Tobacco in Adult Correctional Facilities: A Policy Overview

Studies estimate that between 70 and 80 percent of all inmates in U.S. prisons and jails smoke or use tobacco products – up to four times the national average.[1] The high prevalence of tobacco use among U.S. inmates has a significant impact on the health of priority populations – particularly those of low socioeconomic status, substance abusers, and the mentally ill, all of whom tend to use tobacco, and also serve time, more often than other individuals. To address this problem and reduce related health care costs, all federal and state prisons and most local U.S. jails have adopted tobacco control policies.

Q: Why is tobacco use so prevalent among U.S. inmates?

A: A disproportionate number of inmates in U.S. prisons or jails are mentally ill or suffer from a substance abuse disorder.[2] Research indicates that in the U.S., the mentally ill are twice as likely to smoke as those who are not mentally ill,[3] and substance abusers are up to three times as likely to smoke as those without substance abuse problems.[4] Moreover, many inmates in general have a tendency to engage in unsafe behaviors, such as illicit drug and alcohol abuse, and tobacco use.[5] Also, many inmates tend to come from disadvantaged backgrounds, with limited or no access to early preventive health care, and from environments where tobacco use is relatively common or socially acceptable.[6]

Q: Why is tobacco use a health care concern in the U.S. correctional population?

A: Exposure to tobacco smoke – even occasional smoking or secondhand smoke – can have immediate adverse effects that can lead to serious illness or death.[7] Cigarette smoking, for example, is directly linked to cancer, coronary heart disease and heart attacks, as well as chronic obstructive pulmonary diseases.[8] Inmates suffer from tobacco-related illnesses at a higher rate than nonincarcerated individuals of the same age.[9] A majority of state prison deaths result from heart disease and lung cancer, both of which are linked to tobacco use.[10]

Also, many older inmates have long histories of tobacco use, which leads them to be hospitalized longer and more often than similarly aged individuals outside the prison environment.[11] Once inmates who use tobacco are released, health problems related to their tobacco use are likely to persist – particularly if they resume tobacco use, which typically happens.[12] Moreover, if they smoke, their family and friends could be exposed to secondhand smoke, which hundreds of medical studies have confirmed to be hazardous.[13]

Q: How does the tobacco use of inmates and former inmates affect state and local health care costs?

A: Since inmates are generally not eligible for government subsidized health care programs such as Medicare and Medicaid, states must finance most inmate health care costs through correctional department appropriations.[14] While incarcerated, inmates with tobacco-related illnesses consume a disproportionate share of a correctional facility's health care budget.[15] After release, former inmates with health concerns caused or exacerbated by tobacco use or exposure are likely to need medical attention. Unfortunately, only 15 percent of inmates are estimated to have health insurance in the year before or after incarceration; the rest are either uninsured or unlikely to have financial resources for health care.[16] These individuals are likely to end up drawing on publicly funded health systems, such as Medicaid and Medicare.

Q: How do correctional facilities prevent tobacco use by inmates?

A: Over the years, as the health effects of secondhand smoke have become more widely known and state and local smoke-free laws have proliferated, most prisons and jails have adopted some type of smoke- or tobacco-free policy. Although the scope of these tobacco policies varies by jurisdiction, the policies generally apply to inmates and staff, as well as visitors, contractors and vendors. In 2004, the Federal Bureau of Prisons required all federal prisons to go smoke-free.[17] As of January 2012, thirty state departments of corrections prohibited the use of tobacco inside state correctional facilities, at least fifteen of which also prohibited all forms of tobacco on the outdoor grounds of the correctional facilities.[18] Most local jails have also adopted some form of smoke-free or tobacco-free policy.[19]

Q: How are smoke-free or tobacco-free policies enforced in correctional facilities?

A: Tobacco policy violations by inmates or staff are generally treated as violations of a facility's disciplinary protocol. In correctional facilities with tobacco-free policies, tobacco is considered contraband, and different enforcement procedures and penalties may apply to visitors and others from outside who smuggle tobacco inside the facility.[20]

Q: Have correctional facilities faced any challenges or obstacles in implementing tobacco-free policies?

