CHAPTER 26

INFECTIOUS DISEASES: AIDS, HEPATITIS, TUBERCULOSIS, AND MRSA IN PRISONS*

A. Introduction

This Chapter explains your legal rights with respect to infectious diseases in prison. This Chapter has information both for incarcerated people who already have an infectious disease (like HIV/AIDS, tuberculosis, hepatitis B, hepatitis C, or Methicillin-resistant Staphylococcus aureus (MRSA)), and for incarcerated people who want to avoid getting an infectious disease. Part B gives you some basic facts about infectious diseases. Section (1)(a) of Part B also describes how women may have different symptoms of HIV/AIDS than men. Part C explains the general standard used to determine whether a prison policy is constitutional. Part D is about medical testing for infectious diseases in prisons, including whether a prison can force you to get tested or have others tested. Part E discusses disease prevention and segregation issues. Part F discusses the role of confidentiality and what you can expect in terms of keeping your health status private in prison. Part G deals with treatment options and your legal rights to those options. Part H discusses issues relating to discrimination. Part I discusses sentencing issues. Part J discusses planning for your release if you have an infectious disease. Finally, Appendix A lists resources for further information, counseling, and support for you and your family.

You should also read other chapters of the *JLM* to understand your legal rights, especially Chapter 16, "Using 42 U.S.C. § 1983 to Obtain Relief From Violations of Federal Law," Chapter 36, "Special Considerations for Sex Offenders," Chapter 28, "Rights of Prisoners with Disabilities," Chapter 23, "Your Right to Adequate Medical Care," and Chapter 35, "Getting Out Early: Conditional & Early Release."

There are more court cases about HIV/AIDS than about the other diseases discussed in this Chapter. Because judges always look at the specific facts of each case, try to find cases about your disease. But, you also can try to make comparisons between different diseases and explain how the diseases are very similar, including how they are spread and their effects on incarcerated people. For example, if you want to use a case about AIDS and argue that the case should also apply to hepatitis C, you should try to explain your reasons as clearly as possible.

This Chapter is only a summary of the many issues about infectious diseases in the prison system. You probably will have to do more research elsewhere. For example, this Chapter only includes HIV/AIDS, tuberculosis, hepatitis (the most common infectious diseases in prison), and MRSA, but there are many other diseases. Scientists are always discovering new information about infectious diseases, so some of this information may not be correct in the future.

B. Background Information on Infectious Diseases

1. HIV and AIDS

HIV, the Human Immunodeficiency Virus, is the virus that causes AIDS.[1] AIDS stands for Acquired Immunodeficiency Syndrome. Over time, HIV weakens your immune system so your body

---

* This Chapter was rewritten by Carrie Ellis, based, in part, on previous versions of "AIDS in Prison" and "AIDS, Tuberculosis, and Hepatitis in Prison" by Emily Monroe, Jin Hee Lee, Stephanie I. R. Fidler, Sara Corello, and Paul Farrell Mapelli. Special thanks to Milton Zelermyer Prisoners' Rights Project, The Legal Aid Society of New York; Madeline DeLone, Innocence Project; and Jennifer Wynn, Prison Visiting Project, Correctional Association of New York, for their helpful comments.

1. *HIV/AIDS—About HIV/AIDS*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* https://www.cdc.gov/hiv/basics/whatishiv.html (last visited Oct. 5, 2019). The *JLM* knows that many incarcerated people do not have access to the Internet, but because we want this information to be up to date, we cite frequently to different agencies' and organizations' websites.

cannot fight off infection properly. You may develop various infections—known as "opportunistic" infections—that take advantage of your body's weakened condition.[2]

Most people with HIV develop AIDS within ten to fifteen years of getting HIV.[3] The time it takes for HIV to develop into AIDS is different for each person. Medical treatments can slow down how fast HIV weakens your body.[4] As HIV gets worse and becomes AIDS, people become sick with serious illnesses and infections.

Being HIV-positive *does not* mean that you have AIDS. It is very important that you consult a doctor to find out if you are infected with HIV or if you have developed AIDS so that you can receive proper medical treatment. The only way you can know for certain whether you are infected is to be tested.

