

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (93) 6

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
CONCERNING PRISON AND CRIMINOLOGICAL ASPECTS
OF THE CONTROL OF TRANSMISSIBLE DISEASES
INCLUDING AIDS AND RELATED HEALTH PROBLEMS IN PRISON

*(Adopted by the Committee of Ministers on 18 October 1993
at the 500th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that it is in the interests of the member states of the Council of Europe to achieve greater unity between its members and that one way of pursuing this objective is joint action both in the field of health care in prisons and in the field of crime policy;

Aware of the extent of the challenge presented to prison authorities by the responsibility for the development of preventive measures and the medical, psychological and social care of HIV-infected prisoners;

Convinced of the need to establish a European strategy to combat HIV infection in prisons;

Taking into account the 1987 statement of the consultation on the prevention and control of Aids in prisons, of the special programme on Aids of the World Health Organisation;

Recalling its Recommendation No. R (87) 25 concerning a common European public health policy to fight the acquired immunodeficiency syndrome (Aids);

Recalling the conclusions adopted by the 8th Conference of Directors of Prison Administrations (Strasbourg, 2-5 June 1987) on communicable diseases in prisons with special reference to Aids;

Recalling the conclusions adopted by the 16th Conference of European Ministers of Justice (Lisbon, 21-23 June 1988) on the criminal law and criminological questions raised by the propagation of infectious diseases, including Aids;

Welcoming Recommendation 1080 (1988) of the Parliamentary Assembly of the Council of Europe on a co-ordinated European health policy to prevent the spread of Aids in prisons;

Referring to its Recommendation No. R (89) 14 on the ethical issues of HIV infection in the health care and social settings;

Aware that respect for the fundamental rights of prisoners, in particular the right to health care, entails the provision to prisoners of preventive treatment and health care equivalent to those provided to the community in general;

Referring in this connection to the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter;

Referring to its Recommendation No. R (87) 3 on the European Prison Rules which help to guarantee minimum standards of humanity and dignity in prisons;

Considering that in order to comply with ethical requirements and to be effective, preventive and health care measures should be based on the voluntary co-operation of the prison population,

Recommends that the governments of member states:

– see to it that the principles and provisions set out in the appendix to the recommendation and prepared in the light of present-day knowledge are put into practice in national and regional prison health policies designed to combat HIV infection and other transmissible diseases;

– ensure the widest possible dissemination of this recommendation, paying special attention to all individuals and bodies responsible for implementing health policy in prisons, and also to all law officers and bodies concerned with crime policy and related criminological aspects of the control of transmissible diseases.

Appendix to Recommendation No. R (93) 6

I. Prison aspects

A. General principles

1. There is an urgent need to draw up, in each state, a coherent policy for combating HIV/Aids in prison.

Such a policy should be developed in close collaboration with national health authorities and be incorporated in a wider policy for combating transmissible diseases in prisons.

Ways and means of preventing HIV/Aids in prisons should be fostered.

Health education and information for all inmates and personnel should be an integral part of prison policies.

2. The systematic medical examination carried out on entry into prison should include measures to detect inter-current diseases, including treatable infectious diseases, in particular tuberculosis. The examination also gives the opportunity to provide health education and to give prisoners a greater sense of responsibility for their own health.

3. Voluntary testing for HIV/Aids infection, together with counselling before and after the test, should be made available. Health staff should, under the responsibility of a doctor, explain to prison inmates the consequences of test results prior to undergoing such tests, and inform them of the results, in full confidentiality, unless he/she declines to receive such information.

In the present state of knowledge, compulsory testing of prisoners should be prohibited since it would be ineffective and discriminatory and therefore unethical.

4. At each stage of HIV/Aids infection, prisoners should be offered the same medical and psychosocial treatment as that given to other members of the community. In general, they should have access to health services which are equivalent to those of the community at large.

Co-operation with national or regional health systems facilitates the medical care of seropositive prisoners and prisoners suffering from Aids, as well as their medical follow-up on entry and after release.

5. Medical care, psychological support and social services should be organised for seropositive prisoners, to facilitate their integration after release.

6. A special effort should be made to disseminate information among both prison staff and prisoners to ensure that they are aware of modes of HIV transmission, as well as the rules of hygiene to be observed and precautions to be taken to reduce the risks of contamination during detention and after release.

Health and prison authorities should provide information and, where appropriate, individual counselling on risk behaviours.

Information should be made available to prisoners in a language they can understand, if necessary taking into account their cultural background.

7. In the interests of preventing HIV infection, prison and health authorities should make condoms available to prisoners during their period of detention and prior to their provisional or final release. Each state should be free to select the most appropriate channel for this purpose: medical service, sale in canteens or any other arrangements suited to current attitudes, the type of prison population concerned and the prison establishment's mode of operation.

8. Information about the health of prisoners is confidential.

The doctor may only provide such information to the other members of the medical team and, exceptionally, to the prison management, as is strictly necessary for the treatment and care of the prisoner or in order to examine the health of the prisoners and staff, with due regard to medical ethics and legal provisions. Normally this should take place with the consent of the person concerned. Disclosure of information should follow the same principles as those applied in the general community.

HIV/Aids serological status is not generally considered necessary information.

