



# A best practice guide to HIV disclosure



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## Chapter 3

Disclosure in  
prison settings  
and criminal law:  
Some best practice  
recommendations

**Sasha Gear**



## The chapter in brief

Prisons (now referred to as ‘correctional centres’) are total institutions, and as such pose particular challenges for inmates and prison staff regarding disclosure of HIV. For inmates, an initial issue they have to deal with may be who to disclose to. They may not only have a family or partner(s) outside to consider in their disclosure decisions, but also other inmates with whom they live in very close proximity and have different kinds of relationship, including sexual ones. Disclosing an HIV positive status may also mean that they face discrimination, stigma and even victimisation as a result.

Because inmates are largely shut off from outside society, correctional services’ officers play a fundamental role in ensuring that they have access to health care services and information, and in protecting the confidentiality of prisoners’ disclosures. In addition, they are crucial in protecting inmates from stigmatisation or discrimination. Also important is the attitude of correctional service workers towards their own HIV testing and status.

Although the Department of Correctional Services has adopted a ‘Framework for the Implementation of Comprehensive HIV and AIDS Programmes and

Services for Offenders and Personnel 2007–2011’, and subsequently, additional guidelines, these need much fleshing out before they can be effectively implemented and monitored in prison settings.

Some practical recommendations around disclosure in prison settings include:

- Staff need training to deal with disclosure such as on the importance of confidentiality; in understanding and engaging with homophobia, discrimination, stigmatisation and victimisation in prison.
- Health workers who examine prisoners on arrival must use this opportunity to educate and provide support for disclosure and other HIV related services.
- Prison staff should be trained to detect health problems early and to act swiftly to ensure that inmates are linked with the necessary services.
- All staff need to observe confidentiality, including security staff and doctors. Staff members who do not should be disciplined and these offences should be clearly stated in disciplinary codes.



## Focus of this chapter and definition of disclosure

This chapter focuses on the implications of a prison setting on prisoners' disclosure of their HIV positive status, in relation to:

- Inmates disclosing to regular prison staff and prison health care workers
- Disclosure of inmates' statuses by health care workers to other health care workers in other prisons and the community (in cases of inmate release or transfer)

- Inmates' disclosure to family, friends, partners and children's care givers outside of prison
- Inadvertent disclosures that occur in prisons where daily movements are scrutinised by fellow inmates and staff.

# An overview of HIV and AIDS in prisons

This section deals with the unique characteristics of prisons, which provide the setting for challenges faced by prisoners in disclosing their HIV positive status. It stresses the importance of the attitude that prison staff have towards prisoners accessing health care and health care information, towards HIV disclosure and confidentiality, and towards preventing discrimination and stigmatisation as a result of disclosure.

South African prisons – like most others globally – hold particular and critical challenges regarding the HIV pandemic. Inmate populations tend to have higher rates of HIV infection than the broader population. High levels of incarceration combined with continuous movement of people between prisons and the ‘outside’, make HIV and AIDS as much an issue of public health as of prison health. Annually an estimated 360 000 people move through the prison system.

Prison environments, which are ‘total institutions’ and more closed than outside society, are characterised by unhealthy, overcrowded and under-resourced conditions, which complicate the task of health care. But prisoners do have a



right to health care. They are also entitled to be treated with dignity and exercise all their other basic human rights, save those that are necessarily restricted by their incarcerations. The health care of inmates should be in accordance with that available outside of prison and in this regard, the state – through the Department of Correctional Services (DCS) – is entrusted with and obliged to see to the safety and care of prisoners.

Prison conditions tend to lead to rapid deterioration in a person's health status, which for many is already compromised on arrival in prison due to HIV and other factors. It is therefore imperative that inmates are able to access treatment speedily. Building the support for inmates to test for and disclose their HIV status – as part of a holistic approach to HIV and AIDS – is a vital ingredient in receiving effective treatment. Measures to ensure that others do not get infected (primarily through sexual intercourse) can also be put in place.

## **Correctional officers are crucial to ensuring prisoners have access to health care services**

A key difference between prison life and life outside is that inmates have far fewer potential avenues of support and information than the rest of us. In addition, they face constraints in accessing those avenues of support they are

entitled to (for example, needing to be unlocked and escorted to see a health worker). Correctional officers play a role that exercises enormous power: they are the face of the Department (which is mandated with prisoners' safe care) and inmates are dependent on them to be linked to services, assistance and information.

