

Tobacco Behind Bars:

Policy Options for the Adult Correctional Population

A Policy Options Brief
March 2012



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AT WILLIAM MITCHELL COLLEGE OF LAW

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Executive Summary

Despite recent declines in smoking in the U.S. population, inmates in U.S. jails and prisons are up to four times more likely to use tobacco than nonincarcerated adults. The high prevalence of tobacco use among U.S. inmates has a disproportionate impact on 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. Although most correctional facilities have adopted some type of smoke-free or tobacco-free policy, many inmates cycle through prisons or jails, interrupting tobacco use only when they are incarcerated, and resuming tobacco use upon release. This ongoing tobacco use adversely affects the health of inmates, who suffer from higher rates of chronic tobacco-related illnesses than nonincarcerated adults, and whose leading cause of death is heart disease and lung cancer. Inmate tobacco use also has a profound impact on health care costs – both within the correctional system, and once inmates are released, on private and publicly funded health systems, such as Medicaid and Medicare.

Over the last two decades, correctional facilities have implemented policies to address tobacco use by inmates and corrections staff, and have provided various cessation services, aids and programs. Many early correctional tobacco policies followed the passage



of state or local smoke-free laws and were adopted to protect the health of the correctional population. In addition, some policies were passed, at least in part, to avoid lawsuits by inmates concerned about exposure to secondhand smoke within their cells. Today, as more prisons and jails are going tobacco-free, occasional problems have arisen, including lax or inconsistent enforcement, unequal treatment of staff and inmates, and a growing rise in tobacco contraband.

This policy brief explores the current state of tobacco control policies in local and state prisons and jails in the U.S., the health care cost of tobacco use among the correctional population, regulatory challenges with correctional tobacco- and smoke-free policies, and policy options and opportunities. The purpose of this brief is to spur debate on the most effective ways to address tobacco use among a marginalized population – both current and former inmates – that tends to be diverse, disadvantaged, and engaged in lifelong, life-threatening addictive behavior.

Introduction

Statistics on the U.S. prison system are pretty grim.¹ Today, with an astounding 2.26 million people in correctional facilities, the U.S. incarcerates more men and women than any other country in the world.² In fact, with less than 5 percent of the world's population, the United States has roughly a quarter of the world's prisoners.³

Naturally, this achievement in incarceration has costs. Next to Medicaid, corrections spending represents the fastest growing general fund expenditure in the U.S., accounting for approximately 6 percent of state general fund budgets.⁴ Housing inmates absorbs significant resources, close to \$52 billion in 2008.⁵ A large percentage of that cost – up to a third in some states – is allocated to corrections health care.⁶ With tobacco use among inmates up to four times higher than among the general population, their corresponding health care costs related to tobacco-related illnesses are also higher than those of the nonincarcerated population.⁷ Moreover, given the number, physical condition, and increasing age of long-term offenders, health care costs for the inmate population continue to rise. Inmate health problems stemming from chronic conditions are common, including tobacco-related illnesses such as chronic pulmonary disease, heart disease, and lung cancer. These health problems persist when individuals are incarcerated and when they are released.

Although all federal, and most state and local, correctional facilities have adopted smoke-free policies, tobacco addiction continues to be a problem for current and ex-offenders with long-term consequences, both for the corrections systems and the population at large. Prisons and jails (and post-release treatment centers) that provide tobacco prevention and cessation services can help screen individuals, give them the resources to address their dependence on nicotine, and ultimately ease the financial burden on the public health care system.

Overview of Tobacco Problem in Correctional Facilities

Today, nearly 2.3 million people in the U.S. are behind bars: approximately 207,000 in federal custody, 1,311,000 in state custody, and 749,000 in local jails.⁸ Prisons hold inmates convicted of federal or state crimes; jails generally hold people awaiting trial or serving short sentences. The total rises to 7.1 million if it includes all who are on probation or on parole – 3 percent of all U.S. adult residents.⁹ Although this report focuses on tobacco control policies in state and local jails and prisons, it also includes background information on federal demographics.

Profile of Correctional Population

The high prevalence of tobacco use among inmates has a disparate impact on priority populations – particularly those of low socioeconomic status, who tend to be most commonly incarcerated. A brief look at prison demographics may shed light on the way in which tobacco use affects this unique class of individuals.

Basic Demographics. Despite a recent 1.3 percent decline in the number of offenders under adult correctional supervision, approximately 1 in 33 adults was incarcerated in the U.S. at the end of 2010.¹⁰ The demographics are sobering: Over 90 percent of U.S. inmates are male, approximately 70 percent are non-white, and roughly 40 percent have not completed high school (compared to 18 percent of the general population).¹¹ By middle age, more African American men in the U.S. are likely to have spent time in prison than to have graduated from college or joined the

military.¹² Significantly, studies estimate that **between 70 and 80 percent of all U.S. inmates smoke or use tobacco products – up to four times the national average.**¹³ Smoking prevalence among incarcerated women ranges from 42 to 91 percent, which is two to four times higher than among women in the general population.¹⁴

The use of tobacco products is just one of several risk factors common to the inmate population. Prisoners, in general, are not a healthy population. Many come from disadvantaged backgrounds with limited or no access to early preventive health care or systematic health care over the years. Many also have a tendency to engage in unsafe lifestyle behaviors such as drug and alcohol abuse, tobacco use, and unprotected sex. These factors often lead to what scientists describe as “early aging.”¹⁵ As a result, inmates have a higher rate of chronic and infectious disease than nonincarcerated individuals of the same age.¹⁶ In addition, other factors including age and low socioeconomic status can also have an impact on the health of prisoners.¹⁷

Mental Illness and Substance Abuse Disorders. Just under half of all cigarettes smoked in America are smoked by people with either a mental illness or a substance use problem¹⁸ – persons who have long been overrepresented in U.S. correctional facilities.¹⁹ For example, although serious mental illness afflicts approximately 5.4 percent of U.S. adults, the mentally ill account for nearly 16 percent of all inmates – about 284,000 people, according to federal surveys.²⁰ Three times as many mentally ill people reside in prisons than in mental health hospitals, and the rate of mental illness among prisoners is two to four times greater than in the general population.²¹ Significantly, researchers have found that Americans with mental illness are nearly twice as likely to smoke cigarettes as those with no mental illness.²²

Also, studies have shown that inmates are seven times as likely as individuals in the general population to have a substance use disorder.²³ A disproportionate number of individuals with substance abuse problems also use tobacco products.²⁴ As just one example, in 2005 approximately 66.5 percent of state inmates and 51.5 percent of federal inmates with a substance use disorder smoked in the month of their arrest.²⁵ Nicotine dependence is an addiction, and substance abuse and addiction are at epidemic proportions among prisoners.²⁶

The statistics are bleak. Over 75 percent of alcohol- and drug-dependent persons in early recovery tend to be heavily nicotine-dependent smokers.²⁷ Nationally, studies report that 77 to 93 percent of clients in substance abuse treatment settings use tobacco – more than triple the national average.²⁸ In a startling testament to the addictive properties of nicotine, one study reports that approximately one-third of people who use tobacco develop nicotine dependence, while only 23 percent of heroin users, 17 percent of cocaine users, and 15 percent of alcohol users develop dependence on those drugs.²⁹

Given their high tobacco use, individuals with psychiatric and substance use disorders are at greater risk for tobacco-related diseases, such as cardiovascular illness, respiratory disease, and cancer, than individuals in the general population.³⁰ Moreover, inmates with these disorders are more likely than others to die of tobacco-related causes.³¹

Chronic Illness and Cause of Death. Not only do inmates suffer from higher rates of chronic conditions (including persistent asthma) than nonincarcerated individuals of the same age, but a significantly large number of inmate deaths are linked directly to tobacco use.³² Although correctional authorities report over sixty different medical causes of prisoner deaths, the vast majority of deaths result from only a few causes – heart disease and cancer.³³ Lung cancer is by far

the leading cause of cancer deaths among inmates, accounting for one in three of all cancer deaths in state prisons.³⁴ In fact, statistics show more state prison deaths caused by lung cancer than the following six cancers combined: liver, colon, pancreas, non-Hodgkin's lymphoma, prostate, and leukemia.³⁵ In the United States, cigarette smoking causes 90 percent of all lung cancers.³⁶ The odds are daunting: smokers are fifteen to thirty times more likely to get lung cancer or die from lung cancer than nonsmokers.³⁷

Smoking is also directly linked to coronary heart disease and heart attacks – another leading cause of prisoner deaths.³⁸ Indeed, more men and women in the U.S. die from cardiovascular disease attributed to smoking than from cancer.³⁹ Smoking actually triples the risk of dying from heart disease among middle-aged men and women.⁴⁰

The “Graying” of Our Prisons. Another important consideration in assessing the impact of tobacco use among the U.S. prison population is the growth in the number of elderly inmates, with their attendant health issues. Many of these elderly inmates have long histories of tobacco use – often only interrupted when they are in custody. The rise of the elderly in U.S. jails and prisons has been precipitous.⁴¹ As just one example, in sixteen southern states, the elderly prisoner population grew approximately 145 percent in nine years.⁴² This growth in the elderly prison population results in higher health care costs – particularly for those who are suffering from, or likely to develop, tobacco-related diseases.⁴³

Studies generally place older inmates in the at-risk health category because they are often uneducated and underemployed and have high-risk lifestyles that include substance and alcohol abuse and the use of tobacco.⁴⁴ The poor health of older inmates causes them to be hospitalized longer and more often, and to consult with health care providers more frequently, than similarly aged individuals outside the prison environment.⁴⁵ In fact, one study reports that older inmates see health care providers approximately five times more often than non-inmates.⁴⁶ As a result, health care costs for elderly inmates are significantly higher than for younger inmates, and can represent a substantial portion of corrections departments' budgets.⁴⁷

Because of the rise in older, sicker, and more long-term offenders, and the stretched resources of correctional institutions, states are continuing to explore ways to provide both current and former inmates with more preventive health care services, such as tobacco cessation and treatment support.

Health Impact of Tobacco Use on Current and Former Inmates, and Their Families

The devastating health impact of tobacco use is so well known that the Supreme Court has described it as “perhaps the single most significant threat to public health in the United States.”⁴⁸ Approximately 443,000 people in this country die annually from tobacco-related illness, making cigarettes a leading cause of preventable death in the United States.⁴⁹ Given the high prevalence of tobacco use among inmates, it is sadly unsurprising that so many prison deaths are due to tobacco-related diseases – particularly coronary heart disease, cancer, and chronic obstructive pulmonary diseases.⁵⁰

The tobacco-related health problems of inmates do not end at the prison gates. Each year approximately 12 million inmates are released from jails and prisons, with the vast majority leaving city and county jails.⁵¹ Although many correctional institutions are tobacco-free, prohibition is not enough to change addictive behavior, and former inmates often resume tobacco use upon release.⁵²

As a result, not only are these individuals continuing to harm themselves, but they may be exposing their families, partners and friends to secondhand tobacco smoke, which hundreds of medical studies have confirmed to be hazardous.⁵³ In fact, the 2010 U.S. Surgeon General's Report warns that even occasional exposure to secondhand smoke is harmful and that low levels of exposure can lead to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attacks and stroke.⁵⁴

While the long-term health outcomes of individuals who cycle in and out of U.S. prisons and jails are generally unknown,⁵⁵ mountains of evidence exist on the health risks of both tobacco use and exposure to tobacco smoke.⁵⁶ Given the disproportionate number of inmates who use tobacco, this addictive behavior has a significant impact on current and future health care costs, both in the correctional system and in the public sector.

Health Care Cost Impact of Tobacco Use

Correctional Health Care Costs. Since 1988, state corrections costs have risen a shocking 303 percent.⁵⁷ Health care costs for inmates are also skyrocketing. In Ohio alone, for example, spending on prison health care saw a dramatic 96.2 percent increase from \$115 million in 2001 to over \$225 million in 2010.⁵⁸ And each year, correctional health care costs for inmates are projected to increase approximately 10 percent.⁵⁹ Moreover, as noted earlier, prison demographics show a trend toward older offenders who are serving longer sentences and who have greater health care needs. Many of these inmates have tobacco-related illnesses or are likely to develop these illnesses in the future. For instance, prisoners in Florida who were hospitalized in 2010 for tobacco-related illnesses like cancer and emphysema cost the state approximately \$8.7 million.⁶⁰ Health care has become a pressing problem facing correctional administrators. Since inmates are generally not eligible for federally funded benefits programs such as Medicare and Medicaid, and Medicaid benefits are often terminated upon incarceration, the state absorbs the lion's share of a state inmate's health care costs.⁶¹

Related Costs. Prisoner health is not just an issue for the corrections systems. Approximately 12 million inmates are released annually,⁶² and roughly seven out of every ten offenders will eventually continue to serve all or part of their sentences in the community.⁶³ Inmates who are released and continue to use tobacco are likely to have tobacco-related health issues and costs. They are also likely to become a greater financial burden on their local health care system than if they had been treated while incarcerated, received tobacco cessation support and services in custody and upon discharge, and quit using tobacco. Moreover, 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

TYPE OF SERVICE	TOTAL BILLED
Medical Visit	
Testing X-ray Lab	100
Surgery	
TOTAL THIS CLAIM	

resources for health care.⁶⁴ These individuals – many with chronic conditions directly related to tobacco use – will end up drawing on state and national health care insurance systems such as Medicaid and Medicare.⁶⁵

Finally, as a side note: in addition to the overall public health care cost impact of tobacco use, former inmates who relapse find themselves needing to maintain an expensive habit on a regular basis. The high cost of cigarettes and tobacco products competes with other needs and may divert scarce financial resources at a time when individuals are struggling to reintegrate into the community after incarceration.⁶⁶

Tobacco Control Policy Option 1: Prevention

Given the high prevalence of tobacco use among the correctional population, and the significant health impact and related costs of nicotine addiction, federal, state, and local correctional facilities have taken steps over the years to prohibit smoking – and increasingly the use of all tobacco products – on their premises. Prevention – in the form of smoke-free or tobacco-free regulation – has been the key line of defense in the ongoing war against tobacco in the corrections system.

The adoption of smoke-free correctional policies did not occur overnight. Nor did it occur without a struggle. Correctional facilities are challenging settings for tobacco policies because the rights of both those who live there and those who work there must be considered, and because both parties co-exist in a stressful environment where nicotine addiction is common. This section provides a brief look back at the legal landscape of smoke-free regulation behind bars, and then examines the current state of tobacco policies in U.S. prisons.

Overview of Smoke-free Prison Litigation

Over the last twenty years, inmates and staff have used litigation both to promote the passage of smoke-free regulations in correctional institutions and to challenge those regulations.⁶⁷

Legal Challenges to Prison Smoking Policies

Because they are confined in close quarters, with little opportunity to escape secondhand smoke, inmates have historically experienced a higher risk of harm due to secondhand smoke exposure than the average nonsmoker outside the prison environment.⁶⁸ Back in the early nineties, as the health risks of secondhand smoke were becoming more broadly known, inmates concerned about their exposure to tobacco smoke in the prison setting sued prison officials for protection from this health hazard – often alleging violation of their Eighth Amendment right not to be subjected to “cruel and unusual punishment.”⁶⁹

The seminal inmate lawsuit alleging secondhand smoke exposure was *McKinney v. Anderson* (1991), where a Nevada state prisoner who shared a cell with a heavy smoker brought a civil rights action against prison officials on Eighth Amendment grounds due to his exposure to secondhand smoke.⁷⁰ McKinney was confined in a poorly ventilated, six-foot by eight-foot cell with a cellmate who smoked five packs of cigarettes daily.⁷¹ McKinney also suffered from secondhand smoke outside his cell; nearly two-thirds of the inmates in his facility smoked and the prison had very few smoke-free areas.⁷² McKinney claimed to suffer from nosebleeds, headaches and chest pains as a result of his constant exposure to secondhand smoke.⁷³ He alleged that this exposure posed an unreasonable risk of harm to his health and that Nevada prison officials repeatedly refused his requests to transfer him to a single cell or house him with a nonsmoker.⁷⁴

A magistrate in the U.S. District Court for the District of Nevada dismissed McKinney's claim, finding that McKinney had no right to a smoke-free environment in prison and had failed to prove that prison authorities had been deliberately indifferent to his medical needs.⁷⁵ On appeal, the U.S. Court of Appeals for the Ninth Circuit affirmed on the deliberate indifference issue.⁷⁶ The appeals court also reversed in part, ruling that McKinney had stated an adequate cause of action under the Eighth Amendment by alleging that exposure to secondhand smoke was harmful to his health.⁷⁷ The court remanded the case to district court so McKinney could prove he had been involuntarily exposed to levels of smoke that posed an unreasonable risk of harm to his existing or future health significantly.⁷⁸ Although the appeals court held that McKinney had an actionable claim, it also ruled that the prison officials were "entitled as a matter of law to prevail on their defense of qualified immunity," which essentially shields government officials from liability for damages if their conduct does not violate established rights that a reasonable person would have known.⁷⁹

On October 15, 1991, the U.S. Supreme Court set aside the Ninth Circuit's ruling and directed the appeals court to consider the case in light of a recent Supreme Court ruling on prisoner rights, *Wilson v. Seiter*.⁸⁰ The appeals court then reinstated its earlier judgment, ruling that McKinney was entitled to go forward with his case in district court for proceedings consistent with the appeals court's previous opinion and *Wilson*.⁸¹ McKinney appealed and again the U.S. Supreme Court agreed to hear the case, which was retitled *Helling v. McKinney*.

