

Your Right to HIV Treatment in Prison and Jail

Prisoners living with HIV may have trouble getting the health care they need and deserve. If untreated or mistreated, HIV can result in serious illness or even death. To prevent these things from happening, people living with HIV in prison should be aware of—and insist upon—their legal right to medical care.

YOU HAVE A RIGHT TO MEDICAL CARE IN PRISON

The U.S. Supreme Court has ruled that prison officials must provide medical treatment to prisoners. Under the Eighth Amendment of the U.S. Constitution, prisoners have the right to see a healthcare professional and be treated for serious medical problems.¹ Prisoners have this right to medical care regardless of whether they are in a federal, state, or local prison or jail.

Proving a Violation of the Right to Medical Care

To prove that the right to medical care while in prison has been denied in violation of the Constitution, a prisoner must show that prison officials treated him or her with “**deliberate indifference** to serious medical needs.”² *Deliberate indifference* is when a prison official “knows of and disregards an excessive risk to inmate health or safety.”³ To prove deliberate indifference, a prisoner must show that: 1) s/he has a serious medical need; 2) the prison official knows about the need; and 3) the official has ignored that need.

It is not difficult to prove part one because even people living with HIV who have no visible symptoms have “serious medical needs.” A person living with HIV must have regular blood tests to find out whether it is time to start taking HIV medications. If the person is already taking HIV medications, blood tests are needed to find out whether the medications are still working. And after medications have been prescribed, a prison official’s failure to give a person those medications (on schedule) may result in drug resistance, a drop in immune function, and life-threatening infections.

A person with HIV always has “serious medical needs.” Therefore, it is very important that prison officials are made aware of and are taking care of those needs.

Work Within the System First

If a prisoner finds it necessary to go to court over a prison official’s failure to provide medical care, the prisoner first needs to comply with the **Prison Litigation Reform Act (PLRA)**.⁴ The PLRA applies to almost any lawsuit challenging the conditions of a person’s imprisonment (including the quality of medical care) and requires prisoners to use and “exhaust” any grievance process provided by the prison system before filing a claim in court. This means that the prisoner must follow **all** the steps the prison system

makes available for dealing with the problem (including use of all available appeals within the prison system) before a court will seriously consider a lawsuit filed by that prisoner.

Though the steps a prisoner must take will vary from state to state, and even from prison to prison, the required steps usually include: 1) telling the person who is failing to provide adequate care about the serious medical need that is not being met; 2) filing a formal written complaint (or “grievance”); 3) asking the decision-makers to reconsider any unfavorable decision (also called appealing the decision); and 4) pursuing all such appeals to the highest level possible within the prison system.

The specific procedures established by the prison—which may be different or more complicated than those listed above—**must** be followed. If a lawsuit is filed before the prisoner makes every attempt to solve the problem within the prison itself, a court is likely to dismiss the case without ever considering the merits of the prisoner’s claims.⁵

GETTING TREATMENT WHILE IN PRISON OR JAIL

Listed below are some steps prisoners—and others helping them, such as partners, friends and family members—can take to make it more likely they will receive adequate HIV treatment while incarcerated. These same steps should also be helpful if you can’t get the care you need and later decide to file a claim in court.

Let prison medical staff know about your serious medical needs. If you are receiving medical care for your HIV before entering the jail or prison, getting written documents about your medical needs can be helpful in obtaining HIV care while in prison.

- **Ask your doctor to do a complete physical and blood work-up before you to go to prison.** That way, current information about your condition will be available. Also, if your health gets worse while in prison, you will have some evidence to show a court that your health has gone downhill.
- **Ask your doctor to write a letter explaining your HIV status.** In this letter, the doctor (or other medical care provider) should explain: the doctor’s treatment plan for you; the names, dosages, and schedule for the prescription medications you have been taking; and **the importance of**

continuous care in preventing drug resistance and a decline in your long-term health. It is best if you can get this letter before you enter the prison, but it is useful to get even if you are already incarcerated. (You can get a sample letter from Lambda Legal to give to your health care provider showing the types of information that should be included.)

