir.1994): A male inmate brought suit under § 1983, alleging that two female correctional officers strip searched him, although ten male corrections officers were nearby and available to conduct the

search. He also alleged that female officers “regularly observe male inmates in a variety of settings typically considered private, including while they dress, shower, defecate and sleep in various states of undress.” The court reinstated the inmate’s claim, holding that inmate was “entitled to reasonable accommodation to prevent unnecessary observations of his naked body by female officers.”

4. *Jamal v. Smith*, 2010 WL 375160 (C.D. Ill. Jan 22, 2010): A male plaintiff was pat searched by a female officer, while male officers were in the area. The plaintiff was an orthodox Muslim, and therefore not permitted to have physical contact with a member of the opposite sex. The court found that the Warden and the individual officer violated his First Amendment rights to freely express his religion, as the search was not reasonably related to a legitimate penological interest. The court, however, dismissed the plaintiff’s Eighth Amendment claim, finding the search did not rise to the level of cruel and unusual punishment.
5. *Perales v. Bowlin*, 644 F. Supp. 2d 1090 (N.D. Ind. 2009): A male inmate filed suit against jail officials, alleging First, Eighth, and Fourteenth Amendment violations. The court stated that “[g]enerally, the Constitution does not preclude jail or prison policies allowing officers to conduct pat down searches of opposite sex prisoners; nevertheless, where the gravamen of the inmate’s charge is that the cross-gender clothed body searches inflict great pain and suffering, the unnecessary and wanton infliction of pain upon prisoners constitutes cruel and unusual punishment forbidden by the Eighth Amendment.” The court therefore dismissed his claim regarding an incident where a female officer watched inmate undress. The court however, upheld his Eighth Amendment claim, alleging that a female officer fondled him during a pat search



6. *Bullock v. Sheahan*, 519 F. Supp. 2d 763 (N.D. Ill. 2007): Male inmates challenged the constitutionality of jail's policy of strip searching male inmates upon returning to the jail for out-processing after being ordered release. Males were searched in a large non-private group setting, while females were searched in a location with privacy dividers among the inmates so they do not see each other. The court found that the blanket strip search policy of all male potential discharges is not substantially related to the achievement of prison safety and security. The court found both a Fourth Amendment violation for unreasonable searches, and a Fourteenth Amendment violation for Equal Protection.

B. *Successful Agency Defense*

1. *Dye v. Loman*, 40 F. Appx. 993 (7th Cir. 2002): Male inmate was strip searched in an observation cell in the presence of a team of female corrections officers, after the plaintiff repeatedly disobeyed their orders. The court found the correctional employee's action in strip searching a male prisoner in front of female employees was not cruel and unusual punishment.
2. *Johnson v. Phelan*, 69 F.3d 144 (7th Cir. 1995): A male pretrial detainee filed § 1983 action against county officials, claiming female officers were permitted to monitor detainee while he was naked. The court held that monitoring of naked prisoners by female officers was reasonable under the Fourth Amendment. The court further held that the female officers' monitoring of detainee while he was naked was not a basis for a due process or Eighth Amendment claim.
3. *Madyun v. Franzen*, 704 F.2d 954 (7th Cir. 1983): The court found on a motion for summary judgment that policy allowing

frisk search of male inmates by female officers was reasonable.

4. *Smith v. Fairman*, 678 F.2d 52 (7th Cir. 1982): The court found that female officers' frisk searches of male inmates are not unconstitutional, given the limited nature of the search and training given to correctional officers responsible for conducting the searches.

## II. Male Correctional Staff /Female Inmate

### A. *Successful Inmate Claim*

1. *Meriwether v. Faulkner*, 821 F.2d 408 (7th Cir. 1987): A male-to-female transgender inmate alleged that correctional officer repeatedly required her to strip in front of inmates and other officers, for the sole purpose of viewing her body. The court found this was sufficient to state an Eighth Amendment claim, as the searches were "maliciously motivated" and not related to security matters.
2. *Gary v. Sheahan*, 1997 WL 201590 (N.D. Ill. Apr. 18, 1997): Female inmates filed a class action suit challenging the jail's policy of strip searching all female inmates who return to the jail from court for out-processing after their release. One of the glass walls in the search room looks out onto a hallway where male and female employees can see them. The court allowed the Fourth Amendment claim to proceed, requiring more information as to whether the security risk was great enough to outweigh the detainee's right to privacy. The court also allowed a Fourteenth Amendment Equal Protection claim to proceed, as similarly situated male inmates were not subjected to the same strip search procedure.