On June 18, 1993, the Supreme Court held (7 to 2) that McKinney stated an actionable claim under the Eighth Amendment when he alleged that administrators of the prison system had, with "deliberate indifference,"⁸² exposed him to levels of secondhand smoke that posed an unreasonable risk of serious harm to his future health.⁸³ The Court noted that McKinney would need to prove on remand that "it is contrary to current standards of decency for anyone to be so exposed against his will and that prison officials are deliberately indifferent to his plight."⁸⁴ After the parties reached a settlement agreement, the district court dismissed the *Helling v. McKinney* case with prejudice.⁸⁵ Nevertheless, the *Helling* ruling established a standard that inmates have used for years to assert secondhand smoke claims in lower courts.⁸⁶

Under the judicial ruling in *Helling*, inmates alleging exposure to secondhand smoke must prove that the risk they face is "not one that today's society chooses to tolerate"⁸⁷ and that prison officials exhibit deliberate indifference by consciously disregarding that risk.⁸⁸ Since 1993, inmates have often raised the *Helling* "deliberate indifference" standard in claims for protection against secondhand smoke.⁸⁹ In *Alvarado v. Litscher et al.*, for example, a nonsmoking inmate in Wisconsin with severe chronic asthma filed a civil rights lawsuit alleging that the state corrections department, warden, and health services manager violated his Eighth Amendment rights by acting with deliberate indifference to his exposure to secondhand smoke. The district court denied the defendant's motion to dismiss. The U.S. Court of Appeals for the Seventh Circuit affirmed, ruling that Alvarado's complaint stated a valid Eighth Amendment claim. "Given the decision in *Helling*," the court found that "the right of a prisoner to not be subjected to a serious risk of his future health resulting from ETS ('environmental tobacco smoke') was clearly established in 1998-99."⁹⁰

Legal Challenges to Prison Smoke-free and Tobacco-free Policies

Over the last few decades, as the hazards of smoking and secondhand smoke have become more widely known, the U.S. has seen a proliferation of smoke-free laws. Today, approximately 62 percent of the U.S. population is covered by state and local laws that prohibit smoking in indoor workplaces.⁹¹ As it has become more legally, politically and socially unacceptable to smoke indoors,

communities have begun to extend their smoke-free measures to cover previously exempt areas, as well as federal, state and local correctional facilities. Some facilities have expanded their policies to include the use of smokeless tobacco products, such as nicotine products that can be inhaled, sucked, chewed or otherwise ingested.⁹² Given prisoners' traditionally heavy reliance on tobacco as a means of relieving tension and boredom, these policies have at times met with resistance by inmates, several of whom have challenged them in court.⁹³

Constitutional Challenges. Generally, legal challenges to the validity of tobacco policies in correctional facilities have been based on constitutional grounds. Almost all these challenges have been unsuccessful. For example, courts have uniformly agreed that smoking is not a constitutionally protected right – in jails and prisons, or anywhere else.⁹⁴ Courts also have found that policies regulating the use of tobacco products in correctional facilities do not violate a prisoner's constitutional right not to be subjected to cruel and unusual punishment;⁹⁵ deprive a prisoner of a constitutionally protected liberty or property right;⁹⁶ violate a prisoner's procedural due process rights in being issued without formal rulemaking procedures;⁹⁷ violate a prisoner's constitutional guaranties of equal protection of the law in treating prison employees and inmates (or male and female inmates) differently regarding smoking restrictions;⁹⁸ or violate a prisoner's rights to free expression under the Constitution's First Amendment.⁹⁹ Courts have also held that confiscating tobacco products from county jail prisoners as contraband does not deprive prisoners of their property without compensation in violation of the Constitution's Fifth Amendment.¹⁰⁰

Native American Challenges on Religious Grounds. In addition, some Native American inmates have legally challenged smoke-free and tobacco-free prison regulations on the ground that prohibiting the use of tobacco in correctional facilities violates their rights to exercise religion under the Religious Land Use and Institutionalized Persons Act (RLUIPA), or the First and Fourteenth Amendments of the U.S. Constitution. Many Native American tribes use tobacco for spiritual, ceremonial, and medicinal purposes. All federal, and many state and local, correctional facilities permit access to ceremonial tobacco in some form,¹⁰¹ often including exemptions that allow Native American adults to light tobacco as part of a traditional Indian spiritual or cultural ceremony.¹⁰² Courts addressing these challenges have generally concluded that a prison's tobacco-free policy does not substantially burden a Native American's religious exercise because the policy does not significantly interfere with religious practices within the meaning of RLUIPA or the U.S. Constitution, or because the prison has actually permitted some access to ceremonial tobacco.¹⁰³

Overview of Correctional Smoke-free and Tobacco-free Policies

Tobacco has long been part of the corrections culture. In fact, up until the late 1980s, many prison systems issued inmates free tobacco (often a low grade tobacco known as "bull derm" – a corruption of the R.J. Reynolds brand Bull Durham).¹⁰⁴ Smoking cigarettes has traditionally been viewed as one of the few "privileges" that inmates could look forward to during the day and that correctional staff could use to cope with the stress of their work.¹⁰⁵ In 1993, a survey of the fifty state departments of corrections found that no prison system prohibited smoking entirely.¹⁰⁶ Even in 1998, a national survey of more than 900 correctional institutions found that 45 percent of them still permitted smoking by either inmates or staff.¹⁰⁷ In July 2004, two months after the release of the Surgeon General's Report on *The Health Consequences of Smoking*, the Federal Bureau of Prisons adopted a policy requiring that all 105 federal prisons, housing 180,000 inmates, become 100 percent smoke-free.¹⁰⁸

During this period, many state and local corrections administrators, either working in compliance with the laws of their jurisdictions, or exerting their own authority, began to adopt smoke-free policies.¹⁰⁹ According to a survey of fifty-two correctional departments in the U.S., the most commonly reported reasons for implementing smoke-free policies were to improve the health and safety of inmates and employees; avoid complaints and legal challenges regarding secondhand smoke exposure; comply with current or pending laws limiting smoking; and reduce correctional operating costs.¹¹⁰

As of January 2012, thirty state departments of corrections had in place tobacco-free policies that cover indoor areas, at least fifteen of which also prohibit all forms of tobacco on outdoor grounds.¹¹¹ These tobacco-free policies often include smokeless and spitless tobacco, and occasionally nicotine replacement products. (Some inmates have created a mold from nicotine gum to make keys and disable locks; others have dried and smoked nicotine patches.¹¹²) The policies apply both to inmates and correctional staff. Appendix A contains a table summarizing each state prison's tobacco policy. County jails and other local correctional facilities have also adopted smoke-free and tobacco-free policies. While most state facilities do not permit designated smoking areas on prison premises or grounds, local facilities vary in their scope of coverage.

Enforcement of correctional tobacco policies generally follows the standard disciplinary protocol of each facility. Several state departments of corrections identify specific consequences for noncompliance with their smoke-free/tobacco-free policies. Penalties vary depending on the perpetrator.

State Corrections Departments: Select Examples of Tobacco/Smoke-free Prison Enforcement¹¹³

State	Violator	Outcome
Arizona	Inmates	Confiscation of all smoking materials on the inmate's person and in the inmate's property; disciplinary action, including restricting purchases of tobacco from the inmate store.
Arkansas, Colorado, Kansas, North Carolina, Ohio, Texas	Visitors	Removal from the premises and/or loss of future visitation privileges.
Kansas	Inmates	Disciplinary consequences, plus potential suspension of contact visitation for up to one year.
Kansas	Contractors/ vendors	May result in termination of their delivery of services to the Department.
Nevada	Representatives/ employees of other state agencies	Restricted access to inmate labor.
North Carolina	Employees	Subject to a minimum of coaching and/or disciplinary action, up to and including dismissal.
North Dakota	Inmates	Possession of tobacco may be a class B misdemeanor.
Texas	Employees/others	Providing or possessing with intent to provide a tobacco product to an inmate may be a felony offense of the third degree.

As U.S. tobacco control policies have become increasingly common over the last two decades, correctional systems have also come to accept them as the norm. National organizations such as the American Jail Association,¹¹⁴ the American Correctional Association,¹¹⁵ and the National Commission on Correctional Health (NCCCHC)¹¹⁶ have all adopted resolutions that promote smoke-free policies in jails and prisons. The American Jail Association Resolution, for example, which was first adopted back in 1990, highlights not only the health risks of tobacco use and exposure to secondhand smoke, but smoking-related fire safety concerns, and maintenance and repair costs contributing to the deterioration of correctional facilities.¹¹⁷

Problems and Obstacles

Although state and local correctional facilities have made great strides over the last few decades in prohibiting the use of tobacco on their premises, problems with enforcement and contraband continue to exist. As mentioned earlier, a disproportionate number of inmates tend to use tobacco, and cessation can be a challenge – particularly for those who are heavily nicotine-dependent. Nevertheless, initial fears that imposing smoke-free policies in jails and prisons would cause unruliness or even violence among inmates have been largely unfounded.¹¹⁸ While the policies have not been universally popular – either with inmates or corrections staff – few states report significant overt resistance.¹¹⁹ Inmates or staff who challenge the policies on constitutional or other grounds, as described above, are almost always unsuccessful.¹²⁰

Unequal Treatment

Other problems exist, however. When tobacco policies contain exemptions or exceptions, such as permitting smoking in designated areas, or allowing staff, but not inmates, to use tobacco products in certain areas, difficulties can arise. For example, if a policy goal is to protect inmates and staff from exposure to secondhand smoke, the more comprehensive the policy, the better. Exemptions delegitimize the public health interest behind the policy because they increase the number of people not covered by it. Allowing individuals to use designated smoking areas weakens the policy, subjects it to loopholes, and makes it more difficult to interpret, implement and enforce. Also, many exemptions result in parties within the correctional facility being treated differently.¹²¹ A tiered regulatory system where one party enjoys privileges that other parties are denied is likely to breed resentment and a sense of injustice – a toxic mix in any environment, let alone a correctional institution. It can also lead to lawsuits, as discussed earlier.¹²²

Lax Enforcement

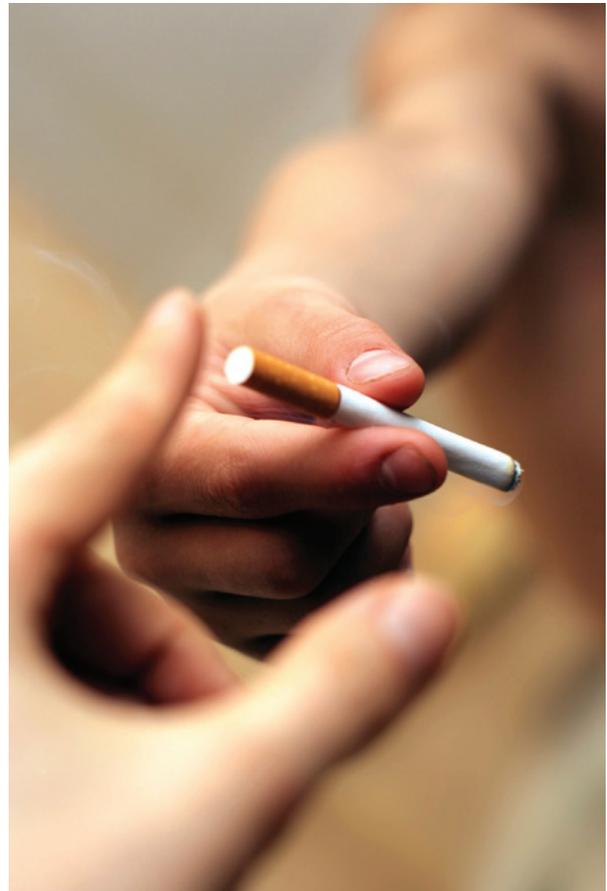
Many corrections officials tend to regard tobacco addiction as a less vital correctional concern than substance abuse, mental illness, violent behaviors, and similar issues among the prison population.¹²³ One correctional expert in a national report aptly summed up the perception problem: “Correctional health care practitioners and others need to see tobacco control as an important high-profile public health issue with the same sort of ‘status’ as HIV or tuberculosis. Otherwise, it will continue to get the short end of the attention and health care resources of correctional facilities.”¹²⁴

As a result of this “lesser of two evils” perspective, reports exist of lax enforcement of tobacco policies in correctional institutions, with some facilities enforcing policies more strictly for inmates than for staff, and access to tobacco often depending on the security status of the correctional facility.¹²⁵ For instance, inmates in minimum security prisons on work-release programs often smoke or use

tobacco products off prison premises, and occasionally smuggle tobacco products back onto prison grounds. This has led to another challenge to smoke-free and tobacco-free correctional policies: the development of a black market in tobacco.