An estimated 1.1 million people in the United States were living with HIV as of 2015, and, in 2017 alone, 38,739 people in the United States and U.S. territories were diagnosed with HIV.[5] The estimated rate of confirmed AIDS cases in state and federal prisons between 1999 and 2008 was more than four times higher than in the general population.[6] In 2014, approximately 1,994 incarcerated people in New York State prisons (but not counting prisons in New York City) were HIV positive, and of those, 1,284 incarcerated people had AIDS.[7]

HIV is most commonly spread by having unprotected anal, vaginal, or oral sex with a person who has HIV or by sharing needles or injection equipment with a drug user who has HIV.[8] It can also be spread from an HIV-infected mother to her baby, before or during birth or through breast-feeding, and through unsanitary tattooing or body piercing procedures.[9]

You cannot get HIV by working with or being around someone who has HIV or by sharing a cell with another incarcerated person who has HIV. You also cannot get HIV from sweat, spit, tears, clothes, drinking fountains, telephones, toilet seats, or through everyday activities like sharing a meal. HIV is also not transmitted through insect bites or stings, donating blood, or through closed-mouth kissing (although there is a very small chance of getting it from open-mouthed or "French" kissing with someone who is HIV positive because of possible blood contact through open wounds, warts, etc.).[10]

If you are currently HIV negative, you can help avoid getting HIV by taking the following steps:

(1) Never share needles or syringes if you inject drugs;

---

2. *HIV/AIDS— About HIV/AIDS,* CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* http://www.cdc.gov/hiv/basics/whatishiv.html (last visited Oct. 5, 2019).

3. *HIV/AIDS: Online Q&A*, WORLD HEALTH ORG. (Nov. 2017), *available at* https://www.who.int/features/qa/71/en/ (last visited Oct. 5, 2019).

4. *HIV/AIDS—HIV Treatment*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* https://www.cdc.gov/hiv/basics/livingwithhiv/treatment.html (last visited Oct. 5, 2019).

5. *HIV/AIDS—Basic Statistics*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* http://www.cdc.gov/hiv/topics/surveillance/basic.htm#aidsdiagnoses (last visited Oct. 5, 2019); *see also HIV in the United States*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* https://www.cdc.gov/hiv/statistics/overview/ataglance.html (last visited Oct. 5, 2019).

6. Laura M. Maruschak & Randy Beavers, *Bulletin: HIV in Prisons, 2007–08,* BUREAU OF JUSTICE STATISTICS, at 3 (2010), *available at* https://www.bjs.gov/content/pub/pdf/hivp08.pdf (last visited Oct. 5, 2019); *see also Fenced In: HIV/AIDS in the US Criminal Justice System*, GAY MEN'S HEALTH CRISIS, *available at* https://www.hivlawandpolicy.org/sites/default/files/Fenced%20In.pdf (last visited Oct. 5, 2019) (explaining that, as of 2012, HIV was four times more prevalent in the prison population than in the general population).

7. BUREAU OF HIV/AIDS EPIDEMIOLOGY, N.Y. STATE DEPT. OF HEALTH, N.Y. STATE HIV/AIDS SURVEILLANCE ANNUAL REPORT: FOR CASES DIAGNOSED THROUGH DECEMBER 2014, at 59 (2016), *available at* https://www.health.ny.gov/diseases/aids/general/statistics/annual/2014/2014-12_annual_surveillance_report.pdf (last visited Oct. 5, 2019).

8. *HIV/AIDS—HIV Transmission*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* http://www.cdc.gov/hiv/basics/transmission.html (last visited Oct. 5, 2019).

9. *HIV/AIDS—HIV Transmissions*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* http://www.cdc.gov/hiv/basics/transmission.html (last visited Oct. 5, 2019).

10. *HIV/AIDS—HIV Transmissions*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* http://www.cdc.gov/hiv/basics/transmission.html (last visited Oct. 5, 2019).

(2) Never share needles or syringes if you get a tattoo or body piercing;
(3) Do not share equipment used to prepare and inject drugs ("works");
(4) Use a latex condom—not a lambskin condom—every time you have sex, including anal and oral sex;
(5) Never share razors or toothbrushes because of the risk of contact with someone else's blood.

Taking these precautions can help protect you from contracting the HIV infection.[11]

(a) Women and HIV/AIDS

Symptoms of HIV are often different for women than for men. Because these symptoms are typically not associated with HIV, many women go undiagnosed until the virus progresses to AIDS.[12] Early signs for a woman with HIV include gynecological disorders, especially pelvic inflammatory disease ("PID")[13]; infections, such as human papillomavirus ("HPV"), that can cause cervical dysplasia[14]; and chronic yeast infections.[15] HIV-positive women also have a higher risk of developing cervical cancer.[16] If you are HIV-positive, getting a complete gynecological exam—including an inspection of the cervix (colposcopy) and a pap smear—every six months is important in order to detect any problems early. If you believe you may be infected with HIV or AIDS, try to get tested.