**8<sup>th</sup> Circuit** (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North and South Dakota)

I. Female Correctional Staff/Male Inmate

A. *Successful Inmate Claim*

1. *Williams v. Boesing*, 2011 WL 3607117 (E.D. Mo. 2011): A male inmate claimed a female officer Newberry used “an open hand faced in toward [his] body, in order to conduct the cross-gender pat search;’ that she ‘ran her hands up the inner thigh of [his] legs;’ that her ‘hands came into contact with [his] groin region and genitals;’ that Defendant Newberry ‘used the finger of her hand to cuff, grab and manipulate [his] genitals;’ and that Defendant used her hands to grab and manipulate [his] buttocks.” The court dismissed the Fourth Amendment claim, as the pat search was not unreasonable. The court however permitted the negligence and battery claims to overcome a motion for summary judgment.
2. *Chestang v. Wiggins*, 2011 WL 2728110 (E.D. Ark. Apr. 25, 2011): A male inmate received \$1 in nominal damages for a cross-gender search that violated the agency’s written policy against such searches.
3. *Goodrum v. Robinson*, 2010 WL 5830447 (E.D. Ark. Oct. 20, 2010): Male inmate alleged that a female correctional officer actively participated in a pat down search. The court held that “occasional or inadvertent sightings by female officers of nude male inmates does not violate the inmates’ limited right of privacy, at some point, cross-gender inspection of naked inmates inches across the line and violates a prisoner’s right to privacy.” The court refused to grant summary judgment as

material issues of fact existed as to whether the female officer performed a pat down search on a naked male inmate.

4. *Bumgardner v. Norris*, 2010 WL 1729866 (E.D. Ark. Mar. 3, 2010): A male inmate was strip searched under threat of tear gas. The search was conducted in a shower stall while a female was present. Plaintiff was strip searched, and subjected to body cavity search, under threat of tear gas if he failed to cooperate. The court permitted plaintiff to proceed on his Fourth Amendment claim against the officers.

B. *Successful Agency Defense*

1. *Timm v. Gunter*, 917 F.2d 1093 (8th Cir. 1990): Male inmates objected to pat searches conducted by female officers and cross-gender supervision. The court found the policy allowing the searches and viewing was reasonable, as there was a penological justification for the policy and the facility provided training to the officers.

II. Male Correctional Staff /Female Inmate

A. *Successful Inmate Claim*

1. *Hill v. McKinley*, 311 F.3d 899 (8th Cir. 2002): A female inmate brought suit after she was stripped in front of male officers. The court held that the use of male officers to control the transfer of an unruly female prisoner was not a violation of the Fourth Amendment, however, the court found that the officers violated her Fourth Amendment rights by forcing her to remain naked and exposed to male officers for a substantial period of time after the threat to security and safety had passed.



2. *Boss v. Morgan County*, 2009 WL 3401715 (W.D. Mo., Oct. 20, 2009): A female detainee was held in a detox cell, where the toilet was located right across from a large window in plain view, so she could be seen using the toilet by jailers, police officers, other inmates and cafeteria workers and visitors. The court dismissed her Eighth Amendment claim, but found there was a Fourth Amendment violation considering the lack of an institutional need to expose her to the male population and the ease with which an accommodation could have been made.
3. *Spencer v. Moreno*, 2003 WL 1043318 (D. Neb. Mar. 11, 2003): A male correctional officer remained present during a female inmate's vaginal and anal medical exam despite the fact that she was handcuffed and shackled and was not violent, aggressive, or uncooperative. He was in a position to view her unclothed body during a breast and pelvic exam. The court upheld her Fourth Amendment claim against the officer and the facility, but dismissed her Eighth Amendment claim, finding there was no wanton or reckless infliction of pain.

