

# **Prisoner Access to Condoms in the United States – The Challenge of Introducing Harm Reduction into a Law and Order Environment<sup>1</sup>**

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## **Review of the Literature**

### Calls for Prisoner Access to Condoms in the United States

The combination of high HIV prevalence, documented risk behavior among prisoners and the high incarceration rates in the US have resulted in many calls for prisoner access to condoms in U.S. jails and prisons. The World Health Organization says, “[s]ince penetrative anal sex occurs, even when prohibited, in prisons, condoms should be made available to prisoners throughout their period of detention.” (WHO, 2004). The United Nations Joint Programme on AIDS concurs: “UNAIDS believes it is vital that condoms, together with lubricant, should be readily available to prisoners.” (UNAIDS). And the National Minority AIDS Council recommends that nonprofit organizations, government and public health agencies be allowed to distribute condoms in prison facilities, pointing out that “[e]nsuring access to condoms in prisons would not only protect prisoners, but also the health and lives of the people in the communities to which they will return.” (NMAC) In many other countries, including Canada, Australia, Costa Rica, and Brazil, South Africa and throughout Europe, prisoners have access to condoms (Hellard & Aitken, 2004; World Health Organization (WHO), 2001). International agencies consistently report that the in-custody condom distributions programs throughout Europe, Canada, and Australia encounter few problems and are well-accepted by both inmates and custody personnel (Hellard & Aitken, 2004; WHO, 2001). But in just two prisons and five jail systems in the U.S. (Braithwaite & Arriola, 2003; Hammett, Harmon, & Rhodes, 2002)

### Research on Prisoner Condom Access Programs

Published research on programs providing prisoners access to condoms have focused primarily on acceptability of condom access to prisoners and staff, security issues associated with, frequency of condom access, and barriers to obtaining condoms from these programs (Dolan et al., 2004; May & Williams, 2002; Yap et al., 2007). Research has also examined staff attitudes regarding the implementation of HIV harm-reduction programs (including condom distribution), barriers to implementing such programs, and the use of makeshift barriers by inmates in the absence of condom distribution (Godin, Alary, Morissette, & Noel, 2001; Godin, Gagnon, Alary, Noel & Morissette, 2001; Mahon, 1996; Schaller & Harding, 1995; Seal et al., 2004). These studies have found that, once implemented, condom distribution programs tend to be accepted by both inmates and correctional staff (Dolan et al., 2004; May & Williams, 2002), do not appear to result in increased consensual or coercive sex (Yap et al., 2007), and do not lead to major

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security infractions, but have been associated with minor security violations such as using them as water balloons (Yap et al., 2007).

Additional evaluations of condom access programs for prisoners are underway in two California jails – Los Angeles and San Francisco – and an upcoming pilot project in the California State Prison system. Preliminary data from the jail-based evaluations are consistent with the findings of other studies: that condom access programs for prisoners do not cause security/custody issues, and that prisoners take and use condoms when they are made available.

### Common Concerns About Providing Prisoners Access to Condoms

Correctional administrators and staff have serious concerns about providing prisoners with condoms and prisoner condom access is opposed by correctional officials and staff in many settings. Studies of staff attitude towards prisoner condom access indicate general staff disagreement with condom distribution due to security concerns, based on the concept that introducing anything new into the security environment provides prisoners with an additional potential tool for conducting illegal activities including secreting contraband and assaulting staff with bodily fluids or excrement. (Godin, Alary et al., 2001) Further, in a rule-based environment, it is considered hypocritical to tell prisoners it's illegal to engage in sexual activity and then provide the means to "safely" engage in that activity. Correctional administrators are loathe to send a message that they argue conflicts with official custody regulations regarding sexual activity in custody, and could be used by assailants to prevent evidence of sexual assault from remaining. They also express concerns about peer norms against distribution and personal principles against sexual activity between men. (Godin, Gagnon et al., 2001) Research documents that custody administrators and officers have these concerns, but research does not support the assertion that providing prisoners access to condoms will increase security infractions or result in custody problems.

### Conclusion from Research

From the research, it appears that condom access programs for prisoners are acceptable and viable, and that concerns about the negative consequences are not supported by evidence. This implies that the barriers to advocating for increased prisoner access to condoms are not operational, but political.

