AIDS Policies Raise Civil Liberties Concerns

Lawrence O. Gostin
Georgetown University Law Center, gostin@law.georgetown.edu

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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 argue 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 the prison population according to serological status does not in itself reduce high risk behaviors. More effective public health policies would stress broad educational efforts designed to inform inmates about preventive and risk behaviors. Informed prisoners of the potential harm in unsafe consensual sex, forced sexual acts or intravenous drug use is essential. While the real challenge is to discover and prevent unhealthy behaviors, prison resources are being increasingly used instead to detect who is seropositive and who is not.

Some state corrections departments also claim that screening is necessary as a diagnostic tool and that isolation of AIDS patients is necessary to prevent immunosuppressed individuals from acquiring infections in the prison environment. Yet, if the purpose of screening were purely diagnosis of AIDS, then it would be administered only where therapeutically indicated with the prisoner's consent, and not on a systematic basis. Further, the limited objective of protecting immunocompromised prisoners could be achieved without a mass screening program by hospitalization of AIDS patients where necessary on a case by case basis. Finally, the HIV antibody test is not in itself an adequate diagnostic tool and should not substitute for comprehensive medical examinations and laboratory tests.

Restriction of Rights Caused by Prison Screening and Segregation

The widespread collection of information on the serologic status of prisoners and the isolation of AIDS carriers unnecessarily invades the privacy of prisoners. The existence of a large collection of sensitive, personal data can have 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-
AIDS in America: The introduction of better lighting, increased staffing, staff training, and improved supervision, monitoring, and enforcement to prevent such dangerous activity should clearly be the major priority. The presence of HIV in America's prisons should be a strong reason to re-double efforts in this direction.

Conclusion

Prisoners are likely to be subjects for screening and segregation programs—not in order to promote public health, but because prison populations are easy targets due to their political impotence. Unproven control measures not implemented widely in the general population are often first tested in closed institutions where it is administratively easier. In the case of AIDS screening, the availability of a medical technology has inappropriately determined the social policy. Screening and segregation will not protect the health of prisoners; will be a serious invasion of their privacy, and will divert attention from less restrictive, more effective policy alternatives.

Larry Gostin is a lecturer in Health Law at the Harvard School of Public Health and the Executive Director, American Society of Law and Medicine. He is also on the National Board of Directors of the American Civil Liberties Union.

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 y 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.