B. *Successful Agency Defense*

1. *Farkarlun v. Hanning*, 855 F. Supp. 2d 906 (D. Minn. 2012): Female arrestee brought § 1983 action against city, city police officers, county, and county sheriff's deputies, alleging that defendants violated her constitutional rights in conducting a cross-gender strip search. The court found that the cross-gender nature of the search did increase the level of intrusion, but that cross-gender searches were not *per se* unreasonable.
2. *Kendrick v. Faust*, 682 F. Supp. 2d 932 (E.D. Ark. 2010): A female inmate was instructed to stand nude in the shower,

and was possibly viewed by a male correctional officer. The court found that even assuming the plaintiff's allegations were true, the female prisoner had a very narrow zone of privacy as an inmate, and therefore her constitutional rights were not violated.



**9<sup>th</sup> Circuit** (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, Northern Mariana Islands)

I. Female Correctional Staff /Male Inmate

A. *Successful Inmate Claim*

1. *Byrd v. Maricopa County Sheriff's Dept.*, 629 F.3d 1135 (9th Cir. 2011): A female cadet conducted a pat down search on a male detainee. The cadet touched the detainee's thighs, buttocks, and genitals, and moved his penis and scrotum while detainee was clad only in boxer shorts. At least ten to fifteen people were present, including male cadets. The court found that the search did not violate his Fourteenth Amendment rights, as the search was prompted by several recent fights and suspicion of contraband. The court found, however, that the search did violate his Fourth Amendment right to be free from unreasonable searches. The court distinguished this case from other cross-gender pat down searches that did not violate the Fourth Amendment noting that the officer touched the detainee's penis and scrotum, and that the detainee was essentially unclothed.
  
2. *Ransom v. Martinez*, 2010 U.S. Dist. LEXIS 39707 (E.D. Cal., 2010): A sergeant implemented a policy that required male inmates to undergo an unclothed search in plain view of others before being brought in from the outside exercise cages. The male inmate brought suit under § 1983 claiming that he was forced to strip in front of male and female staff members and other inmates, which violated his right to privacy, as well as his First Amendment right to practice his Muslim faith. The court permitted the plaintiff to proceed in his First and Fourth Amendment claims. The court distinguished this case from others, in that the searches were

conducted in “plain view,” with a high frequency (every time he left the outside exercise cages).

B. *Successful Agency Defense*

1. *Laing v. Guisto*, 92 F.Appx. 422 (9th Cir. 2004): A male inmate claimed that the jail’s policy of permitting female officers to conduct pat down searches on male inmates violated his Fourteenth Amendment rights. The court affirmed the lower court’s grant of summary judgment to the sheriff, finding that the searches were justified by security concerns.
2. *Rice v. King County*, 243 F.3d 549 (9th Cir. 2000): Male inmate complained that female officer conducted a pat down search, during which she shoved her hand into his testicals. The male inmate claimed he was sexually abused as a child, and he vomited after the search. The court dismissed his Eighth Amendment claim, as he had not produced evidence that the officer knew or had reason to know of his vulnerability.
3. *Somers v. Thurman*, 109 F.3d 614 (9th Cir. 1997): Male inmate brought § 1983 claim against female officers and prison officials, alleging that female officers had performed visual body cavity searches and watched him while showering naked. The court rejected his Fourth Amendment claim, finding that privacy interests of male inmates prohibiting cross-gender body cavity searches was not clearly established at the time. The court also rejected his Eighth Amendment claim, finding that his allegations that female officers had pointed and joked during the searches and while he showered were not sufficient to state a claim.



4. *Fain v. Gomez*, 145 F.3d 1337 (9th Cir. 1998): The court dismissed a male inmate's claim regarding cross-gender searches, noting that "a visual strip search of male prisoners by female officers, without more, does not violate a privacy right."
5. *Kuntz v. Wilson*, 33 F.3d 59 (9th Cir. 1994): The court dismissed a male inmate's claim that a female employee in another room was able to view him being strip searched through a large glass window. The court noted that prisoners have a limited right of privacy from officers of the opposite sex, and that "the assignment of female prison officers to positions requiring only infrequent and casual observation of naked male prisoners does not violate the prisoners' right to privacy."
6. *Michenfelder v. Sumner*, 860 F.2d 328 (9th Cir. 1988): A male inmate brought a § 1983 action against prison officials, claiming that strip searches conducted in front of female officers violated his right to privacy under the Fourth Amendment. The court affirmed the lower court's judgment against the inmate, finding that the presence of female officers did not violate his rights. The court found that female officers were not routinely present during searches, and that prison had made reasonable attempts to accommodate privacy concerns by its allocation of responsibilities between male and female officers.
7. *Grummett v. Rushen*, 779 F.2d 491 (9th Cir. 1985): Three male inmates brought a suit against prison officials, claiming that the prison's policy allowing female correctional officers to view them while undressing, using the toilet, or showering, violated their right to privacy. The court upheld the lower court's summary judgment ruling for the prison officials, finding that policy did not violate their right to privacy. The

court found the female officers had only limited or infrequent views of the male inmate, and they conducted themselves professionally, treating the inmates with respect.

