

The Criminal Justice System and HIV/AIDS

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Introduction

The United States has the highest incarceration rate in the world. At the end of 2005, over seven million people—one in every 32 Americans—were in jail, prison, or on parole or probation.¹ HIV is a significant concern in U.S. jails and prisons considering that one quarter of people living with HIV spend time in the correctional system.² Prevalence rates in facilities across the country range as high as seven percent,³ and the prevalence rate of confirmed AIDS cases is more than two and a half times the rate in the general population.⁴

To change the course of the HIV epidemic in our country we must understand the true extent of HIV infection among incarcerated populations, most of whom eventually return back to their communities. We must also commit to implementing prevention, care, treatment, and post-release strategies that are effective, of high quality and respectful of human rights.

HIV Prevention, Education, and Testing

Condoms are distributed in only a few state and local correctional facilities. In a recent report, however, the Centers for Disease Control and Prevention urged corrections departments to evaluate the feasibility of implementing condom distribution programs in their facilities.⁵ Providing condoms to prisoners may yield additional public health advantages beyond the prison walls if exposure to and experience with condoms in this setting translate into increased use after release.⁶ Additionally, sterile syringes and bleach kits are also available only to a handful of inmates even though the sharing of equipment for injecting drugs, tattooing and body piercing are well documented risk-factors for HIV transmission regularly occurring in prisons and jails.⁷

Evidence suggests that HIV education programs, particularly peer-led programs, are effective in engaging incarcerated populations. Through peer-led programs, inmates can receive information about HIV transmission, available care options, and safer sexual and drug using practices from respected members of their community.⁸

Currently, HIV testing policies vary from state to state. Inmates may receive an HIV test if they have HIV-related symptoms, request a test, belong to a specific “high-risk” group, or if they are involved in an incident in which an inmate is exposed to possible HIV transmission. Nineteen jurisdictions test all incoming inmates and five test all inmates upon release, most on a mandatory basis.⁹ Mandatory testing of all inmates has not been shown to be an effective public health measure. Mandatory—as opposed to opt-out testing—leaves inmates with fewer opportunities to receive counseling, removes the right of choice, and may lead to discrimination or segregation within the prison or jail. Additionally, it is viewed by some as unethical, ineffective, and an invasion of privacy.¹⁰ A strong, rights-based testing program, on the other hand, has the ability to successfully identify new HIV cases and ensure a better public health response.

Populations At-Risk

HIV continues to disproportionately affect minorities at the same time that they are also overrepresented in the country’s jails and prisons. In 2005, 60% of state and federal inmates were black or Hispanic.¹¹ A comparison of prison and total AIDS deaths found that African Americans comprise more than 66% of AIDS deaths in prison compared with 39% of total AIDS deaths. A 2001 report of AIDS cases identified in Maryland’s prisons noted that 91% were African American, compared with 75% of AIDS cases statewide.¹² Current data shows that Hispanic and Latino inmates also disproportionately test positive for HIV.¹³

Incarcerated women are more likely than incarcerated men to be living with HIV. In 2005, 2.3% of state and federal female inmates were HIV positive compared to 1.8% of men. In some states, over ten percent of all female inmates are known to be HIV positive.¹⁴ Women are also more likely than men to be incarcerated for drug-related offenses and to be exposed to HIV through injecting drug use¹⁵ or sex with drug users.

With a heavy national focus on arresting, prosecuting and imprisoning those who engage in drug use and the drug trade, the criminal justice system currently houses a considerable number of drug users living with or at high risk for contracting HIV. In 2005, 55% of federal inmates were serving sentences for drug-related offenses.¹⁶ Additionally, in 1999, the percentage of men testing positive for drug use at the time of arrest was as high as 77% and for women as high as 81% in some cities.¹⁷ Injection drug use is a well-documented risk factor for HIV, and according to a study of prison AIDS cases, 61% of prisoners had injected drugs compared with 27% of total US AIDS cases.¹⁸ High rates of HIV can also be found among the sex partners of injection drug users,¹⁹ so effective prevention interventions with this community have the potential for even broader impact.

Current Legislation

Representative Maxine Waters introduced HR 1943, the Stop AIDS in Prison Act of 2007 that would require the Federal Bureau of Prisons to test inmates upon entering and exiting federal prison. The legislation includes an opt-out provision, allows for inmates to request an HIV test, and ensures that inmates found to be HIV positive will receive treatment. On September 25, 2007, the House of Representatives passed the bill by a 2/3 majority voice vote.

Representative Barbara Lee introduced HR 178, the Justice Act of 2007, which would allow community

based organizations to distribute condoms and engage in STD and HIV counseling and education activities in Federal correctional facilities.

Conclusion

Given that jails and prisons contain high concentrations of persons living with HIV and individuals at great risk for acquiring HIV, intervention programs implemented in correctional facilities have the potential to substantially impact the epidemic. Sound policies include:

- Implementing system-wide voluntary HIV testing and counseling and surveillance in order to understand the full extent of HIV infection among this vulnerable population;
- Providing care and treatment to all HIV positive inmates;
- Providing access to counseling and language appropriate materials on HIV prevention and care to all inmates;
- Considering wider distribution of condoms, sterile syringes, and bleach kits;
- Working closely with community based organizations and medical providers on offering effective discharge and transitional planning.