### **Existing Condom Access Programs for Prisoners: Case Studies of Successful Advocacy to Overcome Political Barriers to Prisoner Condom Access**

Prisoners have access to condoms in the U.S. in the following county jail systems: Los Angeles, San Francisco, Philadelphia, Washington, D.C. and New York. Prisoners have access to condoms in the state prisons in Vermont and Mississippi.<sup>2</sup> This section examines three programs as case studies of successful advocacy for initiation, and in two cases, recent expansion of condom access for prisoners in correctional systems. The programs and their history and the

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<sup>2</sup> According to an Associated Press reporter, Mississippi provides prisoners access to condoms only for the purpose of family/conjugal visits. It does not provide prisoners access to condoms in custody on a regular basis.

political environment in they were initiated are described. It concludes with a discussion of the events that have led to the development of a pilot project to provide prisoners access to condoms in one California prison facility. The purpose of examining the genesis and expansion of multiple condom access programs for prisoners is to try to understand what common elements exist, to help inform advocacy to further expand prisoner condom access.

### ***Case Study 1: San Francisco***

#### Program Description

San Francisco's Forensic AIDS Project (FAP) provides prisoners access to condoms in the San Francisco County Jails. FAP is a division of the County Department of Public Health and is also a considered part of "Jail Medical Services." FAP distributes condoms upon request through its public health nurses in one-on-one health counseling sessions, one per person, per request, and upon release to prisoners involved in their transitional planning programs for HIV positive individuals. In 2007, FAP, in collaboration with the Center for Health Justice and the UCSF Center for AIDS Prevention Studies (CAPS), expanded the means by which prisoners in San Francisco can access condoms; through a research study, a condom dispensing machine – a vending machine set to require no payment – was installed in a gym to which 800 prisoners have access once per week. Prisoners are allowed to take one condom from the machine per visit to the gym. During the study period (April through August 2007), about 70 condoms per week are taken from the machine.

#### History and Political Evolution of the Program

In San Francisco, prisoners have had access to condoms through FAP's health educators since 1989. San Francisco was the first county jail system in California to distribute condoms. Nationwide, San Francisco was 5th in the country to implement condom distribution. At that time the Sheriff of San Francisco, Michael Hennessey – a progressive lawyer who was first elected in 1978 and remains Sheriff today announced that he would allow condom access for the county's prisoners. Michael Hennessey is an example of an unusual law enforcement executive. For example, in the 1980s he was known, and criticized in the local press, for conducting deputy recruitment efforts in San Francisco bars catering to gay men. He argued that his staff should reflect the diversity of San Francisco's population.

At the time he announced that prisoners in San Francisco jails would have access to condoms, Sheriff Hennessey made the following statement in a press release:

*The historic struggle against A.I.D.S. (sic) has created responsibilities for jail and prison administrators far beyond the traditional mandates to run humane facilities and prevent escapes. The spectre of A.I.D.S. also makes us accountable to public health issues involving life and death for millions of Americans.*

— Sheriff Michael Hennessey, July 13, 1989

A protocol was developed at that time, which applies to the one-on-one provision of condoms through the FAP health educators. It includes that: (1) every condom distributed required AIDS

education, (2) every condom distributed required counseling and (3) counseling includes the reminder that having sex in jail can be charged as a felony.

### Expansion of the Program

In the fall of 2006, the Center for Health Justice, Dr. Grinstead and the FAP approached the Sheriff of San Francisco about installing a condom-dispensing machine, in part because of reports from FAP staff that the demographic characteristics of the health educator seemed to influence whether a prisoner being counseled took a condom. The Center for Health Justice sought to evaluate a more anonymous method of providing prisoners access to condoms, as well as less staff-intensive. The Director of FAP, a long-time friend of Sheriff Hennessey introduced Mary Sylla from the Center for Health Justice and Olga Grinstead of UCSF's Center for AIDS Prevention Studies (CAPS) to the Sheriff. We asked for permission and a letter of support to apply for funding to conduct a study to determine whether it was feasible to install a condom-dispensing machine in a prison. He seemed hesitant, but granted us permission to apply for the grant, and said, jocularly, to Ms. Kate Monico Klein, "What are you getting me into this time?" He appeared to warm to the idea even during the meeting, and was the one who suggested the location of the machine, the gymnasium.

The dispensing machine program and its pilot feasibility were conducted by the Center for Health Justice in collaboration with the Forensic AIDS Project. The machine was installed in April 2007 in a gym to which 800 prisoners have access every week for their three hours of recreation. Prior to the installation of the machine Ms. Sylla attended briefings of all deputies who would be affected by the machine on the purpose of the programs and the associated rules. The day before the machine was installed she went, accompanied by the facility Captain and a deputy, to each housing unit of prisoners who would have access to the machine to explain the purpose of the program, and its rules.