Contraband

Controlling the possession and trade of illicit items and goods has long been a concern in correctional institutions. Recently, in addition to the illegal drugs and weapons more commonly smuggled inside, jails and prisons have seen a growth in tobacco as contraband.¹²⁶ Loose tobacco and tobacco products are often viewed as valued currency to be bartered among inmates and even corrections staff.¹²⁷ Trading in tobacco enables inmates to buy, bribe or barter for services, goods or other favors.¹²⁸ For those who are trafficking in tobacco as a commodity, the profits can be substantial. State departments of corrections report black market tobacco prices ranging from hand-rolled cigarettes (\$5 apiece); a cigarette (\$10); a pack of cigarettes (\$20 to \$50 apiece); a pouch of tobacco (\$50 to \$200 apiece), to a carton of cigarettes (\$200 to \$500 apiece) and a can of loose tobacco (up to \$1,000 apiece).¹²⁹ Because of the high cost of purchasing tobacco products on the black market, many inmates trading in these goods have switched to smoking unfiltered hand-rolled cigarettes, which are higher in tar and nicotine than traditional cigarettes.¹³⁰ And, in another alarming fallout of the contraband problem, the profits that can be made on black market tobacco products not only motivate some inmates to engage in illicit trade, but can also serve to corrupt staff. As one study reports, “a single tobacco transaction may fetch a week’s pay for a staff member willing to violate prison policy.”¹³¹



Unfortunately, some states have begun to see a possible link between an increase in inmate-on-inmate violence and the use of contraband tobacco as a lucrative commodity. In California, for examples, inmates on outside work crews have picked up cigarette butts along the roadside and smuggled them back into the prisons to cull the tobacco and sell it.¹³² Subsequent brawls and violent assaults have broken out as groups have argued over the tobacco.¹³³ At a maximum security prison at Pelican Bay, California, a convict paroled hours earlier was found sneaking back onto prison grounds holding a pillowcase filled with 50 ounces of tobacco worth nearly \$10,000, which he had intended to throw over the facility’s fence where his associates were waiting to retrieve it.¹³⁴ In Ohio, the state’s top prison official recently asked his corrections department to investigate whether the rise in Ohio’s prison disturbances can be linked to the tobacco contraband issue and the black market flow of this illicit good.¹³⁵ And in Texas, tobacco smuggling in prison is viewed as a gateway offense that can lead to the delivery of more dangerous contraband, breed violence and corrupt corrections officials; as a result, smuggling tobacco into a Texas prison is a felony offense.¹³⁶

From reports like these across the U.S., and from interviews the Public Health Law Center conducted in late 2011 and early 2012 with a limited number of local and state corrections officials, tobacco contraband appears to be a problem in correctional facilities with tobacco-free policies.¹³⁷ Tobacco black markets are less prevalent in local jails, where inmates are held for shorter times, than in state prisons, where longer incarcerations are common. Opportunities for contraband tend to arise in minimum security state facilities where inmates participate in work release programs off prison grounds, and smuggle tobacco back inside.¹³⁸ Ironically, violations of corrections tobacco policies and related disciplinary infractions result in increased costs to maintain security and order, at a time when state budgets are stretched and some correctional facilities are reducing the availability of treatment programs, such as tobacco cessation services.¹³⁹

Tobacco Control Policy Option 2: Cessation

Over the last few decades, given the devastating health impact of tobacco use on the prison population, and the severe toll of tobacco-related diseases on the nation's health care and correctional systems, many states have seen prisons and jails as windows of opportunity in which to provide tobacco control-related services, including cessation assistance, to a largely concentrated, high risk population. Many corrections and public health experts, such as the authors of a federally-commissioned three-year study on *The Health Status of Soon-to-Be-Released Inmates*, acknowledge that primary prevention is the “best and most cost-effective use of health care dollars,” and that as a means of achieving tobacco-free federal, state and local correctional facilities, tobacco cessation programs should be available for all staff and inmates.¹⁴⁰

The cost savings of tobacco cessation are beyond dispute. Helping tobacco users quit saves thousands of dollars in health care expenditures per user – savings that benefit former tobacco users, insurance companies, employers, state budgets, and taxpayers. A recent study shows that for every dollar a state spends on smoking cessation treatments, it saves an average of \$1.26 – a 26 percent return on investment.¹⁴¹ Downstream, tobacco cessation can not only benefit ex-inmates by lowering their rates of cardiovascular and pulmonary disease and improving their overall health, but by saving the state and local community thousands of dollars in tobacco-related medical costs.¹⁴²

Overview of Correctional Tobacco Cessation Services

Both corrections and health experts are aware that forced abstinence is not the same as voluntarily quitting. In either case, relapse is common. In fact, epidemiologic data suggest that although a minority of tobacco users are able to abstain permanently after an initial quit attempt, most continue to use tobacco for many years and cycle through multiple periods of relapse and remission.¹⁴³ For example, a recent Centers for Disease Control & Prevention study found that in 2010, approximately 69 percent of adult smokers wanted to stop smoking, 52 percent tried to, and only 6 percent actually quit.¹⁴⁴ Significantly, evidence indicates that most incarcerated tobacco users wish to quit.¹⁴⁵

Over the last few decades, as U.S. prisons and jails began adopting tobacco policies, many state and local facilities offered cessation programs or services to help staff and inmates adjust to smoke-free or tobacco-free environments and to assist inmates about to be released. Tobacco cessation services varied, depending on the state and facility. For instance, the *U.S. Public Health Service's 2009 Clinical Practice Guideline, Treating Tobacco Use and Dependence* recommends seven medications and three types of counseling (individual, group, and by phone), which have been proven to help smokers quit.¹⁴⁶ These medications include nicotine replacement therapies (NRT), such as nicotine

gum, patch, lozenge, nasal spray, and inhaler, as well as two non-nicotine medications, bupropion and varenicline.¹⁴⁷

According to a Public Health Law Center survey of U.S. state corrections tobacco policies, facilities offered the following types of tobacco cessation services over the last ten years:¹⁴⁸

- *Tobacco use cessation counseling* (New York)
- *Tobacco use cessation classes* (California, Florida, Iowa, Louisiana, New Jersey, North Dakota, Rhode Island, Virginia, Washington, Wisconsin)
- *Provision of educational printed or electronic information about tobacco use cessation* (Arizona, California, Delaware, Florida, Massachusetts, Oregon, Pennsylvania, Utah, Wyoming)
- *Sale of nicotine replacement therapy products in canteens/commissaries* (Illinois, Louisiana, North Carolina, Ohio, North Carolina, Virginia, Washington)
- *Tobacco cessation assistance programming, not otherwise specified* (Alabama, Colorado, Michigan, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, West Virginia)
- *Provision of tobacco cessation aids, not otherwise specified* (Georgia, Hawaii, Kansas, Missouri, Montana, South Dakota)

Correctional facilities that offer tobacco cessation aids often make them available to inmates and staff through commissaries or medical personnel. Also, some correctional facilities offer innovative programs such as peer counseling, peer-led cessation support groups, and internal helplines and quitlines.¹⁴⁹

Problems and Obstacles

In recent years, as corrections tobacco policies have become more restrictive – prohibiting first smoking and then tobacco products inside the premises, then expanding to the outer grounds – some facilities have begun to reduce the availability of cessation services and aids.¹⁵⁰ For example, totally tobacco-free correctional facilities, such as California’s thirty-three prisons, have eliminated all tobacco products from the premises, including nicotine replacement products.¹⁵¹ Prison officials in such tobacco-free facilities often question the need for cessation aids, since inmates and staff have little or no exposure to tobacco products on the premises.¹⁵²



Facilities seeking to control corrections costs may end up reluctantly reducing health care services and programs, such as tobacco cessation assistance.¹⁵³ If cessation services are effective in preventing inmates from returning to tobacco use upon release, these cutbacks can prove shortsighted, given far greater health care savings down the road.

It is not easy, however, to assess the long-term effectiveness of corrections tobacco policies and cessation services. Prisons and jails can be complicated environments in which to conduct tobacco control interventions, and post-custody follow-up is rare. Inmates in local jails tend to be incarcerated for relatively short periods of time, while inmates in state prisons tend to be repeat offenders, often coming and going from the prison system on a recurrent basis. Given the transient nature of the population, and the limited tracking of individuals released from custody, very little research exists on the resumption of tobacco use by this high risk, underserved, almost under-the-radar population.¹⁵⁴ Nevertheless, some studies suggest that a majority of inmates



housed in tobacco-free facilities resume tobacco use fairly soon upon discharge or when moved to a setting that allows tobacco use.¹⁵⁵ This comports with studies that the average smoker typically quits multiple times before permanently quitting.¹⁵⁶

What is clearly a dilemma is that many former inmates released from correctional facilities, who have already completed nicotine withdrawal, are likely to need, and have little means of obtaining, ongoing support to maintain cessation. As noted earlier, these are individuals with a high prevalence

of substance abuse and mental illness – individuals for whom permanent tobacco cessation is particularly challenging. Note, for example, this gripping testimonial from a former drug addict describing the difficulty of quitting smoking:

*I used to do a lot of different drugs and I did a lot of hard drugs. I did coke, crank, uppers and downers. Any illegal pharmaceutical I did ... and I had a heroin addiction one time and I had to go in rehab for three months to get over that, and then I did the opposite end of the spectrum and I had stimulants, cocaine, and crank, methamphetamines, and that was easier for me to kick than smoking.*¹⁵⁷

Despite the limited research on tobacco use by former inmates or post-release cessation data, it is clear that reentering the community after incarceration can be difficult, and just as clear that resuming tobacco use is an easy and natural step to take. In addition to the financial and emotional stress of finding housing and employment, and reestablishing ties with family and friends, former inmates will likely return to environments where addictive behaviors, such as substance abuse and tobacco use, may be both common and socially acceptable. To date, no evidence-based treatments exist to

help individuals remain abstinent after a period of prolonged, forced cessation.¹⁵⁸ Nevertheless, studies do confirm the usefulness of cessation assistance to the correctional population – particularly during admission to a facility and at the time of release.¹⁵⁹ Researchers who examined inmates and their motivation and intent to remain tobacco-free upon release have also concluded that post-incarceration tobacco cessation assistance could improve the likelihood of permanent abstinence.¹⁶⁰ Research has shown that tobacco users in general are more successful in quitting when they use cessation medication and counseling in combination, and stay with a program, than when they attempt to quit “cold turkey” on their own.¹⁶¹

One final observation regarding cessation treatment for inmates and former inmates with substance abuse disorders: Treating tobacco dependence within addiction treatment settings has long been a controversial topic among addiction treatment professionals.¹⁶² The historic view has been that attempting tobacco cessation could undermine treatment recovery, particularly when patients are in early sobriety, and that “their more problematic alcohol and drug addictions must be treated first.”¹⁶³ Many addiction treatment professionals have now come to recognize the importance of integrating tobacco dependence treatment across the continuum of addiction treatment and prevention services¹⁶⁴ – a continuum that could also extend to correctional populations.

Tobacco Policy Considerations for Correctional Populations

State and local correctional administrators have several policy choices to make when addressing the problem of tobacco use within their facilities. Many of these choices will be driven by funding, logistical, and administrative considerations, as well as the type of correctional institution and population.

Tobacco-free Correctional Environments

Policy Planning and Drafting. Correctional facilities in the process of drafting or revising a tobacco policy could benefit by involving staff in the planning process – both for input and feedback.¹⁶⁵ The policy should be written clearly and concisely, with important terms defined to ensure that the policy can be interpreted easily, and implemented and enforced effectively. For example, phrases such as “smoke-free” and “tobacco-free” should be explicitly defined so no misunderstanding exists as to what the policy covers and where and how it applies. Policies should identify the consequences for violating the policies – both for inmates and corrections personnel. As part of the planning process, guidelines could also be set in place for the provision of tobacco cessation services, including internal or external access to quitlines. For examples of several U.S. corrections tobacco policies, visit the Americans for Nonsmokers Rights Foundation website, which contains an up-to-date compilation.¹⁶⁶

Scope. Comprehensive tobacco-free policies that prohibit the possession, use, sale or trade of tobacco products both indoors and on the outside grounds of correctional facilities are the most effective way to protect inmates and staff from the adverse health risks of tobacco use and secondhand smoke exposure. In addition, by making premises entirely tobacco-free, officials lower the risk of legal challenges by inmates or staff, since the policy will apply across the board to the entire corrections population and workforce. Also, to prevent smuggling and other infractions, measures should apply to all visitors to the facilities.

Policy Implementation. State and local correctional facilities have generally experienced a smooth transition to tobacco-free policies when corrections officials have educated inmates and staff about the policy beforehand, explained how it works, and provided them with a timetable

for implementation. Officials typically use this opportunity to explain the policy rationale by emphasizing the adverse health impact and significant cost of tobacco use and its importance as a public and corrections health issue.

Enforcement. Penalties for violating the facility's tobacco policy must be enforced fairly and consistently and must be sufficiently severe to discourage attempts at circumvention by inmates, staff or other applicable parties. Facilities must be vigilant and enhance security to prevent the use and trafficking of tobacco contraband. Corrections administrators should ensure that both staff and inmates are aware of the purpose for the contraband and tobacco-free policy, are trained in recognizing and coping with the symptoms of nicotine withdrawal, and receive up-to-date communications regarding policy changes and guidelines.

Tobacco Cessation Assistance

Programs and Services. Effective evidence-based treatment programs, both inside and outside correctional facilities, can help current and former inmates and corrections staff combat nicotine addiction. Since many corrections employees – including prison guards, wardens, administrators, and even some medical personnel – are nicotine-dependent, facilities should consider offering separate treatment programs for staff and inmates.¹⁶⁷ Some tobacco cessation experts recommend mandatory attendance by all tobacco-dependent inmates and staff.¹⁶⁸ Facilities might also consider making tobacco cessation educational materials freely available for all inmates, staff, and visitors.

Counseling. Facilities offering tobacco cessation counseling or other program assistance generally offer it upon admission to help inmates adjust to the new tobacco-free environment, and throughout incarceration. New staff members often receive cessation information and assistance in orientation or as part of a worksite wellness offering. Facilities may want to consider providing peer counseling and arranging peer-led cessation support groups for the correctional population.

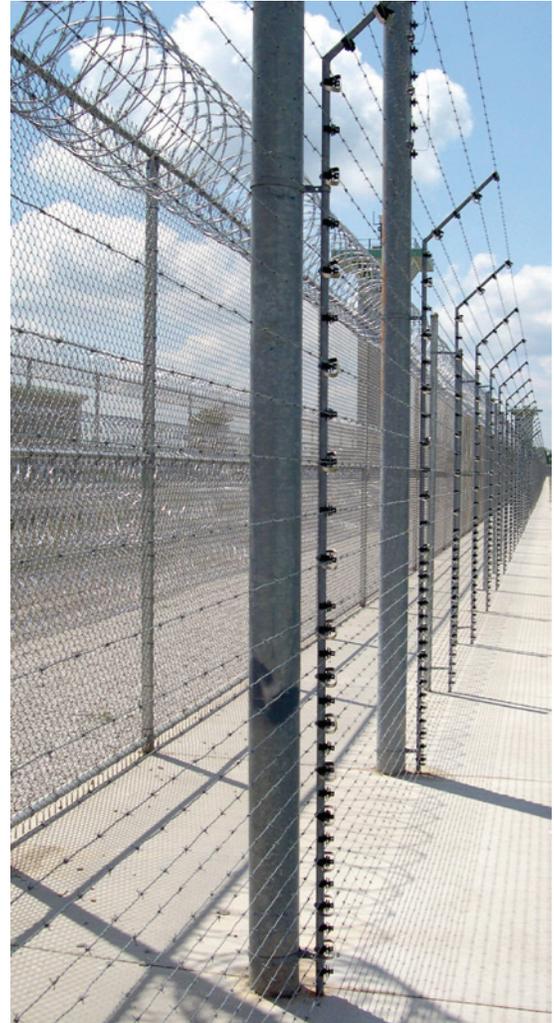
Pre-release Planning. Providing inmates with access to tobacco cessation assistance as part of re-entry planning at the time of release can help remove health-related barriers to reintegration into home communities. Inmates preparing for discharge can benefit by focusing on ways to avoid common triggers that may prompt them to resume tobacco use.¹⁶⁹ They might also find it useful to know the multiple burdens tobacco use will impose upon them once they are released, including the tendency of many employers to prefer nonsmoking employees.¹⁷⁰ Facilities can help ease the reentry transition by providing about-to-be-released inmates with tobacco cessation materials, referrals to local community health services, and local and national quitline information.¹⁷¹

Post-release Assistance. Given the many challenges that former inmates face in adjusting to post-release life, correctional facilities (or other local or state agencies) should assist tobacco-dependent inmates in the re-entry process by giving them information about community health centers, medical/health service staff, or local public health resources that might provide post-release cessation services, including possible access to cessation medications and counseling.¹⁷²

Conclusion

Tobacco use among the correctional population is roughly four times the national average. It is sadly unsurprising, then, that a significant number of inmates suffer from tobacco-related illnesses and chronic conditions, and that this has a disproportionate impact on current and future health care costs, both in the correctional system and in the public sector.

The prison setting presents an unusual opportunity to address tobacco dependence. All federal, and most state and local, correctional facilities have adopted tobacco control policies, with varying restrictions and levels of success. These policies primarily focus on tobacco prevention (smoke-free or tobacco-free environments) and cessation. Comprehensive tobacco-free policies that prohibit the use or possession of all tobacco products anywhere either inside or on the outer grounds of the facility will protect the most individuals – inmates and corrections staff – from the health risks of secondhand smoke and tobacco use. These policies should be written clearly and concisely, and enforced strictly and consistently among inmates and staff. Tobacco cessation programs offered upon admission, during incarceration, prior to release, and even post-release, provide inmates with the resources, incentives, and support they need to continue to abstain once they have left the correctional facility. By taking concrete measures to address the tobacco use of inmates – and former inmates – state and local correctional facilities can ease the financial burden on the health care system and improve the health of a priority population that is all too often marginalized and linked to relapse, tobacco-related disease and premature death.



