

# Model law to address HIV/AIDS in prisons

Satellite on HIV/AIDS in prison settings  
Warsaw, Poland

Sunday, 13 May 2007

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Canadian  
HIV/AIDS  
Legal  
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## About the Canadian HIV/AIDS Legal Network

The Canadian HIV/AIDS Legal Network ([www.aidslaw.ca](http://www.aidslaw.ca)) promotes the human rights of people living with and vulnerable to HIV/AIDS, in Canada and internationally, through research, legal and policy analysis, education, and community mobilization. The Legal Network is Canada's leading advocacy organization working on the legal and human rights issues raised HIV/AIDS.



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# Overview

1. **Model law project**
2. **Why is model law for addressing HIV/AIDS in prisons needed?**
3. **Model law to address...**
  - Likelihood and duration of time spent in prison (including pre-trial detention)
  - HIV/AIDS care and treatment in prison
  - HIV transmission in prison
4. **The role of the Canadian HIV/AIDS Legal Network**

# Model law project

## Model law on drug use and HIV/AIDS

- Resource tool for law and policy reform for advocates/ policy-makers
- Based on national “harm reduction” laws and human rights law
- Proposed text of articles, with supporting evidence
- 8 modules:
  - Criminal law reform
  - Treatment for drug dependence
  - Sterile syringe programs
  - Supervised drug consumption facilities
  - Prisons
  - Outreach and information
  - Stigma and discrimination
  - Heroin prescription programs

# Harm reduction in national laws

## Harm reduction laws

- Laws covering all harm reduction services
- Laws covering specific harm reduction services

## Harm reduction articles in other laws

- Criminal Code
- Drug law
- HIV/AIDS law
- Public health law
- Regulations, Orders, Guidelines, etc.

## Human rights law & policy

- Right to enjoy the highest attainable standard of health (ICESCR, Art. 12)

“steps necessary for... the prevention, treatment and control of epidemic, endemic, occupational and other diseases”

- Right of patient to receive information on his/her state of health
- Treatment with fully informed consent
- Confidentiality of health care information
- Non-discrimination

*UN Basic Principles for the Treatment of Prisoners*

*WHO, Guidelines on HIV Infection and AIDS in Prisons*

*Recommendation No. R (98) 7, Committee of Ministers, Council of Europe*

# Why is model law for addressing HIV/AIDS in prisons needed?

## Many barriers to responding to HIV/AIDS in prisons

- Prisons are recognized as ‘high-risk environment’ for HIV transmission
- Common attitude of denial from prison officials with respect to drug use and sexual activity
- Lack of comparison/ information sharing between jurisdictions
- Prisons are highly controlled environments, requiring explicit endorsement of activities
- Resource restraints, pilot programmes, etc.

**Good law and policy is necessary, but law and policy alone are not enough**

## Model law to address...

### Measures to address likelihood and duration of time spent in prison (including pre-trial detention)

- Alternative sentencing options
- Trial within a reasonable time

# Model law to address...

## HIV/AIDS care and treatment

- HIV/AIDS care and treatment in prison
- Voluntary HIV testing and counselling
- Prohibition on discrimination in prisons on the basis of actual or perceived HIV status
- Compassionate release

## Model law to address...

### Provisions to prevent HIV transmission in prisons

- Distribution of condoms and other safe sex material
- Opioid substitution therapy (OST) in prison
- Sterile syringe programs (SSPs) in prisons
- Prison rape and other sexual offences

## Model law to address...

### Example of principles regarding OST from the model law:

- OST programs should have all the safeguards, human rights protections, and public health attributes of those in the community at large;
- Participation in OST programs in prison must be voluntary and subject to informed consent;
- OST should not be restricted to those who were in an OST program prior to incarceration;
- OST programs should include a discharge planning system for OST patients nearing their release date, including provisions to ensure that OST will not be interrupted.

## Model law to address...

### Example of principles regarding SSPs from the model law:

- Distribution and possession of syringes in accordance with Regulations will not constitute a criminal nor administrative offence;
- An authorized person or organization will distribute syringes via:
  - prison nurses or physicians;
  - prisoners trained as peer outreach workers;
  - NGOs or health professionals who enter the prison for this purpose;
  - automated sterile syringe-dispensing machines.
- Regulations will establish rules for safe disposal of sterile syringes;
- Preferably, sterile syringes should be made available to prisoners without the necessity of the prisoner identifying himself or herself to prison authorities.

# The role of the Legal Network

## The Legal Network's expertise:

- Background information on the appropriate legal and policy frameworks;
- Comparative analysis between jurisdictions (eg. prison needle exchange report);
- Technical assistance on the content of law and policy reform;
- Intervention in legal cases (eg. Shelley)
- Organizing certain implementation activities (training, meetings, study tours, etc.)



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