The other side of this is that prisoners have been removed from existing networks of outside support. Once inside, they may be transferred between sections and prisons, meaning they have to learn new ropes and re-develop in-prison networks. Again, this underscores the importance that prison staff inform inmates about available services and connect them to these, as well as be alert to potential difficulties and problems.

## **Health care workers in prisons play an important role in advocating their patients' health**

As security-focused institutions, prisons go against the culture of health care, and health workers may find themselves in tricky situations where medical concerns and ethics conflict with security prerogatives. But because of the shut-off nature of prisons, health care workers represent an important source of care and information for inmates: their role in advocating for their patients' health carries greater weight than in the general population.

Staff attitudes and perceptions regarding HIV and AIDS are a fundamental factor for disclosure. Recent research among prison staff has found that many officials would literally rather die than reveal their HIV positive status or take anti-retroviral medications, and that many do die. Apart from the devastating effects these attitudes and fears have on individuals and Departmental staffing, they surely impact on officials' dealings with inmates. Particularly in relation to HIV and AIDS, the pivotal role that correctional officers play in the lives of inmates, and in mediating inmates' access to disclosure-related and treatment support makes this serious cause for worry.

Special efforts need to be made to create a healthy and trusting context conducive to HIV disclosure and holistic health care because prison environments do not automatically lend themselves to this. Quite the contrary – critical issues like confidentiality are seriously undermined in prison. The communal nature of the living circumstances and of accessing services (where, for example, inmates regularly hear each others' requests and complaints made to staff members) makes this so.

## **The fact of being in prison adds complexity to disclosure decisions and consequences**

Inmates may not only have a family or partner(s) outside to consider in their disclosure decisions. Since they live in very close proximity to and have varying relationships with other inmates, they may consider disclosing their status to a wider group.

Adding complexity to decisions about who to disclose to are issues around inmates' separation from family and friends in circumstances that have often created tension and conflict in these relationships. In addition, the time that inmates are able to spend with visitors is severely limited and happens where there are lots of other people around. And the hardship of dealing with negative responses to disclosure can be compounded by the experience of being in prison, which is where the inmate must sit with possible rejection and obstacles in accessing support.

## **Inmates may be abused and stigmatised as a result of their disclosure**

Key to disclosure considerations in any setting is fear of stigmatisation. It is conceivable that the danger is heightened

in prison because inmates have so little control over whom they associate with.

Among women, fears of violence, abuse or removal of financial support (often from partners) may be altered and complicated in prison. While their separation may somewhat protect them from physical abuse, imprisonment could add burdens which cause those who are mothers, for example, to fear for the well-being of children outside. If they are mothers who have young children with them, children will sometimes be required to leave the prison before them. A child's HIV positive status may increase the already difficult arrangements that need to be made for the child and may demand disclosure to those taking over the child's care.

Another potential consideration in relation to male prisoners (who make up 98% of South Africa's prison population) is the impact on decisions to get tested and/or disclose of the brutal understandings of masculinity, which are prevalent in prison and forbid male vulnerability.

# Current procedures and practices relating to HIV disclosure in prisons in South Africa

This section considers fairly recent policy that provides a framework and guidelines for tackling HIV and AIDS in relation to prisoners and staff. It also deals with the circumstances in which courts can order an HIV test.

## The Framework for the Implementation of Comprehensive HIV and AIDS Programmes and Services for Offenders and Personnel

In 2007 the Department adopted the 'Framework for the Implementation of Comprehensive HIV and AIDS Programmes and Services for Offenders and Personnel 2007–2011'. It outlines the Department's plan for the (staggered) implementation of an HIV and AIDS strategy, and although it is under review, for now it remains the guiding policy. The policy aims, among other things, to promote voluntary disclosure of HIV status, encourage peer education and establish support

groups. Slightly more detailed guidelines and obligations are provided in the 'DCS Minimum Service Level Standards for HIV and AIDS Programmes for Offenders'.

### **The Minimum Standards state that:**

- VCT must be done in facilities where confidentiality can be ensured.
- If offenders want to disclose their status they should receive counselling first to ensure they will be able to cope with the effects of disclosure.
- Disclosure must be managed with regard to whom and when this will be done.
- Care must be taken that the offender is not taken advantage of and used in all and every event as a person living with AIDS (sic). This provision apparently aims to prevent inmates being used in exploitative ways by the Department to tell their story at public relations or awareness events.
- Staff are also required to keep registers of all testing requested, conducted, related counselling, referrals and disclosures.

