

Women & HIV

This is one in a series of four info sheets on the human rights of women living with or vulnerable to HIV in Canada.

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Women in Prison, HIV and Hepatitis C

"I would say about 80 percent of the women in the prison were using drugs. 35 percent would have to do sexual favours for the drugs. And 25 to 50 percent of the women would be injecting drugs. To inject, we would use used needles from the nurse's office, which we stole. Anywhere from 10 to 15 people would share one needle over a month's time.... I also got a tattoo. I know the needle for my tattoo had been used a lot; I don't know where it came from or who had used it. Back then, we were not allowed bleach, so we never used it to clean our needles. We were aware of getting hepatitis C and HIV from sharing needles, but we didn't care. Being in there, we felt our lives sucked so it didn't matter anyway."

— Woman formerly incarcerated in the Prison for Women in Kingston, Ontario

Women in prison: a Canadian snapshot

Incarcerated women constitute a small minority of the prison population in Canada. Nevertheless, they are among the most marginalized people in Canadian society, not only because they lack power in the prison context, but also because of the economic, social and political realities of their lives. Women in prison, more often than men, suffer from chronic health conditions resulting from poverty, drug use, gender-based violence, adolescent pregnancy, malnutrition, poor access to preventive health care and for Aboriginal and Black women, the effects of colonization, slavery and racism.

Among federally incarcerated women, one third is Aboriginal, 80 percent are survivors of physical and sexual abuse (a percentage that rises to 90 percent for Aboriginal women), a significant number are struggling with substance use, one in five is struggling with mental health problems, and many are single mothers with primary childcare responsibilities. While more than 80 percent of women in Canada have completed education beyond the ninth grade, the figure for women in prison is closer to 50 percent. Drug use also tends to figure more prominently in the lives and criminal offences of incarcerated women, who often

perpetrate income-generating crimes to support their drug use. In particular, a previous history of injection drug use is consistently found more frequently among female than male prisoners in Canada. Consequently, more than half of all charges which bring female accused in contact with police are non-violent, property and drug offences.

Historically, the welfare of women prisoners was secondary to that of the larger male population. While women's correctional needs are profoundly different from men's, the Canadian Human Rights Commission has noted that the criteria by which federal prisoners are classified are designed according to white, male, middle-class standards, resulting in skewed discriminatory assessments of federally sentenced women and too many women being deemed a high-security risk. This leads to numerous hardships for these women since maximum-security prisoners are isolated in segregated living units and, unlike their minimum- and medium-security counterparts, are not eligible to participate in work-release programs, community-release programs or other supportive programming designed to enhance prisoners' chances of reintegration. Moreover, because there are fewer women's institutions and some exist in isolated locations, women are less likely to have

access to community-based support, and are more likely to be located far from their families, communities and other support networks. Geographic dislocation has a particularly isolating impact on Aboriginal women, many of whom come from more remote communities.

Incarcerated women are further neglected with respect to service provision. Because there are relatively small numbers of them in a given institution, it becomes difficult for prison authorities to justify specific services for women. As a result, women in prison struggle to access HIV services that are equivalent to those available to women outside prison, or even to men inside prison. This is compounded by the troubling reality that, as a whole, women infected with HIV or hepatitis C virus (HCV) already do not receive diagnostic and treatment services as early as do men. The needs of women infected with HIV or HCV also differ from those of men, yet appropriate social and community support is less frequently available and less accessible. Thus, women are often less educated than men about HIV and HCV infection and do not have the necessary support structures. Moreover, disease manifestations attributable to HIV infection can be different in women, leading to under-recognition or delays in diagnosis, when disease may be further advanced.

The inadequacy of health services in prison was evident in a 2003 study of women in federal institutions, the most comprehensive study of the specific needs of federally incarcerated women regarding HIV/HCV prevention, care, treatment and support to date. The majority of women interviewed described an overall dissatisfaction with the quality and accessibility of prison medical services, and women living with HIV and/or HCV identified numerous barriers to accessing adequate medical services. These included difficulty in obtaining blood tests, accessing physicians or specialists, obtaining adequate pain management, and accessing medications to relieve the side-effects of HIV and HCV therapies. Women also felt that HIV prevention education programs did not meet their needs, and women living with HIV and/or HCV strongly identified a lack of support and counselling services specific to their needs. In a subsequent 2010 study of federally incarcerated women by the Correctional Service of Canada (CSC), a recurring theme among the women surveyed was their dissatisfaction with the adequacy and accessibility of physical and mental health facilities in prison, and specifically the need for testing for sexually transmitted infections.

