

Smoke-Free Air in State Correctional Facilities: What is the Law?

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Dangers

Dangers of Exposure to Secondhand Smoke

- Premature death
- Adverse effects on the cardiovascular system
- Heart and lung disease
- Cancer (10 types)

No Safe Exposure Level to Secondhand Smoke

According to the Surgeon General, methods that are not effective:

- Separating smokers from non-smokers
- Cleaning the air
- Ventilating buildings

The Surgeon General says the only effective method is to ban indoor smoking.¹

Smoking in Prisons

Surgeon General reports that non-smoking prisoners and staff are exposed to higher levels of secondhand smoke than people in the general population.¹

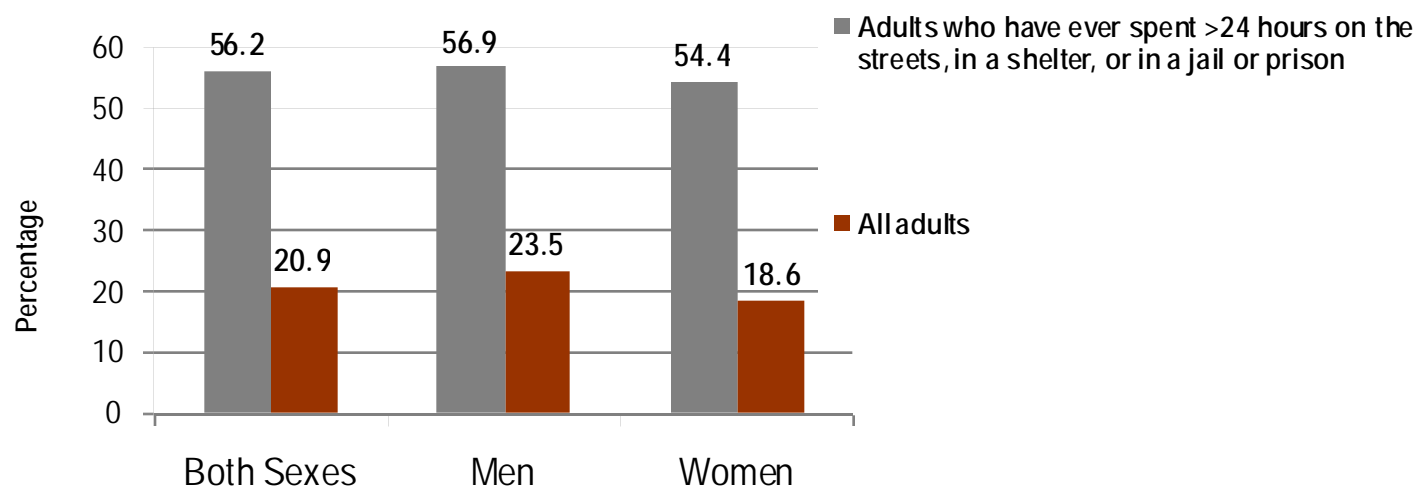
Reasons include:

- 60 to 80 percent of 2 million U.S. inmates are estimated to smoke
- Ventilation is inadequate due to prison overcrowding

The two leading causes of death in state prisons from 2001 to 2004 were heart disease and cancer, accounting for 50.6 percent of all prison deaths.²

One in three cancer deaths in prison were attributable to lung cancer, more than the next six leading cancer types combined.²

Cigarette Smoking Prevalence among Adults Aged ≥ 18 Years Who Have Ever Spent >24 Hours on the Streets, in a Shelter, or in a Jail or Prison, by Sex – United States, 2004



MMWR Weekly. Quickstats (March 17, 2006); 55(10):287
(<http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5510a7.htm>)

Prison Smoking Policies

- Recent studies have shown policies banning smoking reduce exposure.³
- In 2004, the Federal Bureau of Prisons made the 105 federal prisons in the U.S. almost 100 percent smoke-free.¹
- The Surgeon General reports that 38 states have smoking protection *policies* for state prisons, of which 23 are reported to be 100 percent smoke-free.¹

However, *statutes* are a more effective way to prohibit smoking in prisons.

Why a Statute vs. a Policy?