A: Yes. Occasionally, problems have arisen when prisons or jails go tobacco-free:

- Unequal treatment of inmates and staff, resulting from policy exemptions such as designated smoking areas or exceptions for certain parties[21]
- Lax enforcement, as when some facilities enforce policies more strictly for inmates than for staff[22]
- Belief by many correctional personnel that addressing tobacco use is less a priority than addressing other health issues[23]
- The prevalence of tobacco contraband and the destabilizing effect a tobacco black market can have on a facility[24]
- Limited funding for tobacco cessation programs or enforcement efforts[25]

Q: Other than prohibiting the use of tobacco, what else do correctional facilities do to address tobacco use by inmates and staff?

A: Many U.S. prisons and jails provide tobacco cessation services to inmates and correctional staff. These services range from programs, including educational materials and counseling, to nicotine replacement therapy products (often sold in canteens or commissaries or provided through health services).[26] In tobacco-free facilities where inmates have no access to tobacco products, including nicotine replacement therapy aids, other tobacco cessation assistance is often available – particularly upon admission and before release.

Q: What are a few guidelines for developing effective tobacco policies in U.S. correctional facilities?

- Involve facility staff in the development and modification of tobacco policies.
- Draft a comprehensive tobacco-free policy, with the fewest exemptions possible.
- Write the policy clearly and concisely, defining important terms, such as "tobacco-free," "smoke-free" and "tobacco product."
- Explicitly communicate the consequences for violating the policy to all inmates and corrections personnel.
- Inform the correctional population of the purpose for the tobacco policy, give advance notice before implementation, train staff to recognize and cope with the symptoms of nicotine withdrawal, and provide up-to-date communications regarding policy changes and guidelines.
- Provide inmates and staff with information on cessation aids, such as quitlines, counseling and related services, and nicotine replacement therapy products.
- Ensure that the corrections tobacco policy applies fairly and consistently to the entire correctional population.

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Notes

[1] U.S. DEP'T HEALTH & HUMAN SERVS., THE HEALTH CONSEQUENCES OF INVOLUNTARY EXPOSURE TO TOBACCO SMOKE: SURGEON GENERAL'S REPORT (2006), *available at*

http://www.surgeongeneral.gov/library/secondhandsmoke/report/chapter10.pdf (estimating smoking prevalence among U.S. prisoners at between 40 and 80 percent).

[2] *See* Jamie Fellner, *A Corrections Quandary: Mental Illness and Prison Rules*, 41 HARV. C.R.–C.L. L. REV. 391, 392 (2006), *available at* http://www.law.harvard.edu/students/orgs/crcl/vol41_2/fellner.pdf; THE NAT'L CTR. ON ADDICTION & SUBSTANCE ABUSE, BEHIND BARS II: SUBSTANCE ABUSE AND AMERICA'S PRISON POPULATION 2 (2010), *available at* http://www.casacolumbia.org/articlefiles/575-report2010behindbars2.pdf (finding that approximately two-thirds—roughly 64.5 percent—of the U.S. prison population meet medical criteria for an alcohol or other drug use disorder).

[3] *See* Karen Lasser et al., *Smoking and Mental Illness: A Population-Based Prevalence Study*, 284 J. AM. MED. ASSOC. 20, 2606 (2000), *available at* http://jama.ama-assn.org/content/284/20/2606.full.pdf.

[4] Kimber Paschall Richter et al., *Tobacco Use and Quit Attempts Among Methadone Maintenance*, 91 AM. J. PUBLIC HEALTH 2, 296, 297 (2001) ("Tobacco-related illness is a major cause of death for people who have undergone treatment for alcohol or illicit drug use. Smoking rates appear to be very high among patients in methadone maintenance treatment, the treatment of choice for many people with opiate addiction. Although no representative data are available, several surveys have reported prevalence rates of 85% to 98%. . . . Smoking is associated with chronic illness and premature death among persons with a history of opiate dependence.") *Id.* at 296.

[5] *See* RONALD ADAY, AGING PRISONERS: CRISIS IN AMERICAN CORRECTIONS 91 (2003).

[6] *Id.*

[7] *See* Ctrs. for Disease Control & Prevention, *Smoking-Attributable Mortality, Years of Potential Life Lost, and Productivity Losses—United States, 2000–2004*, 57 MORBIDITY & MORTALITY WKLY RPT 45, 1226 (2008), *available at* http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5745a3.htm.