Appendix A includes several organizations and sources of information about HIV and AIDS. *If you are HIV-positive, it is important that you be tested for tuberculosis,* a very contagious and serious disease, because HIV-positive people have a much higher risk of getting tuberculosis.[17]

2. Tuberculosis

Tuberculosis ("TB") is a disease caused by bacteria that are spread through the air. When you breathe in the bacteria, they usually settle in and attack your lungs, but the bacteria can also move to and attack other parts of your body.[18] Outside of prison, TB does not spread that easily. In prison, however, TB spreads much more easily because of overcrowding and poor ventilation.[19] People born outside the United States (especially in Latin America, the Caribbean, Africa, Asia, Eastern Europe, or Russia) are more likely to have been infected with the bacteria.[20] Additionally, people who have

11. *See HIV/AIDS—Prevention*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* https://www.cdc.gov/hiv/basics/prevention.html (last visited Oct. 5, 2019).

12. *See* Louise G. Trubek & Elizabeth A. Hoffman, *Searching for a Balance in Universal Health Care Reform: Protection for the Disenfranchised Consumer*, 43 DEPAUL L. REV. 1081, 1087 (1994).

13. *See Pelvic Inflammatory Disease (PID)—CDC Fact Sheet*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* https://www.cdc.gov/std/pid/stdfact-pid-detailed.htm (last visited Oct. 15, 2019) (warning that PID is a serious complication of sexually transmitted diseases).

14. *See* U.S. DEPT. OF HEALTH & HUMAN SERVS., GUIDE FOR HIV/AIDS CLINICAL CARE, at 378 (2011), *available at* https://aidsetc.org/sites/default/files/resources_files/CM_Jan2011%20(1).pdf (last visited Oct. 5, 2019) (explaining that HIV-infected women are at a higher risk of HPV infection).

15. *See Fungal Diseases—Vaginal Candidiasis*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* https://www.cdc.gov/fungal/diseases/candidiasis/genital/index.html (last visited Oct. 5, 2019) (explaining that women with HIV are at a higher risk of developing yeast infections); *see also Women and HIV*, OFFICE ON WOMEN'S HEALTH, U.S. DEPT. OF HEALTH & HUMAN SERVS., *available at* https://www.womenshealth.gov/hiv-and-aids/women-and-hiv (last visited Oct. 5, 2019).

16. *HIV Infection and Cancer Risk*, NAT'L CANCER INST., *available at* http://www.cancer.gov/cancertopics/factsheet/Risk/hiv-infection (last visited Oct. 5, 2019).

17. *Tuberculosis (TB)—TB and HIV Coinfection*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* https://www.cdc.gov/tb/topic/basics/tbhivcoinfection.htm (last visited Oct. 5, 2019).

18. *Tuberculosis (TB)—How TB Spreads*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* https://www.cdc.gov/tb/topic/basics/howtbspreads.htm (last visited Oct. 5, 2019).

19. *See Prevention and Control of Tuberculosis in Correctional and Detention Facilities: Recommendations from CDC*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5509a1.htm (last visited Oct. 5, 2019).

20. CTRS. FOR DISEASE CONTROL & PREVENTION, U.S. DEPT. OF HEALTH & HUMAN SERVS., *Epidemiology of Tuberculosis*, *in* SELF-STUDY MODULES ON TUBERCULOSIS at 13 (2019), *available at* https://www.cdc.gov/tb/education/ssmodules/pdfs/Module2.pdf (last visited Oct. 5, 2019).

spent time in places where TB is common, like homeless shelters, hospitals, and prisons, are also more likely to have a TB infection.[21]

It is important to know that being infected with the TB bacteria is *not* the same as having TB disease. If you have a "TB infection" (also referred to as "latent TB"), you will have no symptoms and you cannot spread TB to others. But if you do not get medical treatment, your TB infection can develop into "TB disease" (or "active TB").[22] If you have active TB, you can have symptoms like a bad cough lasting more than three weeks, pain in your chest, coughing up blood or phlegm, weakness or fatigue, weight loss, no appetite, chills, a fever, or night sweating.[23]