Facts and figures: women and the HIV and HCV epidemics behind bars

- Conflict with the law and incarceration are often a result of offences arising from the criminalization of certain drugs, and related to supporting drug use, or to behaviours brought about by drug use. **In Canada's federal prisons, over 1 in 4 women have been incarcerated on drug-related charges.**
- With some exceptions, **HIV and HCV infection is generally more prevalent among women than men in prison, particularly among those who have a history of injection drug use.** In a study of provincial prisons in Quebec, the HIV and HCV rate among incarcerated women was, respectively, 8.8 and 29.2 percent, compared to 2.4 and 16.6 percent among male prisoners. In a 2007 nationwide survey by CSC, the HIV and HCV rate among federally incarcerated women was 5.5 and 30.3 percent, compared to 4.5 and 30.8 percent among federally incarcerated men. Aboriginal women reported the highest rates of HIV and HCV, at 11.7 and 49.1 percent, respectively. In a study of female prisoners in British Columbia (B.C.), self-reported rates of HIV and HCV were 8 percent and 52 percent, respectively.

Women in prison struggle to access HIV services that are equivalent to those available to women outside prison, or even to men inside prison.

- While the majority of women in prison are voluntarily tested for both HIV and HCV, the provision of **pre- and post-test counselling has been reported to be poor, and in some cases, non-existent.** Women in prison are more likely than women in the general population to have faced violence and abuse; therefore, counselling accompanying HIV diagnosis is particularly important.
- Women in prison have **concerns about the privacy and confidentiality of their HIV status.** Women have reported being forced to draw unwanted attention

to themselves by accessing HIV medications, HIV and HCV testing services, therapies and diets (which may be dispensed at specific times in a public space) and by requesting safer sex materials and bleach from correctional staff. Violations of women's right to privacy and confidentiality have significant repercussions in prison, where rampant stigma and discrimination exists against people living with HIV.

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- For many women, drug use in prison is a means of coping with trauma and alleviating pain and anxiety, including anxiety about losing custody of their children as a result of their criminal record. In a 2007 national survey, **1 in 4 women in federal prisons admitted using drugs** in the past six months in prison, and **15 percent of women admitted injecting drugs**. Of those women, **41 percent used someone else's used needle, and 29 percent shared a needle with someone who had HIV, HCV or an unknown infection status**. Similarly, in both a national study of federally incarcerated women and a provincial study of women in a B.C. prison, **1 in 5 women was engaging in injection drug use behind bars**.
- In a 2007 national study, **30 percent of federally incarcerated women reported oral, vaginal or anal sex**. In a 2003 study of women in federal prisons, **1 in 4 was having unprotected sex**.
- In a 2003 study of women in federal prisons, **1 in 4 women was tattooing**. In a 2003 study of provincial prisons in Quebec, 9 percent of women had engaged in tattooing or piercing in prison.
- **Women are more likely than men to take part in self-harming behaviour such as slashing and cutting** as a coping strategy frequently linked to experiences of sexual abuse in childhood. In a 2003 study of women in federal prisons, 9 percent of the women interviewed had engaged in slashing or cutting of their own skin or other forms of self-injury. In a subsequent 2010 study of women in federal prisons,

36 percent took part in some form of self-harming behaviour during incarceration.

- Chronic pain can be a symptom of both HIV and HCV infection, so access to effective pain management is a common health concern for people living with these diseases. However, women have reported barriers to pain management in prison. Women whose **pain management needs** are ignored by staff may resort to managing their pain by using illicit drugs via non-sterile injection equipment.

While CSC and some provincial and territorial prison systems mandate the provision of condoms, dental dams, lubricant, bleach to sterilize injection equipment, and methadone treatment, their availability is inconsistent across the country. Where there is a policy in place directing the provision of a harm reduction measure, women have cited irregular distribution, insufficient quantities and a lack of confidentiality as an impediment to access. For example, women are required to request safer sex measures or bleach from either health care staff or correctional officers, forcing them to self-identify as sexually active or as an injection drug user, activities that are prohibited behind bars and for which women can be heavily punished, including through the imposition of longer sentences and solitary confinement.

No prison system in Canada permits harm reduction measures such as needle and syringe programs and safer tattooing options, despite significant evidence of high-risk behaviours related to these practices and women's desire to access such measures. The absence of sterile injection equipment is particularly problematic in light of the pervasiveness of injection drug use behind bars, the frequency of sharing used needles to inject drugs and the inadequacy of bleach to sterilize injection equipment. As the Canadian Human Rights Commission has noted, the impact of sharing injection equipment is greater on women than on men "because of the higher rate of drug use and HIV infection in this population," an impact that "may be particularly acute for federally sentenced Aboriginal women." The Commission further noted that denying prisoners harm reduction measures that are consistent with accepted community health standards exposes them to increased risk, and recommended that "the Correctional Service of Canada implement a pilot needle exchange program in three or more correctional facilities, at least one of which should be a women's facility."