- **Policies are set by individual prison officials and vary from institution to institution**
 - > Statues offer uniform application and enforcement
- **Policies may not provide for penalties**
 - > A statutory ban allows for a non-smoker to sue for compliance
 - > A statutory ban can clearly identify penalties for individual violators and for prison officials
- **Policies can be easily changed**
 - > Policies that are implemented by a prison official can be rescinded just as easily as they are implemented
 - > Change in leadership can mean a change in policy

Why a Statute vs. a Regulation?

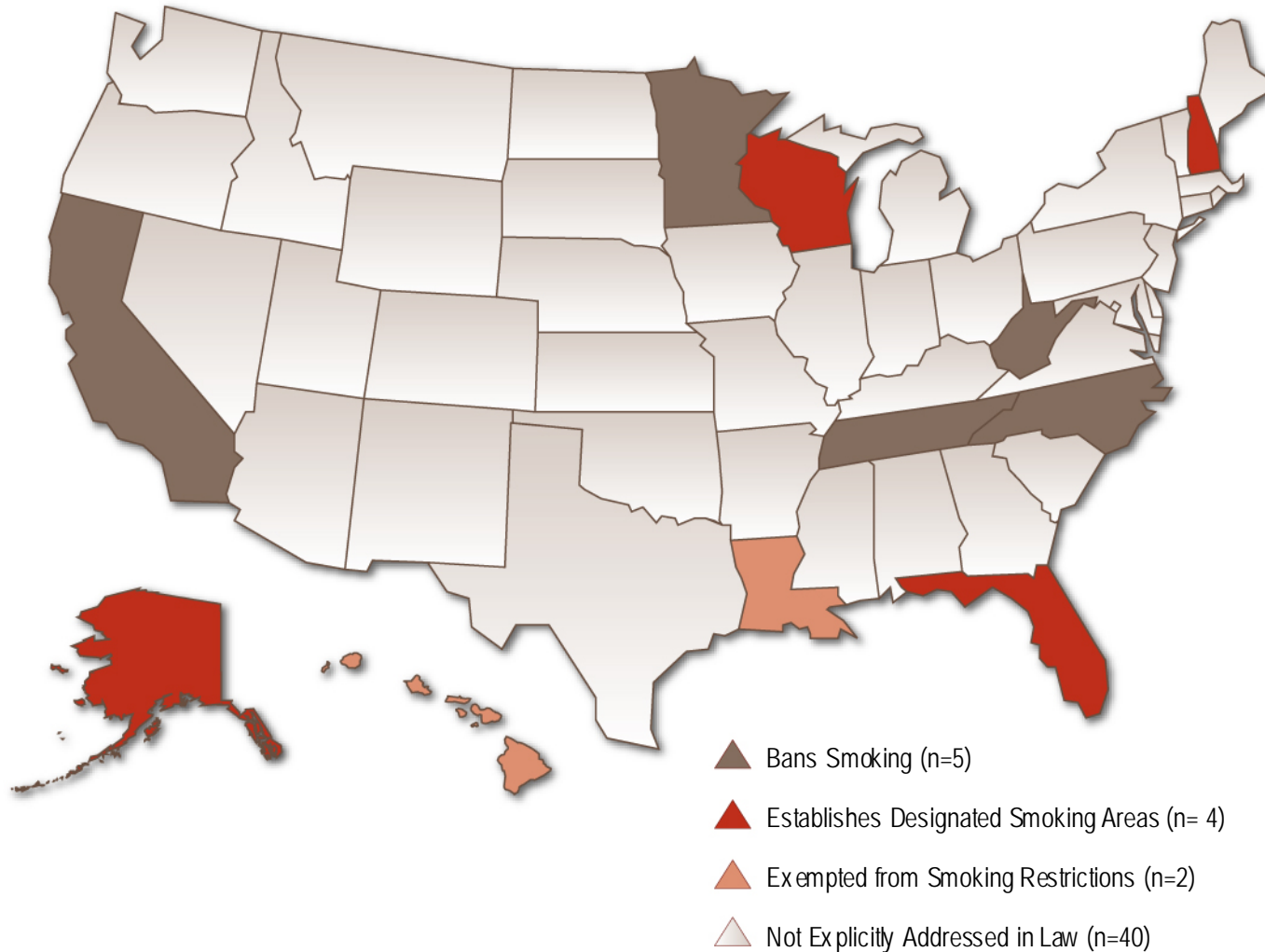
- Regulations, administrative procedures and rules are set and changed by a regulatory board or executive branch agency
- Regulations must be authorized by statute
- Regulations can be relaxed or changed more easily than a statute
 - > Vermont instituted a ban via regulation but later relaxed the policy⁴
 - > Federal regulation now allows smoking in guard towers and vehicles when smoker is alone⁵
 - > Laws have longevity: they can lead to social norm changes