TB is particularly dangerous for HIV-positive people because of their weakened immune systems. In fact, TB is one of the leading causes of death for HIV-positive people.[24] Although as many as 13 million people in the United States have latent TB, only about five to ten percent will develop active TB disease if left untreated.[25] If you have HIV, however, you should be aware that people with both HIV and TB infections are much more likely to develop active TB than HIV-negative people.[26]

Be sure to consult other sources and prison medical professionals if you think you have TB. Active TB disease can be treated and cured if you get medical care, take prescription medication, and follow your doctor's orders.[27]

3. Hepatitis B and Hepatitis C

Hepatitis is a disease that attacks the liver. There are different types of hepatitis, but the most common types among incarcerated people are hepatitis B and hepatitis C.

(a) Hepatitis B

In 2017, there were about 22,100 new hepatitis B infections in the United States.[28] More than 1,700 people died in 2016 from liver disease related to hepatitis B.[29] The hepatitis B virus, like HIV, is spread by having sex with infected persons, through sharing needles ("works") when shooting drugs, through workplace exposure to infected needles or other sharp objects, or from an infected mother to her baby during birth.[30] You can avoid getting hepatitis B by taking the same precautions as you would take to avoid getting HIV. For more information on HIV prevention, see Part B(1) of this Chapter.

People who have hepatitis B often do not have any symptoms but can still spread the virus to other people.[31] If you do have symptoms, you may develop yellow eyes and skin, tiredness, loss of appetite,

---

21. Neela D. Goswami & Philip LoBue, *Travel-Related Infectious Diseases*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* http://wwwnc.cdc.gov/travel/yellowbook/2014/chapter-3-infectious-diseases-related-to-travel/tuberculosis (last visited Oct. 5, 2019).

22. *Tuberculosis (TB)— Latent TB Infection and TB Disease*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* https://www.cdc.gov/tb/topic/basics/tbinfectiondisease.htm (last visited Oc. 5, 2019).

23. *Tuberculosis (TB)—Signs and Symptoms*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* http://www.cdc.gov/tb/topic/basics/signsandsymptoms.htm (last visited Oct. 5, 2019).

24. *Tuberculosis (TB)—TB and HIV Coinfection*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* https://www.cdc.gov/tb/topic/basics/tbhivcoinfection.htm (last visited Sep. 15, 2019)

25. CTRS. FOR DISEASE CONTROL & PREVENTION, U.S. DEPT. OF HEALTH & HUMAN SERVS., TB IN THE UNITED STATES: A SNAPSHOT, at 2 (2018), *available at* https://www.cdc.gov/nchhstp/newsroom/docs/factsheets/tb-in-the-us-a-snapshot.pdf (last visited Oct. 5, 2019).

26. *Tuberculosis (TB)—TB and HIV Coinfection*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* https://www.cdc.gov/tb/topic/basics/tbhivcoinfection.htm (last visited Oct. 5, 2019)

27. *Tuberculosis Facts*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* https://www.cdc.gov/tb/publications/factseries/cure_eng.htm (last visited Oct. 5, 2019).

28. *Viral Hepatitis—Hepatitis B Questions and Answers for the Public*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* https://www.cdc.gov/hepatitis/hbv/bfaq.htm (last visited Oct. 5, 2019).

29. *Viral Hepatitis—Hepatitis B Questions and Answers for the Public*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* https://www.cdc.gov/hepatitis/hbv/bfaq.htm (last visited Oct. 5, 2019).

30. *Viral Hepatitis—Hepatitis B Questions and Answers for the Public*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* https://www.cdc.gov/hepatitis/hbv/bfaq.htm (last visited Oct. 5, 2019).

31. *Viral Hepatitis—Hepatitis B Questions and Answers for the Public*, CTRS. FOR DISEASE CONTROL &

dark urine, abdominal pains, and nausea.[32] There are vaccines to protect you from hepatitis B, but once you get hepatitis B, there is no cure.[33] You should still get medical attention, however, because there are medical treatments to help your symptoms.[34] If you have hepatitis B, you should get tested for HIV and hepatitis C.