Appendix A Overview of Tobacco Policies in U.S. State Correctional Facilities

State	Law or policy	100% Tobacco-free (indoors and outdoors)	100% Smoke-free	Tobacco-free indoors	Smoke-free indoors	Other
Alabama [‡]	Ala. Code § 22-15A (2011), ¹ Ala. Admin. Code r. 420-3-28 (2011) [‡]					✓
Alaska	Alaska Dep't of Corr. Policy and Proc. Index # 101.08 [‡]				✓	
Arizona [^]	Ariz. Dep't of Corr. Ch. 100, Dep't Order 109 [‡]				✓	
Arkansas	Ark. Bd. of Corr. Admin. Reg. 004.00.2-224 [‡]	✓				
California ^{*^}	Cal. Code Regs. tit. 15, §§ 3187-3189 (pgs. 95-96) (2011) [‡]			✓		
Colorado [^]	Colo. Dep't of Corr. Admin. Reg. 100-04 [‡]	✓				
Connecticut [^]	Conn. Dep't of Corr. Admin. Dir. 2.21 [‡]			✓		

Note: Alaska, Connecticut, Delaware, Hawaii, Rhode Island & Vermont have integrated systems that combine jails and prisons.

* Designates a limited exception to the state prison authority's tobacco policy.

Effective date	Notes
9/1/03	<ul style="list-style-type: none"> ■ The Alabama Clean Indoor Air Act allows the person in charge of a public place to designate an area for the use of smokers; in government buildings such an area must be enclosed and well ventilated. ■ Individual facilities may adopt tobacco-free policies. See Ala. Dep't of Corr. 2010 Annual Report.[‡]
4/27/07	<ul style="list-style-type: none"> ■ Permitted outdoor staff smoking must be out of view of the prisoner population. ■ Cited policy may not be applied to community correctional facilities.
4/17/07	<ul style="list-style-type: none"> ■ ^"Smoking is permitted when associated with religious ceremony practiced pursuant to the American Indian Religious Freedom Act of 1978 and ARS 36-601.02 (B-2)." ■ Tobacco products are available for purchase in prison commissaries. ■ Smoking outside is not allowed in any area that "may subject normal traffic to second-hand smoke or may result in drifting smoke entering into buildings through entrances, windows, ventilation systems or other means."
1/17/00	<ul style="list-style-type: none"> ■ Policy applies to inmates and residents incarcerated or confined in Dep't correctional facilities and jails.
7/1/05	<ul style="list-style-type: none"> ■ *Tobacco products for personal use are permitted in staff residential spaces where inmates are not present (in designated areas at designated times). ■ ^"The use of tobacco products may be departmentally approved in inmate religious ceremonies."
4/15/11	<ul style="list-style-type: none"> ■ Policy is extended to locations offsite where Dep't of Corr. crews are working. ■ ^"Religious ceremonies involving the use of tobacco shall be in accordance with administrative regulation 800-01, Religious Programs, Services, Clergy, Faith Group Representatives and Practices."
1/1/08	<ul style="list-style-type: none"> ■ ^Defining smoking as "[t]he burning or any other use of a tobacco product or any other matter or substance which contains tobacco with the exception of an authorized religious practice." ■ ^"In determining what constitutes legitimate religious practices, the Director of Religious Services should consider whether there is a body of literature stating principles that support the practices and whether the practices are recognized by a group of persons who share common ethical, moral or intellectual views. For institutional safety and security, all recommendations for religious practices shall require approval of the Deputy Commissioner of Operations or designee in consultation with the Director of Religious Services." Conn. Dept's of Corr. Admin Dir. 10.8.[‡]

[^] Designates a policy containing language relating to the religious or ceremonial use of tobacco; in these cases, quoted policy excerpts are included as notes.

[‡] Designates that the link to a source available online is provided in the Supplement to Appendix A.

Appendix A
Overview of Tobacco Policies in U.S. State Correctional Facilities (continued)

State	Law or policy	100% Tobacco-free (indoors and outdoors)	100% Smoke-free	Tobacco-free indoors	Smoke-free indoors	Other
Delaware	Del. Dep't of Corr. Policy 8.51.‡				✓	
Florida*	Tobacco-free policy in all facilities. See Fla. Dep't of Corr. Tobacco Cessation Initiative.‡			✓		
Georgia	Tobacco-free policy in all facilities. See Ga. Dep't of Corr. Tobacco-Free Initiative.‡	✓				
Hawaii	Haw. Dep't of Pub. Safety Corr. Admin. Policy COR.01.22‡				✓	
Idaho [^]	Idaho Dep't of Corr. Policy 104‡	✓				
Illinois	410 Ill. Comp. Stat. 82/35 (2011) (Smoke Free Illinois Act; no exemption for correctional facilities)‡				✓	
Indiana	Ind. Dep't of Corr. Ethics and Standards of Conduct‡			✓		
Iowa	Iowa Dep't of Corr. Policy and Proc. AD-GA-15 (policy available upon request)				✓	

Note: Alaska, Connecticut, Delaware, Hawaii, Rhode Island & Vermont have integrated systems that combine jails and prisons.

* Designates a limited exception to the state prison authority's tobacco policy.

Effective date	Notes
4/21/10	<ul style="list-style-type: none"> ▪ Each facility manager may designate outdoor areas for employee smoking. The designated smoking areas must be at least 20 feet from any entrance. ▪ State funds may not be spent on creating gazebos or other structures for smoking areas.
10/1/11	<ul style="list-style-type: none"> ▪ *Death row inmates are permitted to possess and use specified quantities of smokeless tobacco. ▪ *The Fla. Dep't of Corr. has introduced an employee exception to the newly implemented tobacco-free policy in response to the efforts of the correctional officers' union. Wardens are charged with designating outdoor areas for employee smoking that should not be within the plain view of inmates. See "Florida inmates still can't smoke, but now prison officials can."[‡] ▪ Tobacco products are no longer available for sale in prison commissaries, effective 9/2/2011.
12/1/10	<ul style="list-style-type: none"> ▪ A majority of county jails in Georgia are smoke-free. According to Dep't of Corr. Comm'r Brian Owens, inmates "were getting off tobacco in the county jails and then getting back on it when they came into the state system." See "Georgia prisons ordered to kick smoking habit."[‡]
3/9/10	<ul style="list-style-type: none"> ▪ Hawaii adopted resolution HR88 HD1 calling for its state Dep't of Pub. Safety and Dep't of Human Servs. to develop a plan to prohibit smoking in prisons by 2011.[‡]
11/1/96	<ul style="list-style-type: none"> ▪ Policy applies on all properties, or in work situations owned, leased, rented or operated by the department. ▪ Non-departmental personnel within the defined environment are subject to this policy. ▪ ^American Indians are permitted to smoke substances in their religious activities, including kinnikinnik (or bear berry), cedar, sage, and sweetgrass. Tobacco consumption is, however, characterized as a "prohibited religious activity." See Idaho Dep't of Corr. Policy 403.[‡]
1/1/08	<ul style="list-style-type: none"> ▪ Prison workers may smoke in outdoor areas during their breaks.
2011	<ul style="list-style-type: none"> ▪ Community re-entry centers and the Department's four stand-alone Level 1 facilities (Chain O'Lakes, Edinburgh, Henryville, and Plainfield Re-Educational Facility) are exempt.
8/1/11	<ul style="list-style-type: none"> ▪ The Iowa Dep't of Corr. implemented a tobacco-free policy despite being exempted from a statewide smoke-free law. See "Iowa's prisons ban smoking."[‡] ▪ Offenders may not use or possess tobacco in any institution. ▪ Designated staff smoking areas must be outside the secured perimeter and more than 50 feet from building entrances.

[^] Designates a policy containing language relating to the religious or ceremonial use of tobacco; in these cases, quoted policy excerpts are included as notes.

[‡] Designates that the link to a source available online is provided in the Supplement to Appendix A.

Appendix A
Overview of Tobacco Policies in U.S. State Correctional Facilities (continued)

State	Law or policy	100% Tobacco-free (indoors and outdoors)	100% Smoke-free	Tobacco-free indoors	Smoke-free indoors	Other
Kansas ^{*^}	Kan. Dep't of Corr. Internal Mgmt. Policy and Proc. 09-107 [‡]	✓				
Kentucky [*]	Ky. Rev. Stat. Ann. § 61.165 (2011) (Smoking policy for governmental office buildings or workplaces and postsecondary education institutions) [‡]				✓	
Louisiana	La. Rev. Stat. Ann. § 40:1300.256 (2011) (Louisiana Smoke Free Air Act; General smoking prohibitions, exemptions) [‡]				✓	
Maine	Me. Dep't of Corr. Smoking Policy not publicly available, but see Me. Dep't of Health and Human Servs. Admin. Reg. 10-144 Ch. 250 (2011) (Rules Relating to Smoking in the Workplace). [‡]				✓	
Maryland	Md. Code Regs. 10-19-04 (2011) (Prohibition of Smoking in Indoor Areas open to the Public) [‡]				✓	

Note: Alaska, Connecticut, Delaware, Hawaii, Rhode Island & Vermont have integrated systems that combine jails and prisons.

* Designates a limited exception to the state prison authority's tobacco policy.

Effective date	Notes
3/17/03	<ul style="list-style-type: none"> ■ *[^]“Persons in non-correctional facility offices may have tobacco and/or tobacco related products in their possession, but may not consume or openly display such products while on the premises where the office is located.” ■ [^]“An exception to the tobacco-free environment shall be in effect for religious activities as outlined below: 1. Tobaccos (sic) and/or tobacco mixtures shall be allowed in specified amounts in accordance ... 4. Use of tobacco during religious activities shall be limited to inmates who are participating in their designated primary religion. 5. Religious use of tobacco or tobacco substitutes shall not be allowed in any building.”
3/1/2012	<ul style="list-style-type: none"> ■ *Policy does not apply to the state’s only maximum security corrections facility, Kentucky State Penitentiary at Eddyville. ■ *Kentucky has two types of tobacco policies in its 16 state prisons: indoor smoke-free policies (smoking allowed outdoors) and tobacco-free policies (no tobacco of any kind allowed on the grounds of the prison).
8/15/09	<ul style="list-style-type: none"> ■ Smoking inside public buildings and places of employment operated by the La. Dep’t of Corr., including work-release centers, is prohibited. See “Prison inmates, visitors, staff banned from smoking in lockups starting Aug. 15.”[‡] ■ Prison commissaries sell cigarettes (for outdoor use), smokeless tobacco products (for indoor/outdoor use), and some tobacco use cessation aids. See “Prison smoking ban.”[‡]
1/28/90	<ul style="list-style-type: none"> ■ Inmates and visitors are prohibited from tobacco use; see Visiting a Prisoner at Maine State Prison.¹ ■ Employees may only smoke outdoors, at least 20 feet from entryways, vents, and doorways, and not in a location that allows smoke to circulate back into the building.[‡]
2/1/08	<ul style="list-style-type: none"> ■ Tobacco is considered contraband in all state prisons. See “Stepped-up Contraband Effort Leads to a Number of Recent Arrests.”[‡]

[^] Designates a policy containing language relating to the religious or ceremonial use of tobacco; in these cases, quoted policy excerpts are included as notes.

[‡] Designates that the link to a source available online is provided in the Supplement to Appendix A.

Appendix A
Overview of Tobacco Policies in U.S. State Correctional Facilities (continued)

State	Law or policy	100% Tobacco-free (indoors and outdoors)	100% Smoke-free	Tobacco-free indoors	Smoke-free indoors	Other
Massachusetts	Mass. Dep't of Corr. Employee Smoking Policy 103 DOC 203 [‡] ; Mass. Dep't of Corr. Inmate Smoking Policy 103-DOC-444 [‡]				✓	
Michigan	Mich. Dep't of Corr. Policy Dir. 01.03.140. [‡]	✓				
Minnesota [^]	Minn. Dep't of Corr. Policy 103.200 [‡]	✓				
Mississippi*	While the policy is not yet publicly available, implementation of a 100% tobacco-free policy has been scheduled. See "MDOC is going tobacco free." [‡]					
Missouri	Two bills (HB 445 and SB 289) were introduced during the 2011 Mo. Legis. Sess. that would require the implementation of tobacco-free policies in state correctional facilities; these bills were referred to committee and have not been voted upon. [‡]					✓

Note: Alaska, Connecticut, Delaware, Hawaii, Rhode Island & Vermont have integrated systems that combine jails and prisons.

* Designates a limited exception to the state prison authority's tobacco policy.

Effective date	Notes
11/16/09 (staff); 1/15/98	<ul style="list-style-type: none"> ■ All visitors, including inmate visitors and institutional visitors (such as vendors, contractors, and volunteers) are informed of the Mass. Dep't of Corr. "prohibition of tobacco and tobacco related products." See 103 Mass. Code Regs. 483.00 (2011).[‡] ■ The policy does not apply to the use of tobacco products "while entering or exiting a parking lot."
3/14/11	<ul style="list-style-type: none"> ■ "Offenders are prohibited from possessing tobacco products except in areas designated by the Warden or TRRP facility Supervisor for group religious ceremonies or activities conducted pursuant to PD 05.03.150 'Religious Beliefs and Practices of Prisoners.'" ■ Due to the similarity in appearance of electronic or vaporizer cigarettes and other non-tobacco cigarettes (for example, herbal cigarettes) to tobacco cigarettes, as well as the appearance of impropriety when used, the use and possession of these items by employees are restricted in the same way as tobacco products.
5/4/10	<ul style="list-style-type: none"> ■ ^"This policy does not prohibit the possession or use of tobacco or a tobacco-related device as part of a traditional Indian spiritual or cultural ceremony." Inmates at Level 4 and above facilities may use tobacco once a week; inmates at Level 3 and below facilities may use tobacco more than once a week.
6/30/12	<ul style="list-style-type: none"> ■ *Policy implementation is scheduled for summer 2012. ■ Tobacco products will not be available for purchase in prison commissaries after the tobacco-free policy takes effect.
	<ul style="list-style-type: none"> ■ The Missouri Clean Indoor Air Act allows for the designation of indoor smoking areas at places of employment. See Mo. Rev. Stat. § 191.767 (2011).[‡] ■ Smoking by staff and inmates is currently allowed. The extent to which this is regulated varies by facility. ■ Visitors are not permitted to possess or use tobacco on prison premises. ■ Tobacco products are available for purchase in prison commissaries.

[^] Designates a policy containing language relating to the religious or ceremonial use of tobacco; in these cases, quoted policy excerpts are included as notes.

[‡] Designates that the link to a source available online is provided in the Supplement to Appendix A.

Appendix A Overview of Tobacco Policies in U.S. State Correctional Facilities (continued)

State	Law or policy	100% Tobacco-free (indoors and outdoors)	100% Smoke-free	Tobacco-free indoors	Smoke-free indoors	Other
Montana [^]	Mont. Dep't of Corr. Policy Dir. DOC 3.4.3 [‡]			✓		✓
Nebraska ^{*^}	Nebr. Dep't of Corr. Servs. Admin. Reg. 111.05 [‡]	✓				
Nevada	Nev. Dep't of Corr. Admin. Reg. 115 [‡]	✓				
New Hampshire [*]	N.H. Dep't of Corr. Health Servs. policy and Proc. Dir. 6.09 [‡]			✓		
New Jersey	Some indoor smoking is still allowed by both inmates and employees. [‡]					
New Mexico ^{*^}	N.M. Corr. Dep't Dir. CD-160400 [‡]			✓		✓
New York [^]	An indoor smoke-free policy was established over ten years ago, although the policy is not publicly available.				✓	

Note: Alaska, Connecticut, Delaware, Hawaii, Rhode Island & Vermont have integrated systems that combine jails and prisons.

* Designates a limited exception to the state prison authority's tobacco policy.

