

FEATURE ARTICLE

Prisons, needles and OHS

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Abstract

Drug use occurs in prisons despite the strict prohibitionist approach that is taken. In Australia, prison needle and syringe supply is currently unregulated and uncontrolled. Prison officers risk sustaining needlestick injuries when conducting searches of inmates, cells and other areas, thereby risking bloodborne virus infections, such as HIV and hepatitis C. As such, there is a need to explore whether a regulated needle and syringe program (NSP) in Australian prisons could contribute to a safer workplace. International experience has shown that regulated prison NSPs do contribute to institutional safety, and that they do not result in syringes being used as weapons. The introduction of prison-regulated and controlled NSPs would be consistent with efforts to comply with OHS principles, as well as the approved standards for corrections in Australia.

Keywords: prisons; needle and syringe programs; occupational health and safety; drug use; needlestick injuries.

Introduction

The risk of needlestick injury is faced by prison officers on a regular basis. Australian prisons do not have regulated needle and syringe programs (NSPs). Rather, injecting equipment is stored in a clandestine manner, meaning that prison officers searching prisoners and cells are at risk of injury. While the introduction of a prison-based NSP may reduce this risk, the suggestion of a regulated needle and syringe supply in prisons tends to elicit emotional responses. As one prison officer noted in 2007:

“No fucking way. No. If they introduced anything like that then we are out on strike. I don’t care about fucking Spain. Go and commit crime in Spain if that is what you want.”¹

Occupational health and safety is a global priority. According to the International Confederation of Free Trade Unions, “[worldwide] over two million women and men die each year from unsustainable forms of work and 160 million more become victims of work-related diseases”.²

The *National OHS Strategy 2002–2012* articulates the shared vision of all Australian governments that work-related death, injury and disease are not inevitable, and can be prevented. Prisons are fully covered by this strategy.

Within the health sector, the prison setting is commonly perceived as the locus of transmission of bloodborne viruses and other infectious diseases, such as human immunodeficiency virus (HIV) and hepatitis C virus (HCV). This article explores whether the operation of an NSP can contribute to achieving a safer workplace for prison officers.

Drug use in prisons

A 2004 report by the Australian Institute of Criminology found that, for 14% of female prisoners and 10% of male prisoners, the most serious offence for which they were convicted was drug-related.³

The 2004 National Prison Entrants’ Bloodborne Virus Survey showed that 59% of screened prison entrants had a history of injecting drug use, and 38% had injected drugs during the one-month period before entering prison.⁴

The demand for drugs is high inside prisons. Despite a strict prohibitionist approach to drugs, they still find their way into prisons. A 2003 survey conducted in New South Wales found that, of the 789 prisoners from 27 correctional centres, 44% reported a history of injecting drug use and, of these, close to half reported that they had injected while in prison.⁵

The Australian Needle Syringe Program Survey reported that, of the 254 people who indicated that they had been in prison the year before, 37% said that they had injected while in prison.⁶

The Victorian Ombudsman stated:

“Prison administrators must address this challenge by taking a more vigorous approach to the early detection of illicit drugs, both at entry to a prison and by way of random drug testing and searches.”⁷

A 2006 study conducted by the National Drug and Alcohol Research Centre found that, among 246 prison officers surveyed in Victoria and Western Australia, 163 (that is, two-thirds) reported finding syringes in prison.⁸

The response by prison authorities, supported by their industrial associations, has been a concentration of efforts to prevent drugs from being brought into prisons. The emphasis in Australian prisons is to control supply and undertake surveillance through:

- random and periodic searches of cells and common areas
- dog searches of prisoners and staff, and
- high-level entrance security to prevent visitors and new prisoners from bringing contraband items (including drugs) into prison.

