HIV/AIDS and PRISONERS:
The Case Against Segregation

Since the beginning of the AIDS epidemic there have been elements within government and public health who have demanded the segregation of people living with HIV/AIDS. While presently this debate has been quelled within the general community, it is a recurring debate within the prison system. In many parts of the U.S., for example, mandatory HIV testing and forced segregation of prisoners living with HIV/AIDS is standard practice. Here in Canada, the AIDS movement has continued to pressure the prison system to respond to the needs of the ever- increasing number of HIV positive prisoners, and some within the system are again discussing segregation as solution to this crisis.

In November 1996, Correctional Service Canada Commissioner Ole Ingstrup told the Parliamentary Subcommittee on AIDS that CSC does not see either mandatory testing or forced segregation as a useful part of their HIV/AIDS strategy. Still, recent moves by provincial and federal corrections towards adopting elements of the U.S. model - and a political climate which continues to scapegoat prisoners for societal woes - has raised concerns among AIDS and prisoners' rights activists about recent rumours within corrections about HIV and segregation.

In the Canadian prison system today, a combination of high rates of HIV prevalence among prisoners, the rising costs of treatment, and government cutbacks have created a situation where discussions about segregation are again coming to the fore. However, rather than a mandatory, forced segregation of imprisoned PHA’s - which would be seen as quarantine and subject to Charter challenge - today's discussions of segregation are framed in a more "benign" fashion.

The idea floated most often by CSC is the creation of a "specialized" care unit within one of the existing federal prisons. This health unit would be specially staffed and equipped to address the health care needs of people living with HIV/AIDS. HIV positive prisoners could then choose to be voluntarily transferred to this specialized institution, and thereby access "state-of-the-art" medical care. The argument goes that this model would save corrections money and provide imprisoned PHA’s with access to specialized medical, social, and dietary supports.

Sounds OK, right? Well, the reality is that however well intentioned, segregation has no place in any effective HIV/AIDS strategy. So what's wrong with this idea?

1) 'Voluntary' segregation at a prison providing specialized facility is not voluntary. The very existence of a prison whose health care unit provides "specialized" care for people living with HIV/AIDS is an admission that all the other prisons provide substandard care. Therefore the choice for imprisoned PHA’s becomes whether to have access to adequate medical care or inadequate medical care. This is not a voluntary choice, but rather a coercive one which would force many HIV positive prisoners to choose between accessing substandard medical care in an institution closer to their families and friends, or better care in an institution far from those supports.

2) CSC has the responsibility to provide consistent and adequate standards of health care in all its facilities. It is not justifiable for CSC to open a specialized health unit to deal with the HIV/AIDS epidemic within the prison system. Rather, it is their responsibility to ensure that all their health care staff across Canada are trained, equipped, and funded to provide medical care to PHAs.

The existence of a "specialized" prison would result in further deterioration of the already inconsistent levels of care available to PHA’s in other penitentiaries, and would limit avenues for legal redress by HIV positive prisoners and their advocates. For example, if a PHA refuses the "voluntary" transfer and subsequently receives substandard care or dies in custody of AIDS

related illnesses, it becomes the prisoner's fault for choosing not to access the "best" medical care offered by CSC, rather than the system's fault for failing to provide a consistent and adequate level of medical care across the board.

3) Segregation deters testing. Fears about loss of confidentiality, stigmatization, and discrimination continue to be significant barriers deterring people from getting tested for HIV. If prisoners know or fear that segregation is the likely consequence of testing HIV positive, prisoners will choose not to test rather than risk being segregated.

So why not enforce mandatory HIV testing for prisoners? Well, in addition to serious Charter and human rights issues, mandatory HIV testing will not work to comprehensively identify people living with HIV/AIDS in prison any more than it would work in general society. Due to the window period inherent in HIV testing - which can result in delays of 3-4 months between HIV transmission and production of the HIV anti-bodies which trigger a positive test result - the existence of false negative tests are unavoidable. Even if we leave Charter of Rights issues aside, mandatory testing cannot work in the manner it's proponents claim.

The U.S. experience is also instructive. Seroprevalence rates in some U.S. states are as much as 10-20 times higher than those in Canadian prisons despite mandatory HIV testing and segregation policies. These figures clearly demonstrate the failure of this approach.

4) Loss of Confidentiality/ Increase in Stigmatization. Anyone who serves time in this special prison would necessarily have been "suspected" of being HIV positive by staff and prisoners in other institutions. This would by definition breach the confidentiality of PHAs imprisoned there, and would stigmatize all prisoners regardless of HIV status.

5) False and Counterproductive HIV Prevention Messages. The existence of such a prison would create the unrealistic and dangerous assumption among the entire prisoner population that all people living with HIV/AIDS are held in that one special facility. This false impression would easily lead to the further assumption that people held in other penitentiaries need not practice safer sex or safer needle use because "there's no HIV" in their institution. Mandatory HIV testing of prisoners would only reinforce this dangerous impression. Such a message is antithetical to effective HIV prevention education, and will lead to an increase in unsafe behaviours and incidence of seroprevalence.

6) Problems in Security Classification. Federal prisoners in Canada are classified and housed in maximum, medium, or minimum security penitentiaries based upon their criminal records and incarceration history. However, HIV infection does not discriminate between security ratings. If there is only one institution providing an adequate standard of care for people living with HIV/AIDS, how will they house a population with a variety of security ratings? Experience demonstrates that this institution would most likely be classified maximum security, because corrections is far more comfortable holding minimum security prisoners in a maximum settings than vice versa (indeed, this is how it's done today in detention centres across Canada). Housing lower security prisoners (who are most often incarcerated for non- violent offenses) with maximum security prisoners (who are often incarcerated for violent offenses) creates high stress and potentially dangerous conditions, particularly for the lower security cons. Therefore, medium/ minimum security PHA’s will be placed in a position of not only having to "volunteer" to be segregated, but "volunteer" to be segregated in a higher security institution.

7) What happened to Compassionate Release? Segregation in a state- of- the- art medical prison is no substitute for compassionate release. In March 1994, Correctional Service Canada released a document stating that it agreed with the principle of "regularly recommending to the National Parole Board the release of inmates with progressive life-threatening diseases, including

AIDS, earlier in the course of their disease, before they are terminally ill." Prisoners living with HIV/AIDS have yet to see the concrete benefits of those fine words.

The dangers and pitfalls of segregating people living with HIV/AIDS from the general population - whether that population is inside prison or not - are the same. These dangers are the same whether the segregation is considered for "humanitarian" or punitive reasons. Segregation will not reduce the rates of transmission of HIV. Segregation does not serve the interests of people living with HIV/AIDS. It's bad policy. Period.

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