Women, prison and law

Canadian and international law and policy requires that prisons be gender-sensitive, particularly with respect to women's health. In federal prisons, for example, the Correctional Service of Canada (CSC) mandates that "[t]he gender and cultural requirements of individuals and groups shall be respected and reflected in all activities aimed at addressing infectious diseases in the inmate population" (Commissioner's Directive 821, s. 10), while the *Corrections and Conditional Release Act* requires that CSC provide programs designed particularly to address the needs of women and Aboriginal people in prison (ss. 77 and 80).

Internationally, there is increasing recognition that the needs of women prisoners are not being met and that States must give recognition to incarcerated women's specific needs. For example, the 1993 *WHO Guidelines on HIV Infection and AIDS in Prisons* state that "special attention should be given to the needs of women prisoners," and specify that "staff should be trained to deal with the psychosocial and medical problems associated with medical infection in women" (Guideline 44). Correspondingly, *HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings: A Framework for an Effective National Response* (United Nations Office on Drugs and Crime, 2006) calls for initiatives that "reflect the fact that in many countries women face increased vulnerability to HIV infection, have higher rates of HIV infection in

prisons than men, engage in risk behaviours differently than male prisoners, and generally serve shorter sentences than men" (Action 56, p. 24).

As with all prisoners, women do not surrender their rights when they enter prison, and retain all human rights that are not necessarily removed as a consequence of their imprisonment.¹ This includes:

- the right to the "highest attainable standard of health;"²
- the right to life;³
- the right to liberty and security of the person;⁴
- the right to equality and non-discrimination, including with respect to health services;⁵
- the right not to be subjected to cruel and unusual treatment or punishment; and⁶
- access to a standard of health care that is equivalent to that available in the community.⁷

These provisions require, at minimum, that women in prison have access to health care at least to the standard available to women in the community. Given the considerably higher prevalence of HIV and HCV among incarcerated women, this means prisons must make a comprehensive range of harm reduction measures available, including prison-based needle and syringe programs.

Recommendations for policy and law reform

- **Develop alternatives to imprisonment.** Most women are in prison for non-violent offences and pose no risk to the public. Any comprehensive strategy in response to HIV in prison settings should seek to reduce overcrowding as it can create conditions which can lead to sudden outbreaks of violence, including sexual violence. Consideration should be given to the development and implementation of non-custodial strategies for women, particularly during pregnancy or when they have young children.

- **Provide equivalent health services to those available in the community.** All prisons should make condoms, dental dams, lubricant, bleach, opiate substitution therapy, adequate pain management medication, and information on safer slashing or cutting available and accessible. In particular, those provinces and territories that do not yet provide these harm reduction measures should develop policies to introduce them in all their prisons.
- Policies should be developed to **make sterile injection equipment and safer tattooing options available and genuinely accessible in prison**, as they are in the community, in accordance with accepted best practices governing such programs operating in the community.

- **Pre- and post-test counselling for HIV and HCV testing should be mandated and provided for all prisoners.** Women in prison should only be tested for HIV and HCV with their informed consent, and no one should be tested without receiving pre- and post-test counselling.
- **Prisoners' rights to confidentiality and privacy must be respected.** The security of women's personal information, such as medical records and health information, must always be respected. Furthermore, women's access to HIV- and HCV-related prevention education, therapies, diets, counselling and support, testing, and prevention and harm reduction measures should be promoted by ensuring the confidentiality of those who partake in such programs or measures.
- **Meaningfully involve prisoners living with or vulnerable to HIV/HCV in policy design.** Enabling those most directly affected to draw on their lived experiences will increase the effectiveness and appropriateness of policies and programmes to address HIV and HCV behind bars.

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References

¹ S. 4(e) of the *Corrections and Conditional Release Act* (CCRA) and *Basic Principles for the Treatment of Prisoners*, Principle 5.

² Article 12(1) of the *International Covenant on Economic, Social and Cultural Rights* and Article 12 of the *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW). Section 86 of the CCRA also mandates CSC to provide every person in prison with “essential health care” that will contribute to his or her rehabilitation and reintegration into the community.

³ Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR) and s. 7 of the *Canadian Charter of Rights and Freedoms* (Charter).

⁴ Article 9 of the ICCPR and s. 7 of the Charter.

⁵ Article 26 of the ICCPR, CEDAW and s. 15 of the Charter.

⁶ Article 7 of the ICCPR and s. 12 of the Charter.

⁷ See, for example, UN *Basic Principles for the Treatment of Prisoners*, 1990, Principle 9; WHO, *WHO Guidelines on HIV Infection and AIDS in Prisons*, 1993; UNODC, WHO and UNAIDS, *HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings: A Framework for an Effective National Response*, 2006; UNAIDS, “Statement on HIV/AIDS in Prisons to the United Nations Commission on Human Rights at its Fifty-second session, April 1996,” in *Prison and AIDS: UNAIDS Point of View* (Geneva: UNAIDS, 1997), p. 3. Under Canadian law, s. 86(2) of the CCRA stipulates that medical care for prisoners “conform to professionally accepted standards,” thereby implying a right to comparable health care as offered in the community at large.

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