(b) Hepatitis C

Hepatitis C virus ("HCV") causes hepatitis C. In 2016, there were an estimated 41,200 new hepatitis C virus infections in the United States, and there were about 2.4 million people living with the disease in this country.[35] Almost 80% of infected persons do not show any signs or symptoms of hepatitis C.[36] Some people infected with hepatitis C may not show any symptoms for twenty or thirty years.[37] Hepatitis C symptoms include yellow skin, dark urine, fatigue, abdominal pain, and loss of appetite.[38] People with chronic HCV infection have a serious risk of developing liver damage.[39] If you have hepatitis C, you should not drink alcohol because alcohol can make your liver damage worse.[40]

While few people outside of prison have HCV, a high percentage of incarcerated people are infected with HCV.[41] To avoid getting hepatitis C, you should:

(1) Never shoot drugs (if you cannot stop, never reuse or share syringes, water, or "works");
(2) Never share toothbrushes, razors, or other personal care items;
(3) Avoid getting a tattoo or body piercing if there is a chance that someone else's blood is on the tools or that the artist or piercer does not follow good health practices;[42]
(4) Avoid having unprotected sex.

Though the chances of spreading hepatitis C through sexual intercourse is not known, the risk of spreading hepatitis C through direct contact with infected blood is high.[43] If you have hepatitis C, you should be tested for HIV and hepatitis B.

PREVENTION, *available at* https://www.cdc.gov/hepatitis/hbv/bfaq.htm (last visited Oct. 5, 2019).

32. *Viral Hepatitis—Hepatitis B Questions and Answers for the Public*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* https://www.cdc.gov/hepatitis/hbv/bfaq.htm (last visited Oct. 5, 2019).

33. *See Finding a Cure for Hepatitis B: Are We Close?*, WORLD HEALTH ORG. (June 2018), *available at* https://www.who.int/hepatitis/news-events/hbv-cure-overview/en/ (last visited Oct. 5, 2019).

34. *Viral Hepatitis—Hepatitis B Questions and Answers for the Public*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* https://www.cdc.gov/hepatitis/hbv/bfaq.htm (last visited Oct. 5, 2019).

35. *Viral Hepatitis—Hepatitis C Questions and Answers for the Public*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* https://www.cdc.gov/hepatitis/hcv/cfaq.htm (last visited Oct. 6, 2019).

36. Nat'l Prevention Info. Network, U.S. Dept. of Health & Human Servs., *Viral Hepatitis—Hepatitis C Basics*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* https://npin.cdc.gov/pages/hepatitis-c-basics (last visited Oct. 6, 2019).

37. *See Viral Hepatitis—Hepatitis C Questions and Answers for the Public*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* https://www.cdc.gov/hepatitis/hcv/cfaq.htm (last visited Oct. 6, 2019).

38. *Viral Hepatitis—Hepatitis C Questions and Answers for the Public*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* https://www.cdc.gov/hepatitis/hcv/cfaq.htm (last visited Oct. 6, 2019).

39. *See Viral Hepatitis—Hepatitis C Questions and Answers for the Public*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* https://www.cdc.gov/hepatitis/hcv/cfaq.htm (last visited Oct. 6, 2019).

40. *Viral Hepatitis—Hepatitis C Questions and Answers for the Public*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* https://www.cdc.gov/hepatitis/hcv/cfaq.htm (last visited Oct. 6, 2019).

41. *See An Overview of Hepatitis C in Prisons and Jails*, NAT'L HEPATITIS CORRECTIONS NETWORK (Feb. 22, 2016), *available at* http://www.hcvinprison.org/resources/articles-documents/71-main-content/content/191-hepcprison#_edn2 (last visited Oct. 6, 2019) (citing a study that estimated that incarcerated people account for one-third of hepatitis C infections in the United States).

42. *See Hepatitis C: General Information*, CTRS. FOR DISEASE CONTROL & PREVENTION (2015), *available at* http://www.cdc.gov/hepatitis/HCV/PDFs/HepCGeneralFactSheet.pdf (last visited Oct. 6, 2019).

43. *See Hepatitis C: General Information*, CTRS. FOR DISEASE CONTROL & PREVENTION (2015), *available at* http://www.cdc.gov/hepatitis/HCV/PDFs/HepCGeneralFactSheet.pdf (last visited Oct. 6, 2019).