[8] *See* Christopher J. Mumola, *Medical Causes of Death in State Prisons, 2001-2004, Bureau of Justice Statistics Data Brief* 1 (2007), *available at* http://www.bjs.gov/content/pub/pdf/mcdsp04.pdf.

[9] *See* Andrew P. Wilper et al., *The Health and Health Care of U.S. Prisoners: Results of a Nationwide Survey*, 99 AM. J. PUB. HEALTH 666, 668-69 (2009).

[10] *See* Mumola, *supra* note 8 at 1.

[11] *See* VERA INSTITUTE OF JUSTICE, IT'S ABOUT TIME: AGING PRISONERS, INCREASING COSTS, AND GERIATRIC RELEASE (2010), *available at* http://www.vera.org/download?file=2973/its-about-time-aging-prisoners-increasing-costs-and-geriatric-release.pdf.

[12] *See* Thomas Lincoln et al., *Resumption of Smoking After Release from a Tobacco-Free Correctional Facility*, 15 J. OF CORR. HEALTH CARE 190-96 (2009).

[13] *See, e.g.*, Americans for Nonsmokers' Rights Found., *Bibliography of Secondhand Smoke Studies* (2012), *available at* http://www.no-smoke.org/pdf/SHSBibliography.pdf.

[14] *See* Josiah Rich et al., *Medicine and the Epidemic of Incarceration in the United States*, 364 NEW ENG. J. MED. 2081, 2082 (2011).

[15] *See* Josh Poltilove, *Florida Prisons Ban Smoking Beginning Friday*, TAMPA TRIB., Sept. 28, 2011, *available at* http://www2.tbo.com/news/news/2011/sep/28/4/florida-prisons-ban-smoking-beginning-friday-ar-261185/.

[16] *See* Emily A. Wang et al., *Incarceration, Incident Hypertension and Access to Health Care Findings from the Coronary Artery Risk Development in Young Adults (CARDIA) Study*, 169 ARCHIVES OF INTERNAL MEDICINE 7, 687-93 (2009).

[17] U. S. Dep't of Justice, Fed. Bureau of Prisons, Smoking / No Smoking Areas HSD/SAF P1640.04 (2004), *available at* http://www.bop.gov/policy/progstat/1640_004.pdf.

[18] *See* Kerry Cork, Public Health Law Center, *Tobacco Behind Bars: Policy Options for the Adult Correctional Population*, Appendix A (2012).

[19] *See id.*

[20] *See id.*

[21] *See* Steve Bouquet, *Florida Prison Inmates Still Can't Smoke, But Now Correctional Officers Can*, TIMES/HERALD TALLAHASSEE BUREAU, Oct. 26, 2011, *available at* http://www.tampabay.com/news/publicsafety/crime/florida-prison-inmates-cant-smoke-but-now-correctional-officers-can/1198569 (reporting that shortly after Florida's smoke-free corrections policy was to take effect on Oct. 1, 2011, the order was lifted and corrections officers, employees and visitors were permitted to smoke or chew tobacco on prison grounds).

[22] *See* Nat'l Network on Tobacco Prevention & Poverty, *Tobacco Policy, Cessation, and Education in Correctional Facilities* 5 (2004), *available at* http://healthedcouncil.org/breakfreealliance/pdf/ncchc.pdf.

[23] *See id.*

[24] *See, e.g.*, Stephen Lankenau, *Smoke 'Em If You Got 'Em: Cigarette Black Markets in U.S. Prisons and Jails*, 81 PRISON JOURNAL 2, 142 (2001) (case studies of 16 jails and prisons finding that the demand and availability of cigarettes in correctional facilities create a unique black market, and highlighting the following factors in affecting the growth of cigarettes into highly priced commodities: the facility's architectural design, inmate movement inside and outside, officer involvement in smuggling cigarettes to inmates, and officer vigilance in enforcing the smoking policy).

[25] *See* Gloria D. Eldridge et al., *Smoking Bans and Restrictions in U.S. Prisons and Jails: Consequences for Incarcerated Women*, 37 AM J PREV. MED. (2S) S179 (2009), *available at* http://cancercontrol.cancer.gov/TCRB/trend/low_ses_ii/docs/EldridgeCropseyAJPM2009.pdf.

[26] *See* Cork, *supra* note 18.