Just over a year since its installation, the condom-dispensing machine remains on the wall of the jail gym, is regularly restocked by FAP staff, and has resulted in no reported custody incidents or increased rule violations. Kate Monico Klein reports that among the "lessons learned" during the many years prisoners have been provided access to condoms in San Francisco are that none of the concerns originally articulated by custody about providing prisoners access to condoms were borne out, and that the relationship between custody and healthcare staff – those who provide the condoms and stock the machine – was significant to the ongoing success of these programs.

### ***Case Study 2: Philadelphia***

#### Description of the Program

In Philadelphia, the County correctional facility is called a "prison" – in most of the rest of the county, jails are the county facilities and "prisons" are state and federal correctional facilities. Prisoners in Philadelphia Prison have access to condoms both through nurses at sick call through the prisoner commissary – the prisoner "store" through which prisoners can generally buy food and hygiene items, stamps, envelopes, etc., using personal funds. The first method of condom access began in 1989; the commissary-based method is much more recent. Condoms are

available to all prisoners in the jail system, and under the current policy, a prisoner may have six condoms in his possession at one time.

### History and Political Evolution of the Program

In 1988, advocates in Philadelphia approached Mayor Wilson Goode with the idea of providing prisoners in the Philadelphia Prison access to condoms, and, in response, he ordered the city's Public Health Department to begin providing condoms to prisoners. The city's health commissioner agreed with this action, but the prison board did not. Condoms were provided through nurses at sick call. That method of prisoner condom access continues today.

In 2000 prisoner and HIV advocates approached correctional administrators again, now Leon King, saying that although prisoners had access to condoms, correctional officers working in the jails regularly confiscated condoms from prisoners, apparently unaware of the formal policy that condoms are not contraband in the jails.

Correctional administrators brought in community advocates to provide education to the correctional staff at roll calls. The purpose of this education was to provide basic HIV/AIDS information. At that time, a revised policy on condom access was announced: prisoners could have six unused condoms in their possession.

### Expansion of the Program

In 2006, according to press reports, prisoners who had recently been incarcerated were interviewed by community advocates and reported many barriers to receiving and keeping condoms. Correctional administrators decided to make condoms available for purchase through the commissary. The purpose of this additional method of providing prisoners access to condoms was, according to former Prison Commissioner King, more to emphasize and publicize the policy that condoms were not contraband to correctional officers. According to anecdotal information, to date, very few condoms have been purchased through the commissary.

## ***Case Study 3: Los Angeles***

### Description of the Program

In Los Angeles, the Center for Health Justice distributes free condoms to a segregated gay male population only, one condom per week per inmate, a limit imposed by the Los Angeles Sheriff's Department. Each week, a Center for Health Justice staff member enters each of the three dorms, housing self-identified gay men segregated for their protection, gives a brief educational prevention presentation, consisting of the rules of the program and the jail and an HIV educational message, asks the inmates who would like a condom to form a line, and passes out one condom per inmate. Included in the health education message is a statement of California law regarding the illegality of sex while in custody. Since the program's inception over 14,000 condoms have been distributed, an average of 65 per week.

### History and Political Evolution of the Program

The Los Angeles condom access program was the result of an unusual set of circumstances: in

2002 a new Custody Chief, Taylor Moorehead – who at that time had recently been promoted from Medical Services – approached the Center for Health Justice about the possibility of designing a program that could provide gay male prisoners in dormitory-style housing units with access to condoms without involving custody staff or time. Chief Moorehead had worked closely with Health Justice’s Founder, Mary Sylla, for the previous three years on HIV issues in the jails. The two developed a working relationship of trust and respect and as she went from positions at other organizations (the HIV/AIDS Legal Services Alliance and the ACLU of Southern California) to an independent non-profit. Health Justice was asked to design and implement a program that would provide segregated gay male prisoner access to condoms without cost to the correctional administration or involvement of custody personnel in any way. The program began in late 2001 and has operated consistently and without incident since then.