These standards make all personnel involved in implementing HIV and AIDS programmes for prisoners responsible for meeting these standards and set particular measures (such as that information and educational material must continuously be available to inmates and displayed in accessible areas). It specifies that the principle of confidentiality must always be adhered to.

## **The courts may direct an inmate to take an HIV test**

While inmates can never be forced to have an HIV test by virtue of being prisoners, certain circumstances in criminal law now make an HIV test compulsory. This however, requires an application and court process, and if granted, disclosure is permitted to specific people only. If one is alleged to have committed a sexual offence, the victim (or someone on behalf of the victim) may – within 90 days of the alleged offence – apply to a magistrate to have the alleged offender tested for HIV and the results disclosed to them (Sexual Offences Act, 2007). This law could affect inmates incarcerated for (alleged) sexual offences or inmates alleged to have committed sexual offences in prison.



# The impact of current policies and practices on prison populations

The 'Framework for the Implementation of Comprehensive HIV and AIDS Programmes and Services for Offenders and Personnel 2007–2011' is only a framework, and needs more detail to be really useful on a practical level. Because of the gaps in policy and implementation, issues that discourage disclosure (such as discrimination and stigma) are regularly not addressed. This section outlines some of the policy gaps, which may provide a more favourable environment for disclosure.

## The current policy framework requires more substance

It is difficult to get a good sense of the impact of HIV and AIDS policies in prison partially because the policy is relatively new, has not yet been close to fully implemented or evaluated, and because parts of it have been overridden by other decisions. For example, when referring to 'offenders', the Framework ignores awaiting trial prisoners, while actual practice reportedly does not. Nevertheless un-sentenced inmates are particularly

disadvantaged in relation to inmate services in general, and HIV and AIDS prevention and treatment assistance is no exception. The inferior conditions in which un-sentenced inmates are housed – often for long periods of time – remains an issue of grave concern.

The policy merely sets out the parameters for more detailed policy formulation and programme development and its implementation requires that it be substantially fleshed out.

## **Staff shortages contribute to the limited reach of HIV and AIDS programmes**

The capacity of different correctional centres varies considerably, with, for example, some especially hard hit by professional staff shortages. Thirty-five percent of professional nurse posts are currently vacant. There is also uneven use of HIV and AIDS service partnerships with NGOs and support groups, so while some correctional centres are accessing additional support through civil society, others are not.

The shortage of capacity and serious overcrowding contributes to low numbers of offenders being reached by health promotion initiatives, which has seen inmates resorting to legal action in a desperate bid to access anti-retroviral treatment. High numbers of health-related deaths soon after admission highlight the gravity of the situation.

## Gaps in policy need to be filled to create a conducive environment for disclosure

Fear of stigmatisation and discrimination and the broader adverse situation of responses to HIV and AIDS in prison militate against disclosure and require attention in order to establish an environment that is conducive to disclosure.

Important gaps in existing policy inhibit the realisation of a supportive disclosure environment, simultaneously undermining inmates' rights. The policy fails to address the peculiarities of the correctional centre environment. Staff do not have guidance on how they should approach barriers that result from the prison context.

There is no acknowledgement of the obstacles inmates experience in accessing health care, and their reliance on third parties (usually correctional officers) to access all other support services.

The policy is silent on the difficulties of maintaining discretion and confidentiality inside prison. Anecdotal reports from several health staff provide conflicting accounts of confidentiality within

The realisation of the policy is still a long way off and this means that while HIV disclosure should be a gateway to support and treatment, inmates may in fact see little benefit to getting tested or disclosing.

the prison system: some maintain that confidentiality is not compromised because there's no telling the reason that an inmate is accessing health services or why he or she is receiving a high-protein diet, while others argue that there's no such thing as confidentiality in prison and HIV positive inmates are quickly identified through visits to health care workers and special food.

The role of correctional officers as mediators of inmates' access to health services is not addressed by the policy and no guidelines are provided for managing confidential issues they may encounter in performing this role.