As long as they are providing “adequate” care, prison health officials are **not** required to follow your doctor’s particular treatment plan. Still, it will be helpful to have your doctor (or other healthcare professional) inform prison officials about your serious medical needs in a written letter. Make several copies of the letter. Give the original to a prison official and give a copy to one or more people you trust, in case you need another copy later.

- **Also, if possible, talk to your criminal defense attorney about your medical needs.** Your attorney may have suggestions on how best to ensure access to proper medication and be able to advocate on your behalf **before** you enter the prison or jail.

File a formal complaint (“grievance”) with prison officials.

If you believe you are being denied adequate medical care, first follow the procedures set up by the prison for dealing with this kind of problem.

1. Find out how to file a formal complaint at your prison.

Learn what procedures prisoners must follow to file a grievance and take the steps required by those procedures.

2. Follow-up on the complaints you file. If a grievance is denied, dismissed, or rejected (or no action is taken on it) and the problem has not been fixed, file an appeal.

3. Keep going until the problem is fixed. If an appeal is denied, dismissed or rejected, you should attempt to appeal **that** decision to the next level—and do so until you have reached the highest level and “exhausted” all remedies available within the prison system.

Even if filing a written complaint, following up and appealing does not solve the problem right away, taking these steps will put you in a better position to seek a solution in court.

Keep detailed records about your care and any complaints you file.

- **Keep a diary about your medical condition and the treatment you receive.** Prisoners usually are allowed to write things down about their medical treatment, the medical staff they have seen, the effects of any delay in treatment, and the number of days they have gone without treatment. Always include dates, a list of any witnesses to the events you describe, and any other information that would help show that a prison official was aware of your serious medical needs.

- **Keep proof of how you tried to get the problem fixed.**

Try to make and keep copies of all complaints you file and all responses you receive. If you cannot keep copies, write down the dates you filed these grievances and, in as much detail as possible, the reason(s) for filing a grievance on each date. Also make notes about any responses, determinations and appeals.

These types of documents, notes and logs are important because they may help an attorney or other advocate obtain necessary treatment for you. They might also be useful for pursuing a claim in court.

CONFIDENTIALITY AND PRIVACY

In prison, it may be hard to get HIV care and keep your HIV status private at the same time. Outside of prison, medical care providers generally have to keep medical information about patients confidential; however, privacy rights for medical information may be more limited while in prison.

In demanding adequate medical care in prison, you may find it necessary to reveal your HIV status to more people—and more often—than you normally would. If it is important to you to keep your HIV status private, you should avoid discussing it except when seeking, demanding or receiving medical care. In addition, you should mark as “confidential” all documents that mention your HIV status.

Sometimes, prisoners find they are unable to hold on to medical papers (as suggested above) because of a concern that guards or other inmates will see them. If you face this problem, use your best judgment in determining whether to hold on to such documents. If someone on the outside will be helping you try to get the care you need, also let them know about any confidentiality concerns you have.

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For more information

Visit Lambda Legal’s website (www.lambdalegal.org), call our Help Desk at (866) 542-8336, or write us at 120 Wall St., Ste. 1500, New York, NY 10005.

¹ *Estelle v. Gamble*, 429 U.S. 97, 102 (1976).

² *Farmer v. Brennan*, 511 U.S. 825, 836 (1994).

³ *Id.* at 837-38.

⁴ U.S. Pub. L. 104-134, § 801 *et seq.* (amending various statutes, including 42 U.S.C. 1997(e)).

⁵ The federal right to medical treatment while incarcerated described above is the main source of claims based on inadequate medical care. Other legal claims may be available under other laws (for example, disability discrimination laws, state medical malpractice laws, etc.), and the procedures that must be followed before a prisoner can pursue other types of claims may be very different from the procedures required by the PLRA. This document does not attempt to address the requirements for these other types of claims.