8. *Lay v. Porker*, 371 F. Supp. 2d 1159 (C.D. Cal. 2004): State prison inmate brought § 1983 Fourth Amendment action against corrections officer, alleging that he had been subjected to overly intrusive body search in the presence of a female officer. The court held that the corrections officer's alleged subsection of inmate to needlessly intrusive unclothed body cavity search in presence of female officer constituted a violation of the Fourth Amendment, however, officer was entitled to qualified immunity, as there was no clearly established right of inmate to be free from bodily exposure to officers of the opposite sex at the time of the search.
9. *Jones v. Harrison*, 864 F. Supp. 166 (D. Kan. 1994): Strip search of male inmate in presence of female officer did not violate inmate's right to privacy or support a § 1983 civil rights claim given that strip search was conducted as part of emergency intervention to prevent suspected disturbance. Furthermore, a strip search in female officer's presence is permitted under the Kansas Department of Corrections' procedures in emergency circumstances.

## II. Male Correctional Staff /Female Inmate

### A. *Successful Inmate Claim*

1. *Jordan v. Gardner*, 986 F.2d 1521 (9th Cir. 1993): The Washington Corrections Center for Women implemented a policy allowing male correctional officers to conduct random pat down searches of female inmates. The inmates brought suit under § 1983. The court held the policy violated the inmates' Eighth Amendment rights. The court found that



many of the female inmates had been sexually abused, and that the searches by male correctional could cause psychological harm. The prison officials were deliberately indifferent to that harm, as they were warned about the effects such searches would have on the inmates. Furthermore, the cross-gender searches were unnecessary, as prison security did not depend on the searches, and did not affect male officer's equal employment opportunities.

2. *Sepulveda v. Ramirez*, 967 F.2d 1413 (9th Cir.1992), *cert. denied*, 510 U.S. 931, 114 S.Ct. 342 (1993): A male parole officer violated the constitutional rights of a female parolee when he observed her during a urine drug test.

B. *Successful Agency Defense*

1. *Carlin v. Manu*, 72 F. Supp. 2d. 1177 (D. Or. 1999): Female state prison inmates brought action against male correctional officers, alleging that skin searches performed on inmates had violated their Fourth and Eighth Amendment rights. The court held that officers were entitled to qualified immunity.



## 10<sup>th</sup> Circuit (Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming)

### I. Female Correctional Staff /Male Inmate

#### A. *Successful Inmate Claim*

1. *Hayes v. Marriott*, 70 F.3d 1144 (10th Cir. 1995): A male inmate brought suit against prison officials claiming Fourth Amendment violations of his right to privacy. The male inmate was subjected to a body cavity search in front of a female officer and other non-essential personnel, including secretaries and case managers. The search was also videotaped. The court noted that while the "Fourth Amendment does not require complete exclusion of members of opposite sex from areas in which inmate searches are conducted," inmates are afforded a limited privacy right. As the prison officials did not put forth an adequate explanation of why the female personnel were allowed to watch the search, the court denied the defendant's motion for summary judgment.

#### B. *Successful Agency Defense*

1. *Sandstrom v. Hoffer*, 2011 WL 4553067 (D. Kan., Sept. 29, 2011): A male inmate claimed that he was required to shower in the presence of female officers. The court dismissed his Eighth Amendment claim, finding that female staff were placed in the unit due to a staffing shortage.
2. *Barton v. Corrs. Corp. of America*, 2005 WL 5329514 (N.D. Okla., Sept. 1, 2005): Male and female inmates brought class-action suit challenging the constitutionality of the facility's cross-gender search policy. The court held that the plaintiffs had not established common questions of law and fact, and dismissed the suit. The court found the policy



requiring “reasonable suspicion” for cross-genders searches would only be common the plaintiffs who were searched under the same circumstances.

