AIDS Policies Raise Civil Liberties Concerns

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AIDS IN PRISON

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Larry Gostin

Testing for the AIDS virus and segregation of AIDS carriers raise extremely important civil liberties questions in contemporary corrections. The NPP survey revealed 420 cases of fully diagnosed AIDS cases in state prisons across the country. Given the AIDS-to-infection ratio used by the U.S. Centers for Disease Control, there are between 21,000-42,000 prisoners infected with HIV. Up to 30% of these prisoners will probably develop some serious manifestations of AIDS. More importantly, this figure may continue to double every year. Corrections departments have responded to the AIDS crisis in a variety of ways: 90% use the ELISA test to detect antibodies to the AIDS virus (human immunodeficiency virus-HIV); 8% have already instituted systematic screening of the prison population; virtually all states segregate prisoners with AIDS; and educational programs have been undertaken by most systems.

A policy of full-scale screening and segregation may be adopted throughout the country within the next five years. Erosions of the civil rights of prisoners in recent years suggest that the courts will uphold prison discretion to test and segregate, provided there is a colorable public health rationale. Screening sets the stage for widespread invasion of privacy for prisoners, under the guise of public health, while segregation may take place under conditions which trigger Eighth Amendment violations. In a recent report for the U.S. Assistant Secretary for Health, my colleagues and I at the Harvard School of Public Health article, Dr. Gostin gives his views on the above mentioned policy questions from a public health standpoint.

In the Winter 1985 issue of the JOURNAL, we reported the results of an NPP survey of state correctional systems which identified both the scope of AIDS in prison and what states were doing to manage its occurrence. In the following issue we provided some medical background about AIDS, and discussed two of the major policy questions: whether to screen inmates for the HIV antibody, and whether to segregate inmates with AIDS related conditions. We also broached some of the emerging legal issues. In this article, Dr. Gostin gives his views strongly against screening and segregation in prisons.

Public Health Objectives

Effective public health measures to control the spread of AIDS in prisons can be implemented without harming the civil liberties interest of prisoners, for the right to a healthy and safe environment is their primary right. There is no direct conflict between public health and civil liberties. Protection of the latter should be seen as a means to effectively achieve the former. The real question is whether screening and segregation are effective public health measures, and whether there are less restrictive, more effective interventions available.

Antibody screening and segregation of AIDS carriers would be an effective policy if HIV were an airborne virus, or if early identification offered therapeutic value to patients. Prisoners have the right not to be exposed to a communicable disease by their association with guards or other prisoners. But HIV is not spread through non-intimate contact. Several careful studies have shown that, even in the close association of family units and in hospitals, HIV has never been communicated non-sexually. HIV is transmitted almost exclusively through the use of shared intravenous needles and sexual intercourse. These are the behaviors to be focused upon and prevented.

The screening and segregation of prisoners and the isolation of AIDS carriers unnecessarily invades the privacy of prisoners. The existence of a large collection of sensitive, personal data has serious consequences for prisoners if disclosed. In Delaware, for example, an arbitrator ruled that state corrections officers be given the names of HIV antibody positive prisoners pursuant to a collective bargaining agreement. Disclosing an-
The District of Columbia Chapter of the American Red Cross is sponsoring The American Red Cross Conference on AIDS and IV-Drug Use to be held Friday and Saturday, February 27 and 28, 1987 at the Sheraton-Washington Hotel. This conference is the first in the nation to deal specifically with the issue of AIDS as related to IV-use. The conference will have 300 participants and will consist of three keynote speeches, two panels, and 35 workshops. Workshops will examine IV-use/AIDS issues as they pertain to organized religion, health and social service, women and children, public policy, scientific research, the neighborhood, and the "worried well."

The Conference is undertaking a special advocacy for the plight of the IV-user with AIDS. It will ask the hard questions society needs to address about addiction, pharmacology, free needles, and HIV transmission prevention. The heterosexual risk of most IV-users infected with HIV presents an excellent opportunity for the virus' entry into the general population. The American Red Cross Conference on AIDS and IV-Drug Use, by frankly addressing these sensitive problems, is attempting to provide a forum whereby the serious issues which surround AIDS and IV-use will receive widespread public attention. To register, contact Sheila Gallagher, (202) 728-6554.

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