The management of contraband in prisons is part of the prison routine. The Victorian Ombudsman stated that:

“The availability of contraband contributes to a weakening of good governance within a prison and undermines the aims of making a prison environment safe and secure.”⁹

An article in *Australian Doctor* describes it thus:

“The blanket prohibition has made syringes a scarce, high-value commodity in prison . . . Needles are routinely shared, sometimes between as many as 100 inmates. When blunt, it is not unheard of for them to be sharpened on prison walls.”¹

Yet, despite strategies to control contraband in prison settings, drug use continues to occur and needles and syringes continue to find their way into prisoners' hands. It could be argued that tackling a complex problem with one simple approach is bound to fail. It is therefore reasonable to suggest that the prison system could consider complementary measures to reduce the harms associated with drug use.

Reducing harm in prisons

The 2004 National Prison Entrants' Bloodborne Virus Survey showed that 34% of people entering prison have antibodies to HCV. Among those entering prison with a history of injecting drug use, 56% are HCV antibody positive. Among the 612 people surveyed, HIV prevalence was low, that is, only three (< 0.5%) tested positive for HIV antibodies.⁴

Some Australian prisoners contract HCV while in prison — and this is mostly as a result of sharing contaminated injecting equipment and unsafe barbering.^{10,11} The 2001 NSW Inmate Health Survey showed that, among inmates with a history of injecting in prison, 72% of women and 67% of men had used injecting equipment after someone else. About one-third stated that the needle had been used by five or more people before them.¹²

At common law, it is irrefutable that prison authorities owe a duty of care to prisoners to protect them from foreseeable harm while they are in custody. However, while it would seem that the best way to respond to the evidence (described above) is to make

sure that drugs are prevented from entering the prison system, complementary measures are also required to ensure that those who are using drugs in prisons have the means to protect themselves from bloodborne viruses (this would extend to prison staff and visitors to prisons, and to the communities to which offenders return).

In 2004, the Australian National Council on Drugs commissioned a review of supply, demand and harm reduction strategies in Australian prison settings. The review found that supply reduction strategies were widespread in Australian prisons, although they were relatively expensive, had not been evaluated, and had potential unintended and negative consequences. The implementation of demand reduction strategies was reasonable, relatively inexpensive, and favourably evaluated. However, harm reduction strategies were the least likely to be implemented — even though they were relatively inexpensive and evaluations had been favourable.¹³

This is inconsistent with the approaches to illicit drug use in the community, which are based on a comprehensive approach involving demand reduction, supply reduction, and harm reduction. Resources are spent on establishing and providing drug treatment centres to help people in the community stop using drugs, including detoxification services and opioid substitution programs. Sterile needles and syringes, information, and education on minimising the health risks associated with drug use are widely available for those who need them.

In 1990, the United Nations adopted the Basic Principles for the Treatment of Prisoners, endorsing the “principle of equivalence”. Based on this principle, the World Health Organization, the Joint United Nations Programme on HIV/AIDS, and the United Nations Office of Drug Control have stated that “the higher the prevalence of injecting drug use and associated risk behaviour is in prison, the more urgent the introduction of prison-based needle and syringe programs becomes”.¹⁴

The Australian Ministerial Council on Drug Strategy has recently released the National Corrections Drug Strategy which unequivocally supports harm minimisation, that is, a balance between demand reduction, supply reduction and harm reduction initiatives to improve health, social and economic outcomes for adult and juvenile offenders in correctional and community-based facilities and services. The National Corrections Drug Strategy states:

“Correctional facilities are environments that concentrate [on] a subset of the population who are experiencing higher than normal levels of impairment in multiple domains, including drug problems. This presents a unique opportunity to address the range of problems facing this population that does not adequately access healthcare in the community.”¹⁵

However, the strategy also acknowledges the challenge of providing equity of service in correctional settings when “some community harm-minimisation practices are incongruent with contemporary correctional practices or public expectation”.¹⁵

The *Standard Guidelines for Corrections in Australia* (which were endorsed by Australian corrections ministers and revised in 2004) state:

“These guidelines have been developed in accordance with the principle that prisoners are:

- treated with respect as human beings and not to be subject to harsh or degrading treatment, physical or psychological abuse.
- owed a duty of care by the Administering Department.