Effective date	Notes
1/1/98; revised 7/1/08	<ul style="list-style-type: none"> ■ Policy also applies to the use of “tobacco substitutes,” defined as “[a]ny product that can be construed as tobacco (i.e., mint chew, herbal chew, leaf-based substance).” ■ ^“Administrators may approve exceptions to tobacco use restrictions for legitimate offender spiritual practices in accordance with DOC 5.6.1, Religious Programming and pursuant to the American Indian Religious Freedom Act of 1978.”
8/8/87; revised 9/30/10	<ul style="list-style-type: none"> ■ Employees are prohibited from using tobacco products on state property. ■ *Inmates and visitors at community corrections centers can use and possess tobacco products per facility rules. ■ ^Chinshasha (Red Willow) is permitted for use in Native American ceremonies, such as the Chanupa (Pipe Ceremony), and the making of Prayer Ties. Tobacco is prohibited. See Nebr. Dep’t of Corr. Servs. Admin. Reg. 208.01.‡
5/20/10	<ul style="list-style-type: none"> ■ Inmates working at outside facilities or for other agencies must comply with Nev. Dep’t of Corr. restrictions regarding the use of tobacco products by inmates.
6/15/07	<ul style="list-style-type: none"> ■ Employees may consume tobacco products privately in personal vehicles; products must be subsequently secured in personal vehicles. ■ *Tobacco policies at community corrections centers vary by facility (outdoor use permitted at some facilities).
3/1994	<ul style="list-style-type: none"> ■ Inmates may smoke in single-occupancy cells in close custody housing and in designated outdoor areas. ■ Officers may smoke in the institutional towers, in state-owned vehicles if only the driver is present, and in designated outdoor areas.
8/23/02; revised 4/27/11	<ul style="list-style-type: none"> ■ *Tobacco use is permitted inside and within the confines of a private residence or personal vehicle on prison facility grounds with the permission of the legal occupant of the private residence or vehicle. ■ ^Native American inmates will be allowed to smoke during approved ceremonial events as allowed by policy CD-101100, CD-101101 and CD-143001.
1/1/01	<ul style="list-style-type: none"> ■ The New York State Clean Indoor Air Act requires designated workplace smoking areas to be further than 25 feet from building entrances. See “An Orientation to Employment in the Empire State.”‡ ■ ^A Native American inmate may be permitted to possess a small medicine bag “containing small amounts of natural objects ... including sacred tobacco.” However, in keeping with the Department’s smoke-free policy, “only non-tobacco substances consisting of sweetgrass or kinnick-kinnick (obtained from an approved commercial vendor) may be used for smoking.” See N.Y. Dep’t of Corr. Servs. Religious Programs and Practices Dir. 4202.‡

^ Designates a policy containing language relating to the religious or ceremonial use of tobacco; in these cases, quoted policy excerpts are included as notes.

‡ Designates that the link to a source available online is provided in the Supplement to Appendix A.

Appendix A Overview of Tobacco Policies in U.S. State Correctional Facilities (continued)

State	Law or policy	100% Tobacco-free (indoors and outdoors)	100% Smoke-free	Tobacco-free indoors	Smoke-free indoors	Other
North Carolina [^]	N.C. Dep't of Corr. Div. of Prisons Policy and Proc. F.2500 [‡]			✓		
North Dakota ^{*^}	N.D. Cent. Code § 12-44.1-21.2 (2011) [‡]					
Ohio [*]	Ohio Dep't of Rehab. and Corr. Policy 10-SAF-01 [‡]	✓				
Oklahoma	Okla. Dep't of Corr. Policy OP-150601 [‡]			✓		✓
Oregon [^]	Or. Dep't of Corr. Operations Div. Health Servs. Sec. Policy and Proc. #P-F-03 [‡]			✓		
Pennsylvania	Pa. Dep't of Corr. Policy 1.1.7 [‡]				✓	
Rhode Island	R.I. Dep't of Corr. Smoking and Tobacco Reg. 8.08A-DOC (not publicly available). But see R.I. Dep't of Corr. Policy and Proc. 24-03.3-DOC. [‡]	✓				

Note: Alaska, Connecticut, Delaware, Hawaii, Rhode Island & Vermont have integrated systems that combine jails and prisons.

* Designates a limited exception to the state prison authority's tobacco policy.

Effective date	Notes
12/7/09	<ul style="list-style-type: none"> ▪ ^“Inmates may not possess or use tobacco products, tobacco-less products, paraphernalia or lighting devices except for religious services authorized by the Division’s Chaplaincy Services section.”
	<ul style="list-style-type: none"> ▪ Facilities may establish smoke-free policies. ▪ *Policy applies in city, county, and regional corrections facilities, although a variance can be granted to individual facilities. ▪ ^Exception exists for tobacco use associated with religious practices.
3/1/09	<ul style="list-style-type: none"> ▪ *Exceptions: <ol style="list-style-type: none"> 1. Residential staff housing where inmates are not present. 2. Possession of tobacco product when secured in a locked private vehicle. 3. As specifically authorized by the Managing Officer to meet facility needs.
8/1/10	<ul style="list-style-type: none"> ▪ Effective August 2, 2010, inmates at minimum security prisons were allowed to resume smoking on prison grounds (a tobacco-free policy had been implemented in Oklahoma prisons in 2004). ▪ Employees and offenders assigned to community corrections may possess and use tobacco products, as long as they use the tobacco products in a designated area.
10/2008	<ul style="list-style-type: none"> ▪ ^“An inmate whose religious expression includes odor or smoking producing substances (e.g., tobacco, sage, sweet grass, and incense) may be authorized to burn small amounts of these substances as part of an approved religious activity and in a manner consistent with facility security, safety, health and order.” See Or. Dep’t of Corr. Div. 143 Admin. Rule 291-143-0080.‡
9/11/08	<ul style="list-style-type: none"> ▪ Except at tobacco-free facilities, smoking is permitted at designated outdoor locations. Proper disposal receptacles must be used.
5/14/07	<ul style="list-style-type: none"> ▪ All use of tobacco products is prohibited within any and all buildings and property under the control of R.I. Dep’t of Corr.

^ Designates a policy containing language relating to the religious or ceremonial use of tobacco; in these cases, quoted policy excerpts are included as notes.

‡ Designates that the link to a source available online is provided in the Supplement to Appendix A.

Appendix A
Overview of Tobacco Policies in U.S. State Correctional Facilities (continued)

State	Law or policy	100% Tobacco-free (indoors and outdoors)	100% Smoke-free	Tobacco-free indoors	Smoke-free indoors	Other
South Carolina	Tobacco is considered contraband. See S.C. Dep't of Corr. Visitor Rules. [‡]	✓				
South Dakota	Tobacco is considered contraband. See S.D. Dep't of Corr. Frequent Questions: Inmate Property. [‡]			✓		
Tennessee	Tobacco is considered contraband. See Inmate Rulebook. [‡]			✓		
Texas	37 Tex. Admin. Code §151.25 (2011). [‡]			✓		
Utah	Tobacco is considered contraband. See Utah Dep't of Corr. Inmate Friends and Family Orientation Booklet. [‡]			✓		
Vermont	Vt. Agency of Human Servs. Dep't of Corr. Dir. #408.02 [‡]	✓				

Note: Alaska, Connecticut, Delaware, Hawaii, Rhode Island & Vermont have integrated systems that combine jails and prisons.

* Designates a limited exception to the state prison authority's tobacco policy.

Effective date	Notes
1/1/08	<ul style="list-style-type: none"> ■ Tobacco, tobacco related products, paraphernalia or lighting devices are not allowed in any buildings or on any property belonging to the S.C. Dep't of Corr. ■ Implementation of the South Carolina Dep't of Corr. tobacco-free policy was prompted by the prison system's loss of a 2005 lawsuit to an asthmatic man who claimed his rights were violated when he was exposed to secondhand cigarette smoke. See "South Carolina Prisons Get A 'Fresh Start' With Tobacco-Free Policy."[‡]
12/2000	<ul style="list-style-type: none"> ■ Formerly, an exception existed for tobacco use associated with religious ceremonies. Because some tobacco designated for ritual use was misused in prison bartering, this exemption no longer exists.
7/2007	<ul style="list-style-type: none"> ■ The Tenn. Dep't of Corr. policy is consistent with Tenn. Code Ann. § 39-17-1803 (2011) (Non-smoker Protection Act).[‡]
10/13/97; revised 10/7/07	<ul style="list-style-type: none"> ■ "Designated outdoor tobacco areas shall be at a sufficient distance from any place at which employees regularly perform duties to ensure that no employee who abstains from the use of tobacco products is physically affected by the use of tobacco products at the designated areas." ■ "Tobacco use in the designated areas shall not negatively affect the comfort or safety of any employee, visitor or offender." ■ "Employees shall be permitted to use tobacco products during their work hours while on break and during their lunch period."
11/1/07	<ul style="list-style-type: none"> ■ The Utah Dep't of Corr. policy is consistent with Utah Code Ann. § 26-38-1 (2011) (Utah Indoor Clean Air Act).[‡]
1/5/04	<ul style="list-style-type: none"> ■ The Department will not permit any tobacco and tobacco-related products within the secure perimeter of its buildings or on the secured grounds of its correctional centers and in its state vehicles. ■ Tobacco products have not been available for sale in prison commissaries since 12/14/03. ■ Correctional Facility Superintendents are responsible for ensuring that any and all employee break practices conform to the tobacco-free policy and do not conflict with the required amount of daily work hours.

[^] Designates a policy containing language relating to the religious or ceremonial use of tobacco; in these cases, quoted policy excerpts are included as notes.

[‡] Designates that the link to a source available online is provided in the Supplement to Appendix A.

Appendix A Overview of Tobacco Policies in U.S. State Correctional Facilities (continued)

State	Law or policy	100% Tobacco-free (indoors and outdoors)	100% Smoke-free	Tobacco-free indoors	Smoke-free indoors	Other
Virginia	Tobacco is considered contraband. See Va. Dep't of Corr. Operating Proc. 802.1. [‡]	✓				
Washington ^{*^}	Wash. Dep't of Corr. DOC 190.500 [‡]			✓		
West Virginia	Tobacco policies vary among facilities.					
Wisconsin	Smoking is specifically prohibited in the enclosed places and outdoor areas of correctional facilities per Wis. Stat. Ann. § 101.123 (2011). [‡]				✓	
Wyoming ^{*^}	Wyo. Dep't of Corr. Policy and Proc. # 1.016 [‡]	✓				

Note: Alaska, Connecticut, Delaware, Hawaii, Rhode Island & Vermont have integrated systems that combine jails and prisons.

* Designates a limited exception to the state prison authority's tobacco policy.

Effective date	Notes
2/1/10	<ul style="list-style-type: none"> ■ Tobacco-free policy implemented despite correctional facility exemption from statewide smoke-free law. See Va. Code Ann. § 15.2-2820 (2011) (Virginia Indoor Clean Air Act).[‡]
1/1/89; revised 3/18/11	<ul style="list-style-type: none"> ■ *Policy is not applicable to staff residences at McNeil Island Corr. Ctr. or Wash. State Penitentiary. The Appointing Auth. may designate these residences smoke-free as they become vacant and before staff assume occupancy. ■ ^“Offenders may have access to . . . [s]moke producing substances for religious practices and religious group use as authorized by DOC 560.200 Religious Program.”
	<ul style="list-style-type: none"> ■ Facilities administered by the W.Va. Regional Jail and Corr. Facility Auth. are tobacco-free. ■ Facilities administered by the W. Va. Dep’t of Corr. are not smoke-free. See “Smoking Regulations in West Virginia.”[‡]
7/5/10	<ul style="list-style-type: none"> ■ Facilities may establish more extensive tobacco-free policies; see, e.g., Sanger B. Powers Correctional Facility Center Restrictions.[‡]
5/1/11	<ul style="list-style-type: none"> ■ *Adult community corrections facilities are encouraged to adopt policies restricting or prohibiting tobacco usage. ■ ^“For religious activities involving the use of tobacco, tobacco related materials, or tobacco substitutes, shall be governed by WDOC Policy & Procedure #5.600, Inmate Religious Activities. The use of kinnikinnick, but not tobacco, may be approved for religious expression as allowed by WDOC Policy & Procedure #5.600.”

[^] Designates a policy containing language relating to the religious or ceremonial use of tobacco; in these cases, quoted policy excerpts are included as notes.

[‡] Designates that the link to a source available online is provided in the Supplement to Appendix A.

Supplement to Appendix A

Web Address Directory of State Correctional Facility Tobacco Policy Materials

Web addresses link directly to policy and procedure statements on state departments of corrections websites, to publicly accessible postings of state statutes or regulations, or to media reports describing the policies used in a particular location. Please note that these web links are accurate as of February 2012.

Alabama:

<http://alisondb.legislature.state.al.us/acas/codeofalabama/1975/coatoc.htm>
<http://alabamaadministrativecode.state.al.us/docs/hlth/420-3-28.pdf>
<http://www.doc.state.al.us/docs/AnnualRpts/2010AnnualReport.pdf> (pg. 22)

Alaska:

<http://www.correct.state.ak.us/corrections/pnp/pdf/101.08.pdf>

Arizona:

<http://www.azcorrections.gov/Policies/100/0109.pdf>

Arkansas:

http://adc.arkansas.gov/resources/Documents/adcar_pdf/AR224.pdf

California:

http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/2011%20Title%2015%20English.pdf
(pgs. 95-96)

Colorado:

http://www.doc.state.co.us/sites/default/files/ar/0100_04_04152011.pdf

Connecticut:

<http://www.ct.gov/doc/LIB/doc/PDF/AD/ad0221.pdf>
<http://www.ct.gov/doc/LIB/doc/PDF/AD/ad1008.pdf>

Delaware:

http://www.doc.delaware.gov/pdfs/policies/policy_8-51.pdf

Florida:

<http://www.dc.state.fl.us/secretary/press/2011/04-05tobaccocessation.html>
<http://www.tampabay.com/news/publicsafety/crime/florida-prison-inmates-cant-smoke-but-now-correctional-officers-can/1198569>

Georgia:

<http://www.dcor.state.ga.us/frameset.html?NewsRoom/Publications/pdf/TobaccoFreeInitiative.pdf>
<http://www.gainesvilletimes.com/archives/28449/>

Hawaii:

<http://hawaii.gov/psd/policies-and-procedures/P-P/3-COR/CORR%20%20P-P%20FINAL/CHAPTER%201/COR.01.22.pdf>

http://www.capitol.hawaii.gov/Archives/measure_indiv_Archives.aspx?billtype=HR&billnumber=88&year=2008.