4. Methicillin-resistant Staphylococcus Aureus ("MRSA")

Staphylococcus (staph) is a kind of bacteria that can cause a variety of health problems, ranging from minor skin irritation to, more rarely, deadly infections.[44] Methicillin-resistant Staphylococcus aureus, or MRSA, is a kind of staph not easily treatable with the antibiotics that normally cure a staph infection.[45] Many people carry staph bacteria in their nose without getting sick.[46] The illness can develop if the bacteria enter the skin, often through a scratch, scrape, or other minor wound.[47] Most cases of MRSA happen in healthcare settings like hospitals, but MRSA is also likely to spread in crowded living conditions, including in dormitories, athletic facilities, and correctional facilities.[48]

The first symptom of MRSA is usually a skin infection easily mistaken for a pimple, boil, or insect bite.[49] The infection may be painful, swollen, red, or produce pus.[50] It can develop into a large abscess or blister.[51] MRSA can usually be treated by either draining the wound or taking antibiotics.[52] Do not drain the wound yourself because that can cause the infection to spread.[53] The infection may return even after treatment.[54]

MRSA and other staph infections can be spread to other people through direct physical contact or, less commonly, through contact with an infected surface or object.[55] You can reduce the risk of infection by keeping wounds clean, dry, and covered.[56] It is also important to keep shared surfaces clean, to wash your hands often (especially after touching a wound), and to avoid sharing personal items like razors and clothing.[57] If you suspect you have MRSA, it is especially important to seek treatment if

---

44. *See Staph Infections—Overview*, MAYO CLINIC, *available at* https://www.mayoclinic.org/diseases-conditions/staph-infections/symptoms-causes/syc-20356221 (last visited Oct. 6, 2019).

45. *See Methicillin-Resistant Staphylococcus Aureus (MRSA) Infections—General Information*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* http://www.cdc.gov/mrsa/community/index.html (last visited Oct. 6, 2019).

46. *See Staph Infections—Overview*, MAYO CLINIC, *available at* https://www.mayoclinic.org/diseases-conditions/staph-infections/symptoms-causes/syc-20356221 (last visited Oct. 6, 2019).

47. *See Methicillin-Resistant Staphylococcus Aureus (MRSA) Infections—General Information*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* http://www.cdc.gov/mrsa/community/index.html (last visited Oct. 6, 2019).

48. *See* Peter Eisler, *Dangerous MRSA Bacteria Expand into Communities*, USA TODAY (Dec. 16, 2013, 6:16 PM), *available at* https://www.usatoday.com/story/news/nation/2013/12/16/mrsa-infection-community-schools-victims-doctors/3991833/ (last visited Oct. 6, 2019).

49. Tara Parker-Pope, *MRSA Warning Signs and Preventive Measures*, N.Y. TIMES, Oct. 27, 2007, at B4, *available at* http://www.nytimes.com/2007/10/27/nyregion/27mrsa.html (last visited Oct.6, 2019).

50. *Methicillin-Resistant Staphylococcus Aureus (MRSA) Infections—General Information*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* http://www.cdc.gov/mrsa/community/index.html (last visited Oct. 6, 2019).

51. Tara Parker-Pope, *MRSA Warning Signs and Preventive Measures*, N.Y. TIMES, Oct. 27, 2007, at B4, *available at* http://www.nytimes.com/2007/10/27/nyregion/27mrsa.html (last visited Oct. 6, 2019).

52. *See Staph Infections—Overview*, MAYO CLINIC, *available at* https://www.mayoclinic.org/diseases-conditions/staph-infections/symptoms-causes/syc-20356221 (last visited Oct. 6, 2019) (noting that strains of MRSA still respond to certain antibiotics).

53. Tara Parker-Pope, *MRSA Warning Signs and Preventive Measures*, N.Y. TIMES, Oct. 27, 2007, at B4, *available at* http://www.nytimes.com/2007/10/27/nyregion/27mrsa.html (last visited Oct. 6, 2019).

54. *Learning About MRSA: A Guide for Patients*, MINN. DEPT. OF HEALTH, *available at* https://www.health.state.mn.us/diseases/staph/mrsa/book.html (last visited Oct. 6, 2019).

55. FED. BUREAU OF PRISONS, MANAGEMENT OF METHICILLIN-RESISTANT STAPHYLOCOCCUS AUREUS (MRSA) INFECTIONS, FEDERAL BUREAU OF PRISONS CLINICAL PRACTICE GUIDELINES, at 28 (2012), *available at* https://www.bop.gov/resources/pdfs/mrsa.pdf (last visited Oct. 6, 2019).

56. *See Methicillin-Resistant Staphylococcus Aureus (MRSA) Infections—General Information*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* http://www.cdc.gov/mrsa/community/index.html (last visited Oct. 6, 2019).

57. *See Methicillin-Resistant Staphylococcus Aureus