

# 4

## HIV/AIDS in Prisons

2004/2005

# Prevention: Condoms

*Info sheets 1-3 in this series showed how prevalent HIV infection and hepatitis C are in prisons; that the behaviours through which these infections can be transmitted are also prevalent; and that outbreaks of infection have and will continue to occur unless efforts to prevent the spread of infections are stepped up. Info sheets 4-7 discuss what can be done to reduce the spread of HIV and other infections in prison.*

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
3. HIV Transmission in Prison
4. Prevention: Condoms
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## Providing Condoms

According to the World Health Organization, 23 of 52 prison systems surveyed allowed condom distribution as early as late 1991. Significantly, no system that has adopted a policy of making condoms available in prisons has reversed the policy, and the number of systems that make condoms available has continued to grow every year. For example, in a number of surveys undertaken in Europe, the proportion of prison systems that declared having made condoms available rose from 53 percent in 1989 to 75 percent in 1992 and 81 percent in 1997. In the most recent survey, condoms were available in all but four systems.

In 1995 in Australia, 50 prisoners launched a legal action against the state of New South Wales (NSW) for non-provision of condoms, arguing that “[i]t is no proper part of the punishment of prisoners that their access to preventative means to protect their health is impeded.” Since then, at least in part because of the legal action, the NSW government has decided to make condoms available. Other Australian systems have also made condoms available. Only in the United States does only a small minority of prison systems make condoms available.

## Canadian Federal Prisons

In Canada’s federal prisons, condoms were made available on 1 January 1992. After some initial opposition, the decision to make them available has been well accepted and has not created any problems. However, in some prisons access to condoms remained limited. In particular, where access was restricted to distribution in health-care services, prisoners said they were afraid to pick up condoms for fear of being identified as engaging in homosexual activity and of being discriminated against. In response, and as a result of a recommendation by the Expert Committee on AIDS and Prisons, the federal prison system announced in 1994 that condoms, dental dams, and water-based lubricant would become more easily and discreetly available.

## Canadian Provincial Prisons

On 1 October 1989 the Northwest Territories adopted the first prison policy in Canada to allow for the distribution of condoms to inmates. Most other prison systems followed. However, even today, in some provincial prisons condoms, dental dams, and lubricant are not available, and in many provincial prisons they are not easily and discreetly available:

- British Columbia is an exception. In its provincial prison system, condoms have been easily and discreetly accessible for years.
- In Québec, a working group established by the Québec ministry of public security released a report in 1997 recommending wider and more

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discreet access to condoms. At present, distribution methods vary between prisons.

- Some jurisdictions such as Ontario, Alberta, and Nova Scotia, among others, continue their policy of making condoms available only through prison health services. Others, such as Saskatchewan and Manitoba, use different methods of distribution in different prisons, some necessitating a request to the health unit and some not.
- In four prison systems (New Brunswick, Newfoundland, Nunavut, and Prince Edward Island), condoms and dental dams are still not made available.

Not making condoms, dental dams, and lubricant available, or making them available only through prison medical services, runs against all Canadian and international recommendations. Because prisoners, on average, spend only 30 to 40 days in provincial prisons, the prevalence of sexual activity may be lower than in federal prisons, but sexual activity nevertheless occurs. In addition, studies have shown that, when prisoners have to ask for condoms at health-care services, few will do so. Making condoms available is not enough. They must be easily and discreetly accessible.

### Recommendation

Without any further delay, condoms, dental dams, and water-based lubricant need to be made easily and discreetly accessible to inmates in all prisons, in various locations throughout the institutions, and without prisoners having to ask for them.

Denial of HIV prevention measures such as condoms to prisoners exposes prisoners and the general community to disease. The potential liability of correctional authorities to civil action was recently illustrated by an out-of-court financial settlement achieved by a South African former prisoner who claimed that he had contracted HIV through sex while in prison

between 1993 and 1994. Condoms were introduced in South African prisons in 1996.

### Additional Reading

K Dolan, D Lowe, J Shearer. Evaluation of the condom distribution program in New South Wales prisons, Australia. *Journal of Law, Medicine & Ethics* 2004; 32: 124-128. The most recent of only a few evaluations of prison condom distribution programs.

R Lines. *Action on HIV/AIDS in Prisons: Too Little, Too Late – A Report Card*. Montreal: Canadian HIV/AIDS Legal Network, 2002. Contains information about provision of safer sex measures in all Canadian prison systems. Available at [www.aidslaw.ca/Maincontent/issues/prisons/reportcard/toc.htm](http://www.aidslaw.ca/Maincontent/issues/prisons/reportcard/toc.htm)

A DiCenso, G Dias, J Gahagan. *Unlocking Our Futures: A National Study on Women, Prisons, HIV, and Hepatitis C*. Toronto: PASAN, 2003. Examines access to safer sex measures among women in Canadian federal prisons. Available at [www.pasan.org](http://www.pasan.org).

Correctional Service Canada. *HIV/AIDS in Prisons: Final Report of the Expert Committee on AIDS and Prisons*. Ottawa: Minister of Supply and Services Canada, 1994. Recommends easy access to condoms and that consensual sexual activity “be removed from the category of institutional offences”; and deals with prevention of non-consensual sexual activity.

Joint United Nations Programme on HIV/AIDS. *Prisons and AIDS: UNAIDS Point of View*. Geneva: UNAIDS, 1997. States that “UNAIDS believes it vital that condoms, together with lubricant, should be readily available to prisoners.”

R Jürgens. Results of the Staff Questionnaire. In: Correctional Service of Canada. *HIV/AIDS in Prisons: Background Materials*. Minister of Supply and Services Canada, 1994, at 85-109. An overwhelming majority of 462 prison staff responding to a questionnaire said that making condoms available had created no problems.

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**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](mailto: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](mailto:info@aidslaw.ca)). **Ce feuillet d'information est également disponible en français.**

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