The policy does not deal with disclosure to inmates' families or partners outside prison or how staff might encourage this and assist, given the additional burdens that inmates may face by virtue of being incarcerated. The logistics of disclosure to families can also present challenges. Anecdotal accounts suggest that in many prisons staff can manage this in a private setting, providing support in the form of a health care or social worker, or both.

Less directly related to disclosure but equally pertinent is that the policy is silent on male on male intercourse and sexual violence which together represent key modes of HIV transmission in prison. Lack of acknowledgement of these issues contributes to ongoing discomfort with them. This hinders disclosure, and health promotion and

violence prevention generally. Sex and sexual violence inside correctional centres pose important questions regarding disclosure as staff may become aware of certain inmates being at risk of contracting HIV.

The policy also does not address how HIV positive inmates are to be linked to support when transferred between prisons or following release. The current practice is apparently for health professionals to prepare a report and referring letter to be enclosed in a sealed envelope and given to the transferring officer. However, initial investigations point to breaches and confusion with this system.

A grave broader concern that also impacts on HIV and AIDS is that the Department completely ignores mental health issues.

# Some best practice recommendations on disclosure in the prison environment

This section contains some practical and implementable recommendations to promote voluntary disclosure in a supportive and confidential environment.

Willingness by an inmate to disclose their HIV positive status largely depends on the status of care and support in the prison. This means ensuring that inmates' health and human rights are protected, and that they are provided with relevant prevention and treatment programmes. This requires the full commitment of Departmental leadership, both in word and in deed.

The current typical lack of direct interest in the programmes presented to officials of the Department, and centre managers' unwillingness to undergo VCT, work against disclosure. In order to bring about a truly supportive and respectful environment that encourages disclosure and better understanding of the disease on the part of both staff and inmates, management needs to take a dedicated and energetic lead. Some other practical recommendations follow:

## Assessments, training, policy and practice around confidentiality and sexual issues should encourage a safe environment for disclosure

- Health assessments done when inmates are admitted to correctional centres are the ideal opportunity to establish HIV and AIDS support, to encourage disclosure, and to inform inmates of their rights, including that of confidentiality. (This is in addition to the importance of the assessment for ensuring that inmates get immediate medical treatment where necessary). HIV clinicians provide a checklist of HIV and AIDS related actions on admission which could be used to help ensure that initial health assessments are used optimally.
- Staff training, policies and codes of conduct should address the issues of confidentiality, discrimination and homophobia, and the occurrence of sex and sexual violence in prison. Ignorance surrounding these factors and the lack of related policy contribute to discomfort, myth and stigma, which discourages disclosure and feeds risky and abusive practices. Correctional officers have a critical role in protecting inmates' rights to confidentiality.
- Staff need to be trained to pick up on warning signs such as deteriorating health or fear, and to proactively engage

with inmates to promote disclosure and prevent abuses and risky behaviours.

- Because of the lack of privacy in prisons, inadvertent disclosure to non-medical staff and other inmates may occur. Staff need to be vigilant regarding any victimisation or stigmatisation that may follow.
- Any inappropriate disclosures or threats to confidentiality by staff members need to be addressed through disciplinary measures.
- Any staff member who unreasonably prevents an inmate from accessing services or unreasonably delays such access must be disciplined. The nature and consequences of such infringements must be clearly stated in policy.

## **Inmates must be supported before and after making a disclosure**

- Clear procedures for the logistical support of inmates to disclose to families, sexual partners and friends need to be in place. Inmates should be offered a private setting to disclose in the presence of a health care worker.
- Staff working in women's prisons need to be equipped to support women in the additional disclosure issues they face around, for example, abusive partners, accessing



antenatal treatment, and arrangements for HIV positive children in prison and moving out of prison and away from their mothers.

- The sustained involvement of NGOs and CBOs, for example, in HIV disclosure-related services should be fostered, as should working with inmate groupings to build support groups and peer education.

## **Confidentiality should extend to security staff, medical records and doctors**

- The safety of health workers should not be jeopardised for the sake of confidentiality. The presence of security staff may be necessary during health consultations, in which case security staff must be bound by confidentiality requirements.
- A prisoners' medical records should always be forwarded in a sealed envelope, and not labelled in a manner that discloses HIV status, to health services in other sites where inmates are transferred or given to the inmate in person if released.
- The same ethical standards and principles that govern the forced disclosure of medical information must be applied in prison.

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