9. As segregation, isolation and restrictions on occupation, sports and recreation are not considered necessary for seropositive people in the community, the same attitude must be adopted towards seropositive prisoners.

When prisoners try to sexually assault other prisoners or more generally try to harm other prisoners or staff, disciplinary measures or solitary confinement may be justified independently of the HIV status.

10. Sanitary facilities conforming to standards in the community should be available to prisoners in all sections of a prison.

11. All means necessary to allow them to observe the rules of hygiene should be made available to prison staff and prisoners.

12. Seropositive prisoners should receive medical follow-up and counselling during their period of detention and particularly when they are notified of test results.

Medical services in prison establishments should ensure that medical and psychological follow-up of prisoners is available after their release and should encourage them to use these services.

13. HIV-infected prisoners should not be excluded from measures such as placement in semi-liberty hostels or centres or any other types of open or low-security prison.

14. As far as possible, prisoners with terminal HIV disease should be granted early release and given proper treatment outside the prison.

15. Adequate financial and human resources should be made available within the prison health system to meet not only the problems of transmissible diseases and HIV/Aids but also all health problems affecting prisoners.

16. Persons deprived of their liberty may not undergo medical research unless it is expected to produce a direct and significant benefit to their health.

Ethical principles concerning research on human subjects must be strictly applied, particularly in relation to informed consent and confidentiality. All research studies carried out in prisons should be subject to approval by an ethical review committee or to an alternative procedure guaranteeing these principles.

Research on the prevention, treatment and management of transmissible diseases in prison populations should be encouraged, provided that such research yields information not available from studies in the community.

Prisoners should have the same access to clinical trials of treatments for all HIV/Aids-related diseases as persons living in the community.

Epidemiological HIV/Aids monitoring, including anonymous, non-correlated screening, could be considered only if such methods are used in the general population and if their application to prison populations appears likely to yield results useful to the prisoners themselves.

Prisoners should be informed in due time about the existence of any epidemiological studies carried out in the prison where they are detained.

Publication and communication of the results of research studies must ensure absolute confidentiality concerning the identity of prisoners who have participated in such studies.

B. Special measures

17. The prison authorities should adopt, as far as possible, measures to prevent the illicit introduction of drugs and injection material into prisons. However, such measures should not prejudice the trend towards the closer integration of prisons into their economic and social environment.

18. Prevention requires the introduction and development of health education programmes in order to reduce risks, including the provision of information on the need to disinfect injection equipment or use it only once.

A disinfectant should be made available to prisoners not only to protect them against transmissible diseases, but also to enable them to observe the rules of hygiene.

19. Health care and social programmes should be developed with a view to preparing drug-using prisoners for release and to adapting early-release arrangements, conditional on following appropriate treatment (hostel, after-care centre, hospital, out-patient service, therapeutic community).

20. Non-custodial measures should be more widely used by courts or other competent authorities in order to encourage drug addicts to seek treatment in health or social institutions.

Drug addicts should be encouraged to follow such treatment programmes.

21. Prisoners and their families, spouses or partners who are allowed unsupervised visits must be offered information, counselling and support in connection with HIV/Aids.

Preventive and contraceptive measures should be made available to prisoners and their partners in accordance with the law in force in the community.

22. Health education programmes should be adapted to the specific needs of women prisoners.

Pregnant seropositive prisoners must receive care and assistance equivalent to those given to women outside the prison. They must have as much information as possible on the risks of infection of the unborn child and, if national legislation so provides, have the option of voluntary termination of pregnancy.

A seropositive child born to a woman prisoner should remain with the mother, if she so desires, in conformity with prison regulations. The child should have access to appropriate specialist medical services.

23. Health education programmes should be adapted to the needs of prisoners, particularly young prisoners, to foster attitudes and behaviour conducive to the avoidance of transmissible diseases, including HIV/Aids.

24. Foreign prisoners suffering from HIV/Aids should be given the same information, counselling and health care as other inmates.

25. HIV/Aids infection should not prevent a prisoner from being transferred on the basis of a bilateral agreement or of the Council of Europe Convention on the Transfer of Sentenced Persons.

The medical report on a sentenced person transferred to his/her country of origin should be sent directly by the prison medical services in the sentencing state to the prison medical service in the enforcing state, since the report is protected by medical confidentiality.

26. Arrangements for the deportation of foreign HIV/Aids-infected prisoners may be postponed for humanitarian reasons if the prisoners are seriously or terminally ill.

II. Criminological aspects

27. The priority in controlling transmissible diseases, including HIV/Aids, is the introduction of preventive measures and information designed to develop awareness and a sense of responsibility among the public.

28. Sanctions relating to the transmission of transmissible diseases and HIV/Aids should be envisaged within the context of existing offences, and the institution of criminal proceedings should be considered as a last resort.

29. Such criminal proceedings should be aimed at sanctioning those who, in spite of information and awareness-building campaigns to prevent the spread of HIV/Aids, have nevertheless endangered the lives, physical integrity or health of others.

30. Health care officials or practitioners who have violated norms and practices designed to prevent the spread of transmissible diseases, or who do not fulfil their duty to treat individuals infected by HIV/Aids, should be liable to disciplinary sanctions and, if appropriate, be subject to the criminal laws in force.