Providing inmates with the tools necessary to maintain healthy lives during and following their incarceration is necessary in combating the HIV epidemic both in the corrections system and our communities.

¹ U.S. Department of Justice. Office of Justice Programs. (November 30, 2006). *Press Release: One in every 32 adults was in a prison, jail, on probation, or on parole at the end of 2005* from <http://www.ojp.usdoj.gov/bjs/pub/press/priprpr.htm>.

² Springer, S. & Altice F.L. (2005). Managing HIV/AIDS in correctional settings. *Current HIV/AIDS Reports*. Vol. 2 Number 4.

³ U.S. Department of Justice. Office of Justice Programs. Bureau of Justice Statistics. (2007). *HIV in prisons, 2005*. Retrieved September 2007 from <http://www.ojp.gov/bjs/pub/pdf/hivp05.pdf>.

⁴ U.S. Department of Justice. Office of Justice Programs. Bureau of Justice Statistics. (2007). *HIV in prisons, 2005*. Retrieved September 2007 from <http://www.ojp.gov/bjs/pub/pdf/hivp05.pdf>.

⁵ Centers for Disease Control and Prevention. (2006). HIV transmission among male inmates in a state prison system -- Georgia, 1992-2005. *MMWR*. 55(15), 421-426. Retrieved September 2007 from <http://www.cdc.gov/MMWR/preview/mmwrhtml/mm5515a1.htm>.

⁶ Macher, A., Kibble, D. & Wheeler, D. (2006). HIV transmission in correctional facility. *Emerging Infectious Diseases*. 12(4), 669-671. Retrieved September 2007 from <http://www.medscape.com/viewarticle/529449>.

⁷ Centers for Disease Control and Prevention. (2006). HIV transmission among male inmates in a state prison system -- Georgia, 1992-2005. *MMWR*. 55(15), 421-426. Retrieved September 2007 from <http://www.cdc.gov/MMWR/preview/mmwrhtml/mm5515a1.htm>.

⁸ Centers for Disease Control and Prevention. (2006). HIV transmission among male inmates in a state prison system -- Georgia, 1992-2005. *MMWR*. 55(15), 421-426. Retrieved September 2007 from <http://www.cdc.gov/MMWR/preview/mmwrhtml/mm5515a1.htm>. And Kantor, E. (2006). *HIV transmission and prevention in prisons*. University of California San Francisco. Retrieved September 2007 from <http://hivinsite.ucsf.edu/InSite?page=kb-07-04-13>.

⁹ U.S. Department of Justice. Office of Justice Programs. Bureau of Justice Statistics. (2007). *HIV in prisons, 2005*. Retrieved September 2007 from <http://www.ojp.gov/bjs/pub/pdf/hivp05.pdf>.

¹⁰ Avert. *HIV testing in the USA*. Retrieved September 2007 from <http://www.avert.org/hiv-testing-usa.htm>

¹¹ U.S. Department of Justice. Office of Justice Programs. Bureau of Justice Statistics. (2006). *Prisoners in 2005*. Retrieved September 2007 from <http://www.ojp.usdoj.gov/bjs/pub/pdf/p05.pdf>.

¹² Kantor, E. (2006). *HIV transmission and prevention in prisons*. University of California San Francisco. Retrieved September 2007 from <http://hivinsite.ucsf.edu/InSite?page=kb-07-04-13>.

¹³ U.S. Department of Justice. Office of Justice Programs. Bureau of Justice Statistics. (2007). *HIV in prisons, 2005*. Retrieved September 2007 from <http://www.ojp.gov/bjs/pub/pdf/hivp05.pdf>.

¹⁴ *Ibid*

¹⁵ The Sentencing Project. (2006). *Factsheet: Women in Prison*. Retrieved September 2007 from http://www.sentencingproject.org/Admin/Documents/publications/women_factsheet_prison.pdf.

¹⁶ U.S. Department of Justice. Office of Justice Programs. Bureau of Justice Statistics. (2006).

Prisoners in 2005. Retrieved September 2007 from <http://www.ojp.usdoj.gov/bjs/pub/pdf/p05.pdf>.

¹⁷ Office of National Drug Control Policy. (2002). *Drug Use Trends*. Retrieved September 2007 from <http://www.whitehousedrugpolicy.gov/publications/factsht/druguse/>.

¹⁸ Kantor, E. (2006). *HIV transmission and prevention in prisons*. University of California San Francisco. Retrieved September 2007 from <http://hivinsite.ucsf.edu/InSite?page=kb-07-04-13>.

¹⁹ Friedman, S.R., Bolyard, M. & Zenilman, J., Mateu-Gelabert, P., & Sandoval, M. (2006). *Non-injector sex partners of IDUs: Results from a sexual network study of infection*. Paper presented at American Public Health Association Annual Meeting, November 4-8, Boston, Massachusetts.

Retrieved September 2007 from http://apha.confex.com/apha/134am/techprogram/paper_128302.htm.