...

Prisons should identify, minimise and manage risk.”¹⁶

Prisons should provide for the personal safety of staff and prisoners by ensuring that the prison environment protects the physical, psychological and emotional wellbeing of individuals.

Prisons should develop and implement a prisoner safety regime which:

- identifies prisoners who present a risk to prison staff or other prisoners
- places prisoners in situations which minimise their opportunities to be harmed or to harm others
- ensures that no prisoner injuries or unnatural deaths occur, and
- provides a management system that meets the different and particular needs of all prisoners, including “at-risk” prisoners.¹⁶

Regulating the exchange of injecting equipment in prisons

The authors of this article believe that implementing NSPs in prisons is consistent with the responsibilities of governments and prison authorities. Needle and syringe programs in prisons provide a way to manage and respond to the harms associated with injecting drug use.

Discussions about NSPs in prisons have largely focused on preventing the transmission of bloodborne viruses among prisoners and tackling injecting drug use as a health issue. However, from the perspective of prison officers, the issue is one of safety in the workplace.

One of the arguments against the implementation of NSPs in prisons is that syringes will be used as weapons. A representative of the NSW Prison Officers Vocational Branch stated that:

“... needles are weapons and we don’t want to deal with more weapons in the prison system.”¹

In NSW in 1991, a prison officer was stabbed with an HIV-infected blood-filled syringe.¹⁷ He subsequently died of AIDS. The assailant was an acutely mentally ill prisoner who was in the advanced stages of an AIDS-related illness, and who was not being treated with anti-retroviral medications. It should be noted that needles and syringes were being illegally circulated in the prison, offering no protection to the prison officers. This unfortunate incident has not been repeated anywhere in the world

since. Although no record of an investigation into this workplace fatality by the NSW WorkCover Authority has been found, the NSW Parliament did pass the *Prisons (Syringe Prohibition) Amendment Act 1991*.¹⁸

An article written by a representative of the Prison Officers Vocational Branch discussing the management of HIV/AIDS in prisons stated:

“Every time officers enter gaol they do not know whether or not they walk out again at the end of the shift. Prisons are unpredictable places, calmness may exist one minute and in the next, unbelievable scenes of violence and destruction erupt.”¹⁹

Needle and syringe programs in prisons have been operating for up to 10 years in Switzerland, Germany, Luxembourg, Spain, Moldova, Kyrgyzstan and Belarus, and the introduction of prison-regulated and controlled NSPs in these countries has not resulted in instances of syringes being used as weapons (it should be noted that no NSP was sanctioned in NSW at the time of the prison officer's assault, nor subsequently).²⁰ In fact, international experience shows that prison-regulated and controlled NSPs actually increase institutional safety.²⁰

Acknowledging the work experience of correctional officers

The role of prison officers is not only about surveillance, security and control, but also includes human elements. Their competencies include:

- maintaining the health, safety and welfare of offenders
- responding to offenders who are under the influence of drugs or alcohol
- protecting the safety and welfare of vulnerable offenders
- protecting the safety and welfare of Aboriginal and Torres Strait Islander offenders, and
- undertaking case management.¹⁶

The representative of the Prison Officers Vocational Branch wrote in his article:

“The possibility of a direct assault on an officer with a blood-filled syringe is one that will always be there . . . So is the problem of getting killed with an iron bar or a length of wood.”¹⁹

The authors of the present article believe that there is compelling evidence for prison staff to advocate for NSPs in Australian prisons, for example:

- out of 163 prison officers surveyed in Victoria and Western Australia, only 17 had ever sustained a needlestick injury.²¹ These injuries occurred in the course of searching inmates and cells or during other routine duties. None of the reported incidents involved injuries that were the result of a deliberate assault, and
- no syringes have been used as weapons in a prison setting in the countries outside of Australia which have introduced prison-regulated and controlled NSPs.²⁰

A regulated injecting equipment exchange could actually reduce the incidence of needlestick injuries, as it provides a mechanism for knowing:

- how many needles are located in a prison
- where the needles are located
- the removal (exchange) of contaminated equipment, and
- how the injecting equipment will be stored.

