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HIV/AIDS
in
Prisons

2004/2005

A Moral and Legal Obligation to Act

Prison systems have a moral and legal responsibility to do whatever they can to prevent the spread of infectious diseases among prisoners, and to provide care, treatment, and support equivalent to those available outside. Good prevention and care in prisons are in the interest of everyone – prisoners, prison staff, and the public.

This is one of a series of 13 info sheets on
HIV/AIDS in prisons.

1. HIV/AIDS and Hepatitis C in Prisons: The Facts
2. High-Risk Behaviours behind Bars
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The State's Duty with Respect to Health

By its very nature, imprisonment involves the loss of the right to liberty. However, prisoners retain their other rights and privileges "except those necessarily removed or restricted by the fact of their incarceration." In particular, prisoners, as every other person, have "a right to the highest attainable level of physical and mental health": the state's duty with respect to health does not end at the gates of prisons.

Recommendations on HIV/AIDS and drug use in prisons have all stressed the importance of prevention in prisons, and have suggested that condoms, bleach, sterile needles, and methadone maintenance treatment be available to prisoners; and have stressed the importance of providing inmates with care, treatment, and support equivalent to those available outside. According to the 1993 World Health Organization (WHO) Guidelines on HIV/AIDS in Prisons, "[a]ll prisoners have the right to receive health care, *including preventive measures*, equivalent to that available in the community without discrimination." WHO states that prison administrations have a responsibility to put in place policies and practices that will create a safer environment and diminish the risk of transmission of HIV to prisoners and staff alike. This is consistent with the *Mission of the Correctional Service of Canada*, according to which the provision of a "safe, secure and clean environment that promotes health and well-being" is a "strategic objective."

Legal Action by Prisoners

The law could be used to force prison systems to introduce preventive measures or to hold prison systems liable for not providing them and for the resulting transmission of infections in prison.

In a number of cases, prisoners have already initiated legal action in order to obtain access to condoms and to methadone treatment. In such cases, this has provided the catalyst necessary for the institution of long-recommended changes. Courts have not even had to rule on the substantive issues raised: governments and correctional authorities, at least in part because of these cases, have acted before the courts forced them to do so, and made condoms and methadone treatment available.

Further, in at least two cases, Australian prisoners initiated legal action to secure damages for having contracted HIV in prison. The first prisoner seroconverted while in a maximum-security institution in Queensland and launched an action for damages for negligence against the prison system. The second prisoner testified from his hospital bed that he had contracted HIV while under the control and custody of the New South Wales prison authorities, and instituted a negligence claim against the authorities for failing to provide him with access to condoms and sterile needles while he was incarcerated. Because he

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died shortly after the commencement of the pre-trial hearing and left no estate or dependants, the case ended with his passing.

Finally, in Canada, a prisoner claims that he contracted HIV in prison because of the prison system's negligence, and that, once infected, he did not receive proper care. He is currently suing the Correctional Service of Canada for damages.

These legal cases have been important, but it would be a shame if prisoners were obliged to continue to have recourse to the courts in order to claim and have recognized their rights to access preventive means. There can be no question that the issue of providing protective means to prisoners would be more appropriately dealt with by swift action by correctional systems than by court action.

Why Should We Care?

Prisoners, even though they live behind bars, are part of our communities. Most prisoners leave prison at some point to return to their community, some after only a short time inside. Some prisoners enter and leave prison many times. Prisoners deserve the same level of care and protection that people outside prison get. They are sentenced to prison, not to be infected:

[B]y entering prisons, prisoners are condemned to imprisonment for their crimes; they should not be condemned to HIV and AIDS. There is no doubt that governments have a moral and legal responsibility to prevent the spread of HIV among prisoners and prison staff and to care for those infected. They also have a responsibility to prevent the spread of HIV among communities. Prisoners are the community. They come from the community, they return to it. Protection of prisoners is protection of our communities (United Nations Commission on Human Rights, 1996).

Introduction of preventive measures in prisons, and providing prisoners with medical care equivalent to that available outside, is in the interest of all concerned. Any measure undertaken to prevent the spread of HIV and other infections will benefit prisoners, staff, and the public. It will protect the health of prisoners, who should not, by reason of their imprisonment, be exposed to the risk of a deadly condition. It

will protect staff: lowering the prevalence of infections in prisons means that the risk of exposure to these infections will also be lowered. It will protect the public. Most prisoners are in prison only for short periods of time and are then released into their communities. In order to protect the general population, prevention measures need to be available in prisons, as they are outside.

Additional Reading

G Betteridge, R Jürgens. *Prisoners, HIV/AIDS, and Human Rights*. Montréal: Canadian HIV/AIDS Legal Network, 2004. Discusses the legal responsibilities of prison systems. Via www.aidslaw.ca/Maincontent/issues/prisons.htm.

D Kloeze. Inmate sues the Correctional Service of Canada. In R Jürgens (ed). *HIV/AIDS in prisons: New developments. Canadian HIV/AIDS Policy & Law Review* 2002; 6(3): 13-19, at 13-15. At www.aidslaw.ca/Maincontent/otherdocs/Newsletter/vol6no3-2002/prisons.htm.

Correctional Service Canada. *Mission of the Correctional Service of Canada*. Ottawa: Ministry of Supply and Services Canada, 1997. At www.csc-scc.gc.ca/text/pblct/mission/index_e.shtml.

Joint United Nations Programme on HIV/AIDS. United Nations Commission on Human Rights (Fifty-second Session, item 8 of the agenda). *HIV/AIDS in Prisons – Statement by UNAIDS*. Geneva, April 1996. Argues that the treatment of prisoners in many countries constitutes a violation of the prisoners' human rights. Via www.unaids.org.

H Krever, The Honourable Mr Justice. *Commission of Inquiry on the Blood System in Canada: Final Report*. Volumes 1-3. Ottawa: Minister of Public Works and Government Services Canada, 1997. After this report, governments should know better than to continue fragmented, reactive approaches to the public health crisis occurring in prisons.

J Skirrow. Lessons from Krever – a personal perspective. *Canadian HIV/AIDS Policy & Law Newsletter* 1999; 4(2/3): 35-41. Discusses nine lessons that emerge from the Krever Report. At www.aidslaw.ca/Maincontent/otherdocs/Newsletter/spring99/krever.htm.

Third, revised and updated version, 2004. Copies of this info sheet are available on the Network website at <http://www.aidslaw.ca/Maincontent/issues/prisons.htm> and through the Canadian HIV/AIDS Information Centre (email: aidssida@cpha.ca). Reproduction of the info sheet is encouraged, but copies may not be sold, and the Canadian HIV/AIDS Legal Network must be cited as the source of this information. For further information, contact the Network (tel: 514 397-6828; fax: 514 397-8570; email: info@aidslaw.ca). **Ce feuillet d'information est également disponible en français.**

Funded by Health Canada, under the Canadian Strategy on HIV/AIDS. The findings, interpretations, and views expressed in this publication are entirely those of the author and do not necessarily reflect the official policy or positions of Health Canada.