3. *Jones v. Harrison*, 864 F. Supp. 166 (D. Kan. 1994): A male inmate was strip searched in the presence of a female officer. The court found that the search did not violate inmate's right to privacy. The strip search was conducted as part of emergency intervention to prevent a suspected disturbance, as prison authority had heard the inmate was an instigator of the disturbance.

## II. Male Correctional Staff /Female Inmate

### A. *Successful Agency Defense*

1. *Graham v. Van Dycke*, 564 F. Supp. 2d 1305 (D. Kan. 2008): Male officers stripped a female inmate and put her in a suicide gown. The court granted the defendant's motion for summary judgment, finding that an emergency situation existed. There were many inmates “in crises” that day, five officers had called in sick for their shifts, two were on leave, and one was in training. The court found it would have been impractical or impossible to have a female officer handle the plaintiff.

## 11<sup>th</sup> Circuit (Alabama, Florida, Georgia)

### I. Female Correctional Staff /Male Inmate

#### A. *Successful Inmate Claim*

1. *Fortner v. Thomas*, 983 F.2d 1024 (11th Cir. 1993): Male inmates in a state facility brought suit against prison officials, claiming that female correctional officers were assigned to their living quarters, and acted unprofessionally when they viewed the inmates in the nude. The inmates claimed that the officers flirted with them, and seduced and solicited the inmates into exposing their genitals. The court found that the inmates did state a claim for privacy, and denied the defendants' motion to dismiss as it pertained to injunctive relief.
2. *Wilder v. Lawson*, 2011 WL 3703398 (S.D. Ga. Jul. 26, 2011): A male inmate brought suit against the Sheriff and individual officers at a jail, alleging that he was subjected to pat down and strip searches conducted by female jailers. He claimed that he suffered "ongoing psychological and emotional trauma," as a result. The court denied the defendant's motion to dismiss, and permitted the claim to proceed for nominal damages, declarative, and injunctive relief.

#### B. *Successful Agency Defense*

1. *Webb v. White*, 2008 WL 4889116 (M.D. Fla. Nov. 12, 2008): A male inmate was strip searched in the sight range of a female correctional officer. The court dismissed the suit based on qualified immunity, finding that the search was not established as "clearly unlawful."



## II. Male Correctional Staff /Female Inmate

### A. *Successful Inmate Claim*

1. *Hammond v. Gordon County*, 316 F. Supp. 2d 1262 (N.D. Ga. 2002): Allegations that male jail officer required female inmate to strip in order to receive toiletries, and inserted his finger in inmate's vagina, stated claim that officer violated inmate's Eighth Amendment rights.

### B. *Successful Agency Defense*

1. *Skurstenis v. Jones*, 236 F.3d 678 (11th Cir. 2000): Plaintiff was arrested for drunk-driving and submitted to a strip search by a female officer after being booked. The next morning she was instructed to go to the infirmary, where a male in jeans and a t-shirt who wore no badge or ID told her to pull down her pants so that he could check her for "crabs." He ran his fingers back and forth through her pubic hair 8 or 10 times looking for lice. The district court held there was simply no legitimate basis for the pelvic inspection, which becomes "absolutely uncivilized" when conducted by an unknown male. The Eleventh Circuit reversed, holding that the search conducted by male member of hospital staff, "was reasonable in manner and scope and did not violate Fourth Amendment."

## D.C. Circuit

### I. Male Correctional Staff /Female Inmate

#### A. *Successful Inmate Claim*

1. *Shaw v. District of Columbia*, 825 F. Supp. 2d 173 (D.D.C. 2011): A female transgender inmate was arrested and brought to the District of Columbia Superior Court, under the supervision of the U.S. Marshals. A male deputy marshal took her to a room with other male inmates and searched her, although a female deputy had been prepared to do the search. The male marshal groped her breasts, buttocks, and between her legs repeatedly. The marshal made jokes about her breasts, stating, "those must be implants, because hormones don't make breast stand up so perky like that." The court dismissed her Eighth Amendment claim, as the Eighth Amendment does not apply to pre-trial detainees. The court also dismissed her tort claims of assault, battery, and negligence, as she failed to respond to these claims in response to the motion to dismiss. The court permitted her claims under the D.C. Human Rights Act and intentional or negligent infliction of emotional distress to proceed, and remanded to the Superior Court of the District of Columbia.