Potential models of good practice

Regulation and control are hallmarks of the prison system. As such, the introduction of prison-regulated and controlled NSPs (as occurs in other parts in the world) would not be at odds with current practice. In the community, the distribution of sterile injecting equipment is regulated, controlled and restricted to specific classes of people. In most Australian jurisdictions, this would be pharmacists, their assistants, and duly authorised and approved NSPs.

A model for a prison-regulated and controlled NSP that has been used overseas involves prisoners being required to keep their “kit” in a pre-determined location in their cells. Since the injecting equipment is part of an approved program within the prison, there is no need for prisoners to conceal the needles for fear of being punished.²⁰

In Spain, retractable needle and syringe sets are provided, along with a disposal container wherein prisoners are required to store their used equipment. It is not an offence to possess prison-issued needle and syringe sets, but it is an offence to have used equipment outside of their disposal containers.

The introduction of prison-regulated and controlled NSPs would also be consistent with OHS legislation. In all Australian jurisdictions, employers must provide safe and healthy workplaces and safe systems of work, and employees must work in as safe a manner as possible. This means providing and maintaining a working environment that is “safe for the employer’s employees and without risk to their health”.²²

What is reasonable and practicable?

Is it reasonable and practicable to have increased surveillance and control to prevent contraband needles and syringes from entering prisons? Or, is it reasonable and practicable to consider prison-regulated and controlled NSPs? This would mean that there is greater likelihood that needles and syringes are sterile or single-used, are kept in safe disposal containers at all times when not being used, and are disposed of safely once they have been used.

The nationally-endorsed *Standard Guidelines for Corrections in Australia* articulate the following clauses on providing a safe environment and managing risk:

- prisons should identify, minimise and manage risk, and
- prisons should provide for the personal safety of staff and prisoners by ensuring that the prison environment protects the physical, psychological and emotional wellbeing of individuals.¹⁶

The National Drug Strategy is quite clear on this issue:

“Governments do not condone illegal risk behaviours such as injecting drug use: they acknowledge that these behaviours occur and that they have a responsibility to develop and implement public health and law-enforcement measures designed to reduce the harm that such behaviours can cause.”²³

In an environment where drug use is prohibited, supplying sterile needles and syringes may seem like a contradiction.

Needle and syringe programs are but one element of a comprehensive range of strategies to address drug use issues in the community. The introduction of prison-regulated and controlled NSPs would be part of a range of strategies to create a safer environment for both prisoners and prison staff.

The National Drug Law Enforcement Research Fund released a monograph in 2004 on the role of the police in preventing and minimising illicit drug use.²⁴ There are some parallels, given that prison officers (like police officers) are enforcers of law, regulation and order. In addition, police might encounter similar drug-related issues in the course of their work, including violence, needlestick injuries, and corruption. Just like prison officers, the role of police officers has continued to evolve. For example, the traditional view of policing is that it is “reactive, non-collaborative, and reliant upon coercive strategies”.²⁴ The new collaborative and proactive models such as “community policing” and “problem-oriented policing” have focused on identifying and solving problems using a partnership approach.

Interestingly, the police were, and still are, one of the strongest supporters of NSPs in the community, acknowledging the public health contribution of NSPs in preventing the spread of bloodborne viruses and thereby protecting the community. Australian police forces are now supporting community-based NSPs. For example:

“Policing that is done in a balanced and constructive way can contribute to better public health programs. It is not our core business . . . we advocate for public health, and a lot of the time the police have been ahead of public opinion on many things including needle and syringe programs. We’re not social workers but there is a role there . . . I think we need to try to get the balance right.”²⁵

Prison officers owe it to themselves to demand a regulated prison NSP in order to protect their security and health and to follow the lead of their police colleagues.

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