### ***California State Prison Pilot – Case Study in Progress***

#### Description of the Proposed Program

If all goes as planned, in September 2008 ten condom dispensing machines will be installed five housing units in the California State Prison at Solano, one of two state prisons in the city of Vacaville, about 50 miles northeast of San Francisco. The machines will be provided by the Center for Health Justice and installed by the prison facility staff. HIV educational programs will support the provision of condoms through the existing Peer Education Program with assistance from Health Justice staff. The condom machines will be stocked and re-filled by Health Justice. The precise rules of the program have not yet been developed, but from discussions thus far, it seems likely that prison regulations will make condoms non-contraband in the specific housing areas where the machines are installed, but contraband elsewhere, including shared educational areas to discourage transportation of the condoms.

The program will be rigorously evaluation by epidemiologist and researchers from the California State Office of AIDS. The planned evaluation will include in-depth pre-implementation interviews and surveys of staff and prisoners, with follow-up interviews during the one-year pilot period to determine effect of the program and to assess any negative impact on custody operations.

#### History and Political Evolution of the Program

For the past two years, the California legislature has delivered to Governor Schwarzenegger’s desk a bill that would require the CDCR to allow non-profit or public health entities who wish to distribute condoms to prisoners to do so in California’s prisons. Twice the Governor vetoed the bill, but last year in his veto message, he recognized that the Los Angeles and San Francisco jails have projects that provide prisoners with access to condoms, and directed the CDCR to develop a pilot project to “determine the risk and viability of such a program by identifying one state prison facility for the purpose of allowing non-profit and health agencies to distribute sexual barrier devices.”

The CDCR moved relatively quickly to comply with the Governor’s veto message, and began convening the “Sexual Barrier Device Stakeholders’ Group” several months after the veto.

CDCR staff visited the Los Angeles and San Francisco jail facilities and chose the dispensing machine model as the most feasible for the prison environment. The Center for Health Justice has been chosen as the provider of the services under the program, although there is currently no funding allocated by the CDCR or other state agency to pay for the services.

### Conclusion

A review of these admittedly California-heavy case studies reveals common themes and help address the question of what successful prisoner condoms advocacy campaigns and programs have in common that might be adopted and replicated by advocates elsewhere to increase prisoner access to condoms in the United States. Common elements immediately apparent (and there and undoubtedly others) are:

- 1) Active local HIV/prisoner advocates;
- 2) A willing (if reluctant) executive; and
- 3) A strong consistent relationship between public health service providers and corrections.

#### **1) Active local HIV/prisoner advocates**

In each case study, there were HIV advocates in the community specifically focused on prisoner populations when condom access for prisoners was successfully advanced. This means that in order to successfully advocate for prisoner access to condoms, a level of focus on the specific issue of HIV prevention for prisoners is required.

#### **2) A willing (if reluctant) executive**

In each case, a correctional or higher level governmental executive *ordered* correctional authorities to allow prisoners access to condoms. In most, formal protocols, or at least operational procedures were developed. There is not instance of such an activity beginning in an informal way, as a matter of practice, before being formally adopted as policy. This means that executive buy in is key to advocating for prisoner access to condoms. Since we might presume executive reluctance, education and advocacy are likely the keys to moving executives to willingness to increase prisoner access to condoms.

#### **3) A strong consistent relationship between public health service providers and corrections**

As something of a corollary to the previous point, where a strong relationship between public health service providers and corrections exists, it is not only easier to advocate for prisoner access to condoms, but easier to implement a program to provide them. “Public health service providers” may include jail medical services, departments of public health and also community-based service providers who have developed relationships with a correctional administration that takes them out of the realm of “advocates” in the minds of correctional administrators.

In increasing prisoner access to condoms, the challenge we face is political, not practical. As Robert Fullilove has said,

*Any reservoir of infection as large as a prison would warrant, by simple public health logic, that we do our best to reduce the risk of transmission. The issue has never been “Do*

*we understand what has to happen to reduce the risks? It's always been, "Do we have the political will necessary to put what we know is effective into operation?" (Okie, 2007)*

A political challenge demands a political response. The Toolkits for Advocates and grassroots organizing activities that will ideally flow from UNSHACKLE and our weekend at Stony Point will be a step towards enlightened public health responses to the HIV epidemic among our most at-risk community members.

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She now serves as Director of Policy & Advocacy, focusing on policy opportunities to improve HIV treatment and prevention for California's prisoners, and leading the organization's research. She has been instrumental in drafting legislation advocating condom distribution in the state's prisons, educating legislative and gubernatorial staff about HIV corrections issues, and influencing correctional policy decisions of HIV advocates throughout the state.

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