Methods

Analysis of state laws was conducted through the National Cancer Institute's State Cancer Legislative Database (SCLD) Program.

- SCLD is an online database of 4,027 abstracts of enacted state bills related to cancer and tobacco from 1866 to present.
- Online database is updated quarterly.
- Relevant enacted bills are abstracted and assigned keywords.
- Search was conducted using the Correctional Facilities Keyword under Tobacco Use: Clean Indoor Air.
- Keyword is assigned if a correctional facility is expressly addressed in the law. Locations include state and local correctional institutions (including prisons, jails, penal and detention institutions, and adult lockup facilities).
- Search yielded 17 abstracts through June 30, 2007.

Statutes That Address Smoking in Prisons



What Does the Supreme Court Say?

In 1993, *Helling v. McKinney* held that an inmate may have a Constitutional Eighth Amendment claim of cruel and unusual punishment if exposed to levels of secondhand smoke that pose an unreasonable risk of serious damage to the inmate's future health.⁶

For a cruel and unusual claim to be made:

- A smoking policy must already be in place AND
- An inmate must have health-related problems associated with inhalation of tobacco smoke AND
- Staff must deliberately ignore the smoking restrictions

Areas for Improvement

- **Explicitly include prisons under the definition of a public place and/or place of employment to decrease ambiguity of application of the law.**
 - > Many state comprehensive smoking bans prohibit smoking in “public places” or “places of employment.”
 - > Prisons may not fit into these definitions.
 - > Include half-way houses, city and county jails, and lock-up facilities as areas where smoking is expressly banned.
- **The Supreme Court decided that prison populations have a right to health care.⁷**
 - > Does this mean they are entitled to smoking cessation support?
 - > Providing smoking cessation will likely increase the compliance and effectiveness of smoking bans.

Summary

- Laws can make the issue clear (with judicial decisions).
- In 1993 no state prison system had entirely banned smoking (through law, regulation, or policy).
- Today 5 states ban smoking through statute.
- 45 states and Washington, DC could pass 100 percent smoke-free statutes to fully protect the prison population and prison employees from the adverse effects of secondhand smoke.

State Cancer Legislative Database

<http://www.sclld-nci.net>

Contact

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Conclusion

"We must help them take better care of themselves and practice healthy behavior so that they are as healthy as possible when they return to their communities, whether it is after one night in the county jail, or after 20 years in prison."

- Vice Admiral Richard H. Carmona, M.D., M.P.H, United States Surgeon General, National Conference on Correctional Health Care, Austin, Texas, 10/6/2003.

Endnotes

1. U.S. Department of Health and Human Services. The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.
2. Polito, John R. Prison Smoking Cessation, Tobacco Cessation and Nicotine Cessation. <http://whyquit.com/pr/092507.html> (10/24/2007).
3. Hammond, S.K., & Emmons, K.M. (2005) Inmate exposure to secondhand smoke in correctional facilities and the impact of smoking restrictions. *Journal of Exposure Analysis & Environmental Epidemiology*, vol. 15(3): 205-211.
4. "Ill Effects Force Easing of Ban on Prison Smoking." *The New York Times*, 10/26/1992.
5. Zoroya, Gregg. "Smoking Bans Spread to Prisons." *USA Today*, 7/21/2004
6. *Helling v. McKinney*, 509 U.S. 25 (1993).
7. *Estelle v. Gamble*, 429 U.S. 97 (1976).