Idaho:

http://www.idoc.idaho.gov/sites/default/files/webfm/documents/about_us/policies_and_forms/policypublic/104.pdf

Illinois:

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2893&ChapterID=35>

Indiana:

www.in.gov/idoc/files/Module_5_-_Ethics_Standards_of_Conduct_-_2011.pptx (slides 27-29)

Iowa:

<http://www.kwwl.com/Global/story.asp?S=8299126>

Kansas:

<http://www.doc.ks.gov/kdoc-policies/impp/chapter-9/09107.pdf>

Kentucky:

<http://www.lrc.ky.gov/KRS/061-00/165.PDF>

http://www.uknowledge.uky.edu/gradschool_diss/22

Louisiana:

<http://legis.la.gov/lss/lss.asp?doc=409491>

http://www.nola.com/politics/index.ssf/2009/08/prison_inmates_visitors_staff.html

http://www.doc.louisiana.gov/files_v2/cat16/subcat0/114.pdf

Maine:

<http://www.maine.gov/sos/cec/rules/10/chaps10.htm>

<http://www.maine.gov/corrections/Facilities/msp/MSPVisiting.htm>

<http://www.mainelegislature.org/legis/statutes/22/title22sec1580-A.html>

Maryland:

<http://ideha.dhmh.maryland.gov/eh/ciaa-regulations.aspx>

Massachusetts:

<http://www.mass.gov/eopss/docs/doc/policies/203.pdf>

<http://www.mass.gov/eopss/docs/doc/policies/444.pdf>

<http://www.mass.gov/eopss/docs/doc/policies/483.pdf>

Michigan:

http://www.michigan.gov/documents/corrections/01_03_140_347834_7.pdf

Minnesota:

http://www.doc.state.mn.us/DocPolicy2/html/DPW_Display_TOC.asp?Opt=103.200.htm

Mississippi:

<http://www.mdoc.state.ms.us/News%20Letters/2011NewsLetters/October2011.pdf> (pg. 6)

Missouri:

<http://www.moga.mo.gov/statutes/C100-199/1910000767.HTM>

http://www.stltoday.com/news/local/govt-and-politics/missouri-lawmaker-seeks-prison-smoking-ban/article_816d3e3e-3a96-11e0-a8eb-0017a4a78c22.html

Montana:

<http://www.cor.mt.gov/content/Resources/Policy/Chapter3/3-4-3.pdf>

Nebraska:

<http://www.corrections.state.ne.us/pdf/ar/rights/AR%20111.05.pdf>

<http://www.corrections.state.ne.us/pdf/ar/rights/AR%20208.01.pdf>

Nevada:

<http://www.doc.nv.gov/sites/doc/files/pdf/AR115.pdf>

New Hampshire:

<http://www.nh.gov/nhdoc/documents/6-09.pdf>

New Jersey:

<http://www.njgasp.org/otherlaws.htm#correctional>

New Mexico:

<http://corrections.state.nm.us/policies/current/CD-160400.pdf>

New York:

http://www.goer.ny.gov/Employee_Resources/Orientation/NYSOrientationHandbook2011.pdf (pg. 21)

<http://www.doccs.ny.gov/Directives/4202.pdf>

North Carolina:

http://www.doc.state.nc.us/dop/policy_procedure_manual/f2500.pdf

North Dakota:

<http://www.nd.gov/docr/county/docs/centurycode.pdf>

Ohio:

http://www.drc.ohio.gov/web/drc_policies/documents/10-SAF-01.pdf

Oklahoma:

<http://www.doc.state.ok.us/Offtech/op150601.pdf>

Oregon:

http://www.oregon.gov/DOC/OPS/HESVC/docs/policies_procedures/Section_F/PF03.pdf?ga=t

http://arcweb.sos.state.or.us/pages/rules/oars_200/oar_291/291_143.html

Pennsylvania:

http://www.cor.state.pa.us/portal/server.pt/community/doc_policies/20643

Rhode Island:

<http://www.doc.ri.gov/administration/policy/policies/24.03-3%20DOC.pdf>

South Carolina:

<http://www.doc.sc.gov/family/VisitationRules.jsp>

http://www.scdhec.gov/health/chcdp/phhsbg/docs/2008/BGSSFfinal08_Region3tobacco.pdf

South Dakota:

<http://doc.sd.gov/about/faq/property.aspx>

Tennessee:

<http://www.tn.gov/correction/pdf/502-04.pdf> (pg. 16)

<http://tennessee.gov/sos/acts/105/pub/pc0410.pdf>

Texas:

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_rac=&ti=37&pt=6&ch=151&rl=25](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_rac=&ti=37&pt=6&ch=151&rl=25)

Utah:

http://corrections.utah.gov/visitation_facilities/documents/friendsandfamilymanual_001.pdf (pgs. 5-6)

<http://health.utah.gov/tobacco/uicaa-statute.html>

Vermont:

<http://www.doc.state.vt.us/about/policies/rpd/correctional-services-301-550/401-500-programs-security-and-supervision/408.02%20Tobacco%20Products%20%281%29010704.pdf>

Virginia:

<http://www.vadoc.virginia.gov/about/procedures/documents/800/802-1.pdf> (pg. 2)

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+15.2-2823>

Washington:

<http://www.doc.wa.gov/policies/default.aspx>

West Virginia:

<http://smoking.uslegal.com/smoking-regulations-in-west-virginia/>

Wisconsin:

<https://docs.legis.wisconsin.gov/statutes/statutes/101/I/123>

<http://www.wi-doc.com/sangerb.htm>

Wyoming:

<http://doc.state.wy.us/policies/index.html>

Appendix B

Glossary

Community Corrections: The supervision of criminal offenders in the resident population, as opposed to confining them in secure correctional facilities. The two main types of community corrections supervision are probation and parole. Also referred to as community supervision.

Corrections: Those agencies or facilities concerned with the custody, confinement, supervision, or treatment of alleged or adjudicated offenders.

DOC: This refers to the Department of Corrections that oversees the correctional operation of state-run prisons and state-run probation services. The DOC is also seen as the agency that develops standards and policies for correctional services.

Incarceration: Detention of a person in jail or prison. In many states, convicted offenders sentenced to less than one year are held in a local jail; those sentenced to longer terms are housed in a state prison.

Jail: A short-term facility usually administered by a local law enforcement agency, used to hold inmates with sentences of less than one year or who are being held pending a trial, awaiting sentencing, or awaiting transfer to other facilities after a conviction.

Nicotine: An alkaloid (a nitrogen-containing chemical) made by the tobacco plant or produced synthetically. Nicotine has powerful pharmacologic (such as including increased heart rate, heart stroke volume, and oxygen consumption by the heart muscle) and psychodynamic effects (such as increased alertness and a sense of relaxation). Nicotine is also powerfully addictive. When users become habituated to nicotine and then stop using it, they experience the symptoms of withdrawal, including an intense craving for nicotine.

Nicotine Replacement Therapy (NRT): Involves the use of any form of smoking cessation aid that delivers a measured dose of nicotine to the person using it. Use of NRTs may reduce feelings of craving and withdrawal while a person pursues tobacco use cessation.

Parole: Refers to criminal offenders who are conditionally released from prison to serve the remaining portion of their sentence in the community. Parolees are typically required to fulfill certain conditions and adhere to specific rules of conduct while in the community. Failure to comply with any of the conditions can result in a return to incarceration.

Prison: Compared to jail facilities, prisons are longer-term facilities owned by a state or by the federal government. Prisons typically hold felons and persons with sentences of more than a year; however, the sentence length may vary by state. A small number of facilities are run by private prison corporations whose services and beds are contracted out by state or federal governments.

Probation: Refers to adult offenders placed on supervision in the community through a probation agency, generally in lieu of incarceration. In many instances, offenders on probation are required to fulfill certain conditions of their supervision (e.g., payment of fines, fees or court costs, participation in treatment programs) and adhere to specific rules of conduct while in the community. Failure to comply with any conditions can result in incarceration.

Rehabilitation: Removing or remediating presumed causes of crime by providing economic, psychological, or socialization assistance to offenders to reduce the likelihood of continuing in crime.

Tobacco Use Cessation: Refers to the process an individual undergoes to discontinue the use of tobacco products and overcome a corresponding nicotine addiction. Tobacco use cessation may be assisted with the use of nicotine replacement therapies, non-nicotine medications (such as Bupropion and Varenicline), and behavior change support (though counseling and support groups).

Tobacco Use Cessation Aids: Refers to a variety of nicotine replacement therapy products available for individuals pursuing tobacco use cessation. Available products include the nicotine patch, nicotine gum, nicotine lozenges, nicotine inhalers and nicotine nasal spray.

Work Release: Offenders sentenced to a county jail or workhouse who are employed or employable, and do not pose a threat to the public safety, the sheriff or jail administrator, are occasionally released from the facility so they can continue their employment. The inmates return to and remain in the facility at the end of each workday and on weekends. These inmates are generally charged a fee to pay the costs of their room and board while on work release.

Sources

<http://bjs.ojp.usdoj.gov/index.cfm?ty=tdtp&tid=11>

<http://plsinfo.org/healthysmc/12/glossary.html>

<http://www.edjj.org/training/pdf/CM%201-%20History.pdf>

<http://www.macpo.net/howtospeakcorrections.php>

http://www.medicinenet.com/smoking_and_quitting_smoking/glossary.htm

<http://www.mayoclinic.com/health/nicotine-dependence/DS00307/DSECTION=treatments-and-drugs>

Appendix C

Select Resources

American Cancer Society (ACS): The American Cancer Society is a nationwide, community-based voluntary health organization dedicated to eliminating cancer as a major health problem.

<http://www.cancer.org/Cancer/CancerCauses/TobaccoCancer/tobacco-related-cancer-fact-sheet>

American Heart Association (AHA): The American Heart Association is a national voluntary health agency that helps reduce disability and death from cardiovascular diseases and stroke.

<http://www.heart.org/HEARTORG/>

American Lung Association (ALA): The American Lung Association is a leading organization working to save lives by improving lung health and preventing lung disease through education, advocacy and research.

<http://www.lungusa.org/>

American Medical Association (AMA): The American Medical Association strives to promote the art and science of medicine and the betterment of public health. The AMA participates in the development of tobacco cessation guidelines and provides tools for physicians assisting patients with tobacco use cessation, as well as providing information and tools for use by patients.

<http://www.ama-assn.org/>

Break Free Alliance: The mission of the Break Free Alliance is to reduce tobacco use among populations of low socioeconomic status. Break Free Alliance is a program of the Health Education Council and was formerly known as the National Network on Tobacco Prevention and Poverty.

www.breakfreealliance.org

Health Education Council: The Health Education Council (HEC) is a nonprofit agency focused primarily on eliminating preventable causes of death resulting from the use of tobacco, poor nutrition, and lack of physical activity. HEC operates more than 25 public health programs nationwide to meet the needs of diverse communities by increasing access to health-related knowledge and information.

<http://healtheducouncil.org/index.html>

North American Quitline Consortium (NAQC): The North American Quitline Consortium (NAQC) is an international, non-profit membership organization that seeks to promote evidence-based quitline services (telephone-based tobacco cessation services that help tobacco users quit) across diverse communities in North America.

<http://www.naquitline.org/>

Office of Smoking and Health (OSH) – Centers for Disease Control and Prevention (CDC):

The Centers for Disease Control and Prevention, through its Office on Smoking and Health, is the lead federal agency for comprehensive tobacco prevention and control. OSH is dedicated to reducing the death and disease caused by tobacco use and exposure to secondhand smoke. Through OSH's National Tobacco Control Program, programs relating to tobacco use prevention, cessation, smoke-free environments, and tobacco-related disparities are funded.

<http://www.cdc.gov/tobacco/index.htm>

Office of the Surgeon General (OSG): The Surgeon General serves as America's Doctor by providing Americans the best scientific information available on how to improve their health and reduce the risk of illness and injury. The OSG provides a tobacco cessation resource webpage with links for clients and clinicians, including supportive materials, pocket cards, fact sheets, and clinical guidelines for treating tobacco dependence. Materials are also in Spanish.
www.surgeongeneral.gov/tobacco/

The Osborne Association: The Osborne Association offers opportunities for individuals who have been in conflict with the law to transform their lives through innovative, effective, and replicable programs that serve the community by reducing crime and its human and economic costs. The Osborne Association was the first organization to implement a state-wide tobacco cessation quitline for correctional facilities.
www.osborneny.org

Tobacco Cessation Leadership Network (TCLN): The mission of the Tobacco Cessation Leadership Network is to help increase the capacity in every state to establish effective, sustainable, and affordable cessation services to help tobacco users quit and stay quit. TCLN provides online resources, links, and roundtable discussions on tobacco treatment.
www.tcln.org

Tobacco Control Legal Consortium (TCLC): The Tobacco Control Legal Consortium's team of legal and policy specialists work to assist communities with tobacco-law related issues by providing legislative drafting and policy assistance to community leaders and public health organizations. The Consortium, a program of the Public Health Law Center, provides a wealth of tobacco law and public health law-related publications and resources online.
<http://publichealthlawcenter.org>

Tobacco Technical Assistance Consortium (TTAC): The Tobacco Technical Assistance Consortium is dedicated to assisting organizations in building and developing highly effective tobacco control programs. TTAC provides products, tools and an extensive pool of tobacco control resources through its website.
<http://www.ttac.org/>

Endnotes

- ¹ In this paper, the term “correctional facility” covers federal and state prisons, local jails, and any other facility that holds adult inmates in custody. The terms “prisoner” and “inmate” are used interchangeably.
- ² U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, CORRECTIONAL POPULATION IN THE UNITED STATES, 2010 (2011) [hereinafter CORRECTIONAL POPULATION 2010], available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/cpus10.pdf>; see also Int’l Ctr. for Prison Studies, *Entire World – Prison Population Rates per 100,000 of the National Population* (last visited Dec. 30, 2011), available at http://www.prisonstudies.org/info/worldbrief/wpb_stats.php?area=all&category=wb_poprate.
- ³ Josiah Rich et al., *Medicine and the Epidemic of Incarceration in the United States*, 364 NEW ENG. J. MED. 2081, 2081 (2011); see also Adam Liptak, *U.S. Prison Population Dwarfs That of Other Nations*, N.Y. TIMES, Apr. 23, 2008, available at <http://www.nytimes.com/2008/04/23/world/americas/23iht-23prison.12253738.html?pagewanted=all>.
- ⁴ NAT’L CONF. OF STATE LEGS., INNOVATIONS IN COMMUNITY CORRECTIONS (2010), available at <http://www.ncsl.org/documents/cj/pew/innovations.pdf>; PEW CENTER ON THE STATES, ONE IN 31, THE LONG REACH OF AMERICAN CORRECTIONS [hereinafter ONE IN 31], AT 11 (2009) (analysis based on Nat’l Ass’n of State Budget Officers, “State Expenditure Report” series), available at http://www.pewcenteronthestates.org/report_detail.aspx?id=49382.
- ⁵ ONE IN 31, *supra* note 4, at 11.
- ⁶ States vary in their methods for reporting inmate health care expenses. See VERA INSTITUTE OF JUSTICE, THE PRICE OF PRISONS (last visited Dec. 22, 2011), available at <http://www.vera.org/project/price-prisons>. In California from 2008 to 2009, for example, more than one third of the state’s cost to incarcerate an inmate in prison was spent on health care services. Legis. Analyst’s Office, *Overview of Adult Correctional Health Care Spending* (2010), available at http://www.lao.ca.gov/handouts/crimjust/2010/Correctional_health_care_03_18_10.pdf.
- ⁷ U.S. DEP’T HEALTH & HUMAN SERVS., THE HEALTH CONSEQUENCES OF INVOLUNTARY EXPOSURE TO TOBACCO SMOKE: SURGEON GENERAL’S REPORT (2006) [hereinafter 2006 SURGEON GENERAL’S REPORT], available at <http://www.surgeongeneral.gov/library/secondhandsmoke/report/chapter10.pdf> (estimating smoking prevalence among U.S. prisoners at between 40 and 80 percent); see also Laura Thibodeau et al., *Prerelease Intent Predicts Smoking Behavior Postrelease Following a Prison Smoking Ban*, 12 NICOTINE & TOBACCO RESEARCH 152, 152 (2010).
- ⁸ See CORRECTIONAL POPULATION 2010, *supra* note 2.
- ⁹ *Id.* at 2. At the end of 2010, approximately 1 in every 48 adults in the U.S. was under supervision in the community on probation or parole, compared to about 1 in every 104 adults in the custody of state or federal prisons or local jails. A total of 4,887,900 adult men and women were on probation and approximately 3 in 10 were incarcerated (2,266,800) in local jails or in the custody of state or federal prisons. *Id.*
- ¹⁰ See CORRECTIONAL POPULATION 2010, *supra* note 2; see also U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2010 (2010) [hereinafter PRISONERS IN 2010], available at <http://www.bjs.gov/content/pub/pdf/p10.pdf>.
- ¹¹ Stephanie Ewert & Tara Wildhagen, U.S. Census Bureau, *Educational Characteristics of Prisoners: Data from the ACS* (2011) (analyzing data from the 2009 American Community Survey and Bureau of Justice Statistics’ Survey of Inmates in State and Federal Correctional Facilities).
- ¹² BRUCE WESTERN, PUNISHMENT AND INEQUALITY IN AMERICA 28 (2006).
- ¹³ Thibodeau et al., *supra* note 7, at 152.
- ¹⁴ Gloria D. Eldridge et al., *Smoking Bans and Restrictions in U.S. Prisons and Jails: Consequences for Incarcerated Women*, 37 AM. J. PREV. MED. S179, S179 (2009), available at http://cancercontrol.cancer.gov/TCRB/trend/low_ses_ii/docs/EldridgeCropseyA-JPM2009.pdf.
- ¹⁵ RONALD ADAY, AGING PRISONERS: CRISIS IN AMERICAN CORRECTIONS 101 (2003).
- ¹⁶ NAT’L COMM’N ON CORRECTIONAL HEALTH CARE, HEALTH STATUS OF SOON-TO-BE-RELEASED INMATES, VOL. 1, 3 (2002), available at http://ncchc.org/pubs/pubs_stbr.html.
- ¹⁷ ADAY, *supra* note 15, at 100-01 (2003).
- ¹⁸ Karen Lasser et al., *Smoking and Mental Illness: A Population-Based Prevalence Study*, 284 J. AM. MED. ASSOC. 2606, 2610 (2000), available at <http://jama.ama-assn.org/content/284/20/2606.full.pdf>.
- ¹⁹ See Henry J. Steadman et al., *Prevalence of Serious Mental Illness Among Jail Inmates*, 60 PSYCHIATRIC SERVICES 761, 761–62 (2009) (compiling several studies, including reports from the Bureau of Justice Statistics, finding a disproportionate number of inmates with psychiatric disorders); see also NAT’L CTR. ADDICTION & SUBSTANCE ABUSE, BEHIND BARS II: SUBSTANCE ABUSE AND AMERICA’S PRISON POPULATION 2 (2010) [hereinafter BEHIND BARS II], available at <http://www.casacolumbia.org/articlefiles/575-report2010behindbars2.pdf>.

- ²⁰ See Treatment Advocacy Ctr., *Jails and Prisons*, Briefing Paper (April 2009), available at <http://www.treatmentadvocacy-center.org/resources/consequences-of-lack-of-treatment/jail/1371>; William Branigin & Leef Smith, *Mentally Ill Need Care, Find Prison*, WASH. POST, Nov. 25, 2001, at A01, available at <http://www.washingtonpost.com/ac2/wp-dyn/A10740-2001Nov24?language%2Bprinter>.
- ²¹ 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.
- ²² Karen Lasser et al., *supra* note 18.
- ²³ BEHIND BARS II, *supra* note 19, at 3 (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).
- ²⁴ David Kalman et al., *Co-Morbidity of Smoking in Patients with Psychiatric and Substance Use Disorders*, 14 AM. J. ADDICT. 106, 106 (2005).
- ²⁵ BEHIND BARS II, *supra* note 19, at 2-3.
- ²⁶ *Id.* For example, more than half (51 percent) of all federal inmates in 2010 served drug offenses. PRISONERS IN 2010, *supra* note 10, at 30.
- ²⁷ Kalman et al., *supra* note 24.
- ²⁸ Kimber Paschall Richter et al., *Tobacco Use and Quit Attempts Among Methadone Maintenance*, 91 AM. J. PUBLIC HEALTH 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.
- ²⁹ J. C. Anthony et al., *Comparative Epidemiology of Dependence on Tobacco, Alcohol, Controlled Substances, and Inhalants: Basic Findings from the National Comorbidity Survey*, 2 EXPERIMENTAL & CLINICAL PSYCHOPHARMACOLOGY 244, 249 (1994), available at http://www.umbrellasociety.ca/web/files/u1/Comp_epidemiology_addiction.pdf.
- ³⁰ Kalman, *supra* note 24, at 106.
- ³¹ Lasser, *supra* note 18, at 2609.
- ³² 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).
- ³³ 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>.
- ³⁴ *Id.* at 2. Half of all state prison deaths from 2001 to 2004 were caused by heart disease (27 percent) and cancer (23 percent) alone. *Id.* at 1.
- ³⁵ Mumola, *supra* note 33, at 2.
- ³⁶ U.S. DEP’T HEALTH & HUMAN SERVICES, *THE HEALTH CONSEQUENCES OF SMOKING: A REPORT OF THE SURGEON GENERAL (2004)* [hereinafter SURGEON GENERAL REPORT 2004], available at <http://www.surgeongeneral.gov/library/smokingconsequences/>.
- ³⁷ Anthony Alberg et al., *Epidemiology of Lung Cancer: ACCP Evidence-based Clinical Practice Guidelines* (2nd ed.), 132 CHEST (SUPPL.) 29S, 34S-40S (2007), available at <http://www.ncbi.nlm.nih.gov/pubmed/17873159>.
- ³⁸ See Mumola, *supra* note 33, at 1.
- ³⁹ Ctrs. for Disease Control & Prevention, *Tobacco-Related Mortality: Fast Facts* (2011), available at http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality.
- ⁴⁰ Ctrs. for Disease Control & Prevention, *Smoking and Tobacco Use: Fast Facts* (2011), available at http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality.
- ⁴¹ Shannon McCaffrey, *Aging Inmates Clogging Nation’s Prisons*, ASSOCIATED PRESS, Sept. 30, 2007, available at http://www.usatoday.com/news/nation/2007-09-29-aging-inmates_N.htm. The percentage of inmates in federal and state prisons aged 55 and older increased by 33 percent from 2000 to 2005. See *id.*
- ⁴² So. Legis. Conf., *The Aging Inmate Population: Southern States Outlook* (2006), available at http://www.sclatlanta.org/Publications/HSPS/aging_inmates_2006_lo.pdf [hereinafter *The Aging Inmate Population*].
- ⁴³ *Id.* at 24.

- ⁴⁴ James Marquart et al., *Health Condition and Prisoners: A Review of Research and Emerging Areas of Inquiry*, 77 PRISON JOURNAL 184, 188–89 (1997).
- ⁴⁵ 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>.
- ⁴⁶ *Id.* at 5.
- ⁴⁷ *The Aging Inmate Population*, *supra* note 42.
- ⁴⁸ *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 161 (2000).
- ⁴⁹ 76 Fed. Reg. 36,628, 36,631 (June 22, 2011) (final rule); 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 1226, 1226–28 (2008), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5745a3.htm>.
- ⁵⁰ Mumola, *supra* note 33, at 1.
- ⁵¹ Wilper et al., *supra* note 31, at 666.
- ⁵² Thomas Lincoln et al., *Resumption of Smoking After Release from a Tobacco-Free Correctional Facility*, 15 J. OF CORR. HEALTH CARE 190, 193–94 (2009).
- ⁵³ See, e.g., Americans for Nonsmokers' Rights Found., *Bibliography of Secondhand Smoke Studies* (2012), available at <http://www.no-smoke.org/pdf/SHSBibliography.pdf>.
- ⁵⁴ U.S. DEP'T HEALTH & HUMAN SERVS., *HOW TOBACCO SMOKE CAUSES DISEASE: THE BIOLOGY AND BEHAVIORAL BASIS FOR SMOKING-ATTRIBUTABLE DISEASE, PREFACE, III: SURGEON GENERAL'S REPORT* (2010) [hereinafter 2010 SURGEON GENERAL'S REPORT], available at <http://www.surgeongeneral.gov/library/tobaccosmoke/index.html>.
- ⁵⁵ Anne C. Spaulding et al., *Prisoner Survival Inside and Outside of the Institution: Implications for Health Care Planning*, 173 AM. J. EPIDEMIOLOGY 479, 479 (2011).
- ⁵⁶ See generally 2010 SURGEON GENERAL'S REPORT, *supra* note 54; 2006 SURGEON GENERAL'S REPORT, *supra* note 7.
- ⁵⁷ VERA INSTITUTE OF JUSTICE, *THE FISCAL CRISIS IN CORRECTIONS: RETHINKING POLICIES AND PRACTICES* 3 (2009), available at http://www.pewcenteronthestates.org/uploadedFiles/Vera_state_budgets.pdf.
- ⁵⁸ CORRECTIONAL INST. INSPECTION COMM., *THE COST OF CORRECTIONAL HEALTH CARE: A CIIC SUMMARY OF OHIO'S HEALTH CARE SYSTEM* (2011) (including information on estimated annual cost of health services per inmates in seven states), available at <http://nicic.gov/Library/024989>.
- ⁵⁹ ONE IN 31, *supra* note 4, at 11, 22 (analysis based on Nat'l Ass'n of State Budget Officers, "State Expenditure Report" series), available at <http://www.nasbo.org/publications.php>; see also Council of State Gov'ts, *Corrections Health Care Costs: TrendsAlert* (2004), available at <http://www.csg.org/knowledgecenter/docs/TA0401CorrHealth.pdf>.
- ⁶⁰ 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/>
- ⁶¹ Rich et al., *supra* note 3, at 2082. See generally VERA INSTITUTE OF JUSTICE, *THE PRICE OF PRISONS: WHAT INCARCERATION COSTS TAX PAYERS* (2012), available at <http://www.vera.org/download?file=3476/the-price-of-prisons-updated.pdf>.
- ⁶² Wilper et al., *supra* note 31, at 666.
- ⁶³ ONE IN 31, *supra* note 4, at 22.
- ⁶⁴ 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 687, 692 (2009).
- ⁶⁵ Owners of health insurance are more likely to have coverage for tobacco cessation services and make successful quit attempts compared to persons without health insurance. Ctrs. for Disease Control & Prevention, *What is the Role of Health Insurance Coverage in Tobacco Use Cessation* (last visited Jan. 20, 2012), available at http://www.cdc.gov/tobacco/quit_smoking/cessation/coverage/page2/index.htm.
- ⁶⁶ Eldridge, *supra* note 14, at S180.
- ⁶⁷ See generally Edward L. Sweda, Tobacco Control Resource Ctr., *Summary of Legal Cases Regarding Smoking in the Workplace and Other Places* (2008); Scott C. Wilcox, *Secondhand Smoke Signals from Prison*, 105 MICH. L. REV. 2081 (2007) (arguing that courts should take judicial notice of societal perspectives and medical data on secondhand smoke exposure in litigation regarding prison smoking policies); Jeffrey S. Kinsler, *Exposure to Tobacco Smoke is More Than Offensive, It is Cruel and Unusual Punishment*, 27 VAL. U. L. REV. 385 (1993) (providing an overview of litigation regarding smoke-free prisons, particularly regarding the Eighth Amendment's ban on cruel and unusual punishment).

- ⁶⁸ 2006 SURGEON GENERAL REPORT, *supra* note 7, at 628 (reporting that, where smoking is allowed inside prisons, nonsmokers will likely face exposure to significant concentrations of secondhand smoke), available at <http://www.surgeongeneral.gov/library/secondhandsmoke/report/chapter10.pdf>; see Wilcox, *supra* note 67, at 2102 (applying the death rate to the inmate population data suggests that as many as 115 inmates die each year as a result of secondhand smoke. By contrast, in 2006, only fifty-three U.S. inmates on death row were executed).
- ⁶⁹ U.S. CONST. AMEND. VIII. The Eighth Amendment applies to the states under the Fourteenth Amendment's Due Process Clause. The Supreme Court has interpreted the Eighth Amendment broadly, applying it not only to inmate sentences, but also to their conditions of confinement. See *Estelle v. Gamble*, 429 U.S. 97, 103-04 (1976) (finding that the failure of prison officials to provide an inmate with adequate medical care constitutes cruel and unusual punishment).
- ⁷⁰ *McKinney v. Anderson* (*McKinney I*), 924 F.2d 1500 (9th Cir. 1991).
- ⁷¹ *Id.* at 1507.
- ⁷² *Id.*
- ⁷³ *Id.* at 1502.
- ⁷⁴ *Id.*
- ⁷⁵ *Id.* at 1503, 1510-511.
- ⁷⁶ *Id.* at 1511.
- ⁷⁷ *Id.* at 1508, *vacated and remanded sub nom.*, 502 U.S. 903 (1991) (“[W]e held that housing inmates in units with inadequate ventilation and air flow is unconstitutional.... [W]e held that denying prisoners fresh air ... violates the Eighth Amendment.... [I]t must be even more so to force inmates to breathe air containing levels of known human carcinogens sufficient to pose an unreasonable risk of harm to human health. It is hard to imagine that our society would tolerate exposing inmates to dangerous levels of any other Group A carcinogens, like benzene, asbestos or arsenic.”). *Id.* at 1507.
- ⁷⁸ *Id.* at 1508.
- ⁷⁹ *Id.* at 1509.
- ⁸⁰ *Wilson v. Seiter*, 501 U.S. 294 (1991) (limiting the ability of inmates to establish that prison conditions violate the Eighth Amendment's proscription against the infliction of cruel and unusual punishment). See generally Lisa Gizzi, *Helling v. McKinney and Smoking in the Cell Block: Cruel and Unusual Punishment?*, 43 Am. U. L. Rev. 3, 1091 (1994).
- ⁸¹ *McKinney I*, 959 F.2d 853, 854 (9th Cir. 1992) (noting that its earlier opinion was consistent with *Wilson*).
- ⁸² *Helling v. McKinney*, 509 U.S. 25, 36 (1993).
- ⁸³ *Id.* at 35.
- ⁸⁴ *Id.*
- ⁸⁵ *McKinney v. Anderson* (*McKinney 11*), No. CV-N-87-36-ECR (PHA), slip op. at 1 (D. Nev. Jan. 11, 1995). Under the settlement, *McKinney* was housed either in a single cell or in a double cell with a nonsmoking roommate. *Id.* at 3.
- ⁸⁶ See Wilcox, *supra* note 27, at 2082.
- ⁸⁷ *Helling*, 509 U.S. at 36.
- ⁸⁸ *Farmer v. Brennan*, 511 U.S. 825, 847 (1994) (defining deliberate indifference as conscious disregard of a risk).
- ⁸⁹ See, e.g., *Beauchamp v. Sullivan*, 21 F.3d 789 (1994) (noting the Supreme Court has recognized that “prison officials may have a constitutional duty to protect inmates from high levels of ambient cigarette smoke”); *Hunt v. Reynolds*, 974 F.2d 734, 735-36 (6th Cir. 1992) (finding that the Eighth Amendment is violated “by forcing a prisoner with a serious medical need for a smoke-free environment to share his cell with an inmate who smokes”). The “indifference standard” has also been applied in other prisoners’ claims of violations of their Eighth Amendment rights.
- ⁹⁰ 267 F.3d 648, 653 (7th Cir. 2001).
- ⁹¹ See *State Legislated Actions on Tobacco Issues*, AM. LUNG ASS’N (SLATI website), <http://www.lungusa2.org/slati/> (last visited Dec. 21, 2011) (providing an up-to-date, searchable compilation of state tobacco control laws). For updated information on the status of smoke-free legislation, visit the Americans for Nonsmokers’ Rights website at www.no-smoke.org.
- ⁹² See *infra* “Overview of Correctional Smoke-free and Tobacco-free Policies.”
- ⁹³ See generally Sweda, *supra* note 67.
- ⁹⁴ See, e.g., Samantha K. Graff, Tobacco Control Legal Consortium, *There is No Constitutional Right to Smoke* (2010), available at http://publichealthlawcenter.org/sites/default/files/resources/tclc-syn-constitution-2008_0.pdf.

- ⁹⁵ See, e.g., *Reynolds v. Bucks*, 833 F. Supp. 518 (E.D. Pa. 1993) (granting summary judgment against inmates who alleged that the prison's smoke-free policy violated their constitutional rights against cruel and unusual punishment, and finding that the inmates were unable to prove (1) that the policy on tobacco use was implemented with an intent to punish; (2) the policy was not reasonably related to a legitimate governmental objective; and (3) the policy violates "the evolving standards of decency that mark the progress of a maturing society or that the policy involves the "unnecessary and wanton infliction of pain." *Id.* at 520-21.
- ⁹⁶ See, e.g., *Alley v. State*, 1997 WL 695590 (D. Kan. 1997) (holding without merit a state prison inmate's claim that a correctional institution's smoke-free policy amounted to an additional punishment of prisoners violating the Federal Constitution's proscription of bills of attainder and ex post facto laws).
- ⁹⁷ See, e.g., *Antonetti v. Skolnik*, 748 F. Supp. 2d 1201 (D. Nev. 2010) (finding that a smoke-free prison policy was not an atypical and significant hardship on prisoners and did not violate a prisoner's due process rights). But see *State ex. Rel. Kincaid v. Parsons*, 191 W. Va. 608, 447 S.E.2d 543 (1994) (holding that a jail's administrative rule prohibiting smokeless and other forms of tobacco in the facility amounted to a legislative rule that could not be left to the sole discretion of the jail administrator but that had to be promulgated through formal rule-making procedures according due process through notice and an opportunity to be heard under the state Administrative Procedures Act (W. VA. CODE. § 29A-3-5 (1994)).
- ⁹⁸ See, e.g., *House of Corrections Block Representatives Comm. V. Creamer*, 1998 WL 242663 (E.D. Pa. 1998) (dismissing an equal protection action by pretrial detainees and sentenced inmates in a local prison system, finding that the prison's smoke-free policy applied to staff, inmates, contract employees, and visitors, including official visitors). See also *Jarrett v. Westchester County Dept. of Health*, 169 Misc. 2d 320, 646 N.Y.S.2d 223 (Sup. Ct. 1996) (holding that a directive forbidding jail inmates from possessing smoking materials and prohibiting the sale of such materials in the commissary, but allowing correctional employees to smoke outside during their lunch break, did not violate the inmates' right to equal protection of the law).
- ⁹⁹ See, e.g., *House of Corrections Block Representatives Comm. V. Creamer*, 1998 WL 242663 (E.D. Pa. 1998) (where the court dismissed a claim by pretrial detainees and inmates who alleged that a smoke-free prison policy violated their constitutional rights to free expression).
- ¹⁰⁰ See, e.g., *Washington v. Tinsley*, 809 F. Supp. 504 (S.D. Tex. 1992) (holding without merit a claim by pretrial detainees in jail that confiscation of tobacco products in the jail as contraband, pursuant to the city's smoke-free ordinance, amounted to an unconstitutional taking of their property without compensation, and finding that if tobacco was seized when an inmate was in the jail, the county could take it because its possession would be in violation of a known, rational regulation for the jail's administration).
- ¹⁰¹ See, e.g., Fed. Bureau of Prisons, *Program Statement: Religious Beliefs and Practices, Statement P5360.09 12/31/2004*, at 20(I)-(j) (directing correctional institutions to develop procedures for "using tobacco for rituals"), available at http://www.bop.gov/policy/progstat/5360_009.pdf.
- ¹⁰² See, e.g., MINN. STAT. § 144.4167, subd. 2 (stating that members of federally recognized tribes may smoke as part of a traditional Native American spiritual or cultural ceremony).
- ¹⁰³ See, e.g., *Cryer v. Mass. Dep't of Correction*, 763 F. Supp. 2d 237 (D. Mass. 2011) (summary judgment denied on some aspects of RLUIPA claim, with challenge otherwise unsuccessful); *Adams v. Mosley*, 2008 WL 4369246 (M.D. Ala. Sept. 25, 2008) (challenge unsuccessful); *Brunskill v. Boyd*, 141 F. App'x 771 (11th Cir. 2005) (challenge unsuccessful); *Hyde v. Fisher*, 203 P.3d 712 (Ct. App. 2009) (reversing the district court order denying plaintiff's petition for writ of habeas corpus regarding the complete prohibition of smudging ceremonies, but otherwise rejecting challenge); *Roles v. Townsend*, 64 P.3d 338 (Ct. App. 2003) (challenge unsuccessful).
- ¹⁰⁴ See, e.g., Ross Kauffman et al., *Tobacco Policy in American Prisons*, 2007, 17 TOBACCO CONTROL 357, 359 (2008) (stating that in 1986, a survey of 19 prison systems found that 53 percent distributed free tobacco products to inmates); see also ERIC PARTRIDGE ET AL., THE CONCISE NEW PARTRIDGE DICTIONARY OF SLANG AND UNCONVENTIONAL ENGLISH (2007); Am. Fed. State, County & Municipal Employees Local 3963, *Correctional Officers Guide to Prison Slang* (explaining that in prison slang, the "bull" in "Bull Durham" means "feces"), available at http://afscmelocal3963.tripod.com/f_y_i_.htm (last visited Jan. 24, 2012).
- ¹⁰⁵ Nat'l Network on Tobacco Prevention & Poverty, *Tobacco Policy, Cessation, and Education in Correctional Facilities* (2004), available at <http://healthedcouncil.org/breakfreealliance/pdf/ncchc.pdf>.
- ¹⁰⁶ See 2006 SURGEON GENERAL'S REPORT, *supra* note 6, at 628.
- ¹⁰⁷ Gregory P. Falkin et al., *Cigarette Smoking Policies in American Jails*, AM. JAILS 9, 9 (1998).
- ¹⁰⁸ 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.
- ¹⁰⁹ See, e.g., 2006 SURGEON GENERAL'S REPORT, *supra* note 7, at 628.
- ¹¹⁰ Kauffman et al., *supra* note 104, at 358.

- ¹¹¹ Some correctional policies are described as “Smoking” or “Smoke-free,” but also cover smokeless tobacco products and nicotine products such as e-cigarettes. This figure is based on a January 2012 Public Health Law Center survey of all online state correctional policies.
- ¹¹² Alison Connell, *Tobacco-free Prison Policies and Health Outcomes Among Inmates*, Doctoral Dissertation (2010), available at http://uknowledge.uky.edu/gradschool_diss/22/; see also John Polito, *Prison Smoking Cessation, Tobacco Cessation and Nicotine Cessation*, available at <http://whyquit.com/pr/092507.html> (last visited Jan. 23, 2012).
- ¹¹³ See Appendix A for citations to each state department of corrections policy.
- ¹¹⁴ See Am. Jail Ass’n, *Tobacco-free Jails Resolution* (1990), available at http://www.aja.org/resolutions.aspx#TOBACCO_FREE_JAILS.
- ¹¹⁵ See Am. Correctional Inst., *Public Correctional Policy on Nonsmoking Policies* (1999), available at http://aca.org/government/policyresolution/PDFs/Public_Correctional_Policies.pdf.
- ¹¹⁶ See, e.g., Nat’l Comm’n Correctional Health Care, *Standards for Health Services in Jails* (2008); *Standards for Health Services in Prisons* (2008). For additional information on health services in the nation’s correctional facilities, visit the NCCHC website at <http://www.ncchc.org/>.
- ¹¹⁷ See Am. Jail Ass’n, *supra* note 114.
- ¹¹⁸ But see Josh Politove, *supra* note 60 (reporting that some states have dealt with angry prisoners when smoke-free policies took effect, and describing a 1995 protest by approximately 150 inmates at Lee Correctional Institution when Georgia prisons went smoke-free, ending only after the warden called in a riot squad).
- ¹¹⁹ This is not to say that the policies are not circumvented at times, or that the rise in illicit tobacco has not created other behavioral issues; see *infra* “Contraband.”
- ¹²⁰ See *supra* “Legal Challenges to Prison Smoke-free and Tobacco-free Challenges.”
- ¹²¹ 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).
- ¹²² See *supra* “Overview of Smoke-free Prison Litigation.”
- ¹²³ See Nat’l Network on Tobacco Prevention & Poverty, *supra* note 105.
- ¹²⁴ See *id.* For a similar reaction, see Linda L. Drach et al., *Promoting Smoke-free Environments and Tobacco Cessation in Residential Treatment Facilities for Mental Health and Substance Addictions, Oregon*, 2010, 9 PREV. CHRONIC DISEASE 11_0080 (2011), available at http://www.cdc.gov/pcd/issues/2012/11_0080.htm (quoting a health professional, “Forcing patients to stop smoking when there are so many other issues that we have to deal with is ridiculous.”).
- ¹²⁵ See Nat’l Network on Tobacco Prevention & Poverty, *supra* note 105, at 3; Alison Connell, *supra* note 112, at 19.
- ¹²⁶ See, e.g., Stephen Lankenau, *Smoke ‘Em If You Got ‘Em: Cigarette Black Markets in U.S. Prisons and Jails*, 81 PRISON JOURNAL 142, 147-60 (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).
- ¹²⁷ See, e.g., Cornell, *supra* note 112.
- ¹²⁸ *Id.*
- ¹²⁹ *Id.*; see also *Ohio Prisons Study Link Between Violence, Tobacco*, DAYTON DAILY NEWS, Jan. 22, 2012; Josh Politove, *supra* note 60.
- ¹³⁰ Eldridge & Cropsey, *supra* note 14, at S179.
- ¹³¹ See Ross Kauffman et al., *Tobacco Use by Male Prisoners Under an Indoor Smoking Ban*, 13 NICOTINE & TOBACCO RESEARCH 449, 449 (2011).
- ¹³² Dwight Abbott, *Black Market in Tobacco Makes Prisons More Violent*, NEW AM. MEDIA, Apr. 14, 2007.
- ¹³³ See *id.*
- ¹³⁴ See *id.*
- ¹³⁵ See *Ohio Prisons Study Link Between Violence, Tobacco*, *supra* note 127.

- ¹³⁶ Allan Turner, *Tobacco Ban Blamed in Prison Violence*, HOUSTON CHRONICLE, Dec. 3, 2010, available at <http://www.chron.com/news/houston-texas/article/Tobacco-ban-blamed-in-prison-violence-1702460.php>; see also Texas Stat. Annotated, Penal Code § 38.11 (2009).
- ¹³⁷ Based on Public Health Law Center interviews with state and local corrections officials (2011-12) (summaries available upon request).
- ¹³⁸ *Id.*
- ¹³⁹ Eldridge & Cropsey, *supra* note 14, at S180.
- ¹⁴⁰ NAT'L COMM'N CORRECTIONAL HEALTH CARE, THE HEALTH STATUS OF SOON-TO-BE-RELEASED INMATES, Vol. 1, Exec. Summary, xvii (2002), available at http://www.ncchc.org/pubs/pubs_stbr.vol1.html.
- ¹⁴¹ Am. Lung Ass'n, *Helping Smokers Quit: Tobacco Cessation Coverage 2011* 4 (2011), available at <http://www.lung.org/assets/documents/publications/smoking-cessation/helping-smokers-quit-2011.pdf> (based on analysis of data by Am. Lung Ass'n & Penn. St. Univ., *Smoking Cessation: The Economic Benefits* (2011)).
- ¹⁴² *Id.*; see also 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 1226, 1226-28 (2008), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5745a3.htm>; Partnership for Prevention, *Saving Money: The Massachusetts Tobacco Cessation Medicaid Benefit, A Policy Paper* (2011), available at http://www.prevent.org/data/images/roi%20policy%20paper_a.pdf.
- ¹⁴³ Michael Fiore et al., U.S. Dep't Health & Human Servs., *Treating Tobacco Use and Dependence: A Clinical Practice Guideline* (2008), available at http://www.surgeongeneral.gov/tobacco/treating_tobacco_use.pdf.
- ¹⁴⁴ Ctrs. for Disease Control & Prevention, *Quitting Smoking Among Adults – United States, 2011-2010*, 60 MORBIDITY & MORTALITY WKLY RPT 1513, 1513-19 (2011), available at http://www.cdc.gov/tobacco/data_statistics/mmwr/byyear/2011/mm6044a2/intro.htm.
- ¹⁴⁵ See Kauffman et al., *Tobacco Use by Male Prisoners*, *supra* note 131 at 449.
- ¹⁴⁶ Fiore et al., *supra* note 143, at 9. The Guideline, a review of decades of research on tobacco cessation, is widely considered a definitive report on effectively treating tobacco users.
- ¹⁴⁷ *Id.* at 72-77.
- ¹⁴⁸ Public Health Law Center survey of online state corrections tobacco policies (2012). Given shrinking and evolving corrections budgets, states may not currently offer all tobacco cessation services identified above.
- ¹⁴⁹ Legacy, *Legacy's Small Innovative Grants: Exploring Promising Programming in Tobacco Control*, 10-14 (2010), available at http://www.legacyforhealth.org/PDF/SIG_Dissemination_Booklet.pdf.
- ¹⁵⁰ Kauffman, *Tobacco Use by Male Prisoners*, *supra* note 131, at 360; see also Health Educ. Council, *Tobacco Policy, Cessation, and Education in Correctional Facilities* 5 (2010), available at <http://healtheducouncil.org/breakfrealliance/pdf/ncchc.pdf> (summarizing a 2003 national survey of correctional facilities, which found that “smoking cessation is not a priority in correctional facilities” and that “very little tobacco cessation programming occurs” in them).
- ¹⁵¹ CAL. CODE REGS. TIT. 15, §§ 3187-3189 (2011), available at http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/2011%20Title%2015%20English.pdf.
- ¹⁵² See generally Hillel Alpert et al., *A Prospective Cohort Study Challenging the Effectiveness of Population-based Medical Intervention for Smoking Cessation*, 21 TOBACCO CONTROL 1 (2012) (advance online publication).
- ¹⁵³ VERA INSTITUTE OF JUSTICE, THE FISCAL CRISIS IN CORRECTIONS: RETHINKING POLICIES AND PRACTICES 2 (2009), available at http://www.pewcenteronthestates.org/uploadedFiles/Vera_state_budgets.pdf.
- ¹⁵⁴ Connell, *supra* note 110, at 21.
- ¹⁵⁵ See, e.g., Cropsey & Kristeller, *supra* note 145, at 1894; Kauffman et al., *Tobacco Use by Male Prisoners*, *supra* note 131 at 449; Thibodeau et al., *supra* note 7, at 153 (reporting that the majority of smoking relapses occur within 3 months of cessation).
- ¹⁵⁶ Fiore et al., *supra* note 143, at 9.
- ¹⁵⁷ Educ. Council et al., *Smoking Habits and Prevention Strategies in Low Socioeconomic Status Populations: Focus Group* (2004), available at <http://healtheducouncil.org/breakfrealliance/pdf/preres.pdf> (studying the role of tobacco among low socioeconomic status populations).
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- ¹⁵⁹ Kauffman, *Tobacco Use by Male Prisoners*, *supra* note 131, at 449.
- ¹⁶⁰ *See id.*; *see also* Thibodeau, *supra* note 7, at 152.
- ¹⁶¹ Am. Lung Ass'n, *Helping Smokers Quit: Tobacco Cessation Coverage 2011* (2011), available at <http://www.lungusa.org/assets/documents/publications/smoking-cessation/helping-smokers-quit-2011.pdf>.
- ¹⁶² Edward Perka, Jr., *Culture Change in Addictions Treatment: A Targeted Training and Technical Assistance Initiative Affects Tobacco-Related Attitudes and Beliefs in Addiction Treatment Settings*, 12 HEALTH PROMOTION PRAC. 159S, 161S (2011), available at http://hpp.sagepub.com/content/12/6_suppl_2/159S.full.pdf+html.
- ¹⁶³ *Id.*
- ¹⁶⁴ *Id.* at 165S.
- ¹⁶⁵ *See* Break Free Alliance, *Recommendations for Addressing Tobacco Use in Correctional Facilities through Policy and Cessation Programming*, Briefing Paper (last visited Jan. 22, 2012), available at <http://healthedcouncil.org/breakfreealliance/pdf/Break%20Free%20Alliance%20-%20Correctional%20Policy%20Recommendations%20FINAL%206-8-09.pdf>.
- ¹⁶⁶ *See* Americans for Nonsmokers' Rights Foundation website at <http://www.no-smoke.org/pdf/100smokefreeprisons.pdf>.
- ¹⁶⁷ John Polito, *supra* note 112.
- ¹⁶⁸ *See id.*
- ¹⁶⁹ *See* Break Free Alliance, *supra* note 165, at 3-4.
- ¹⁷⁰ *See id.*
- ¹⁷¹ *See id.*
- ¹⁷² *See, e.g.*, Thibodeau *supra* note 7, at 156-57 (finding that the intent to stay tobacco-free is a powerful and effective predictor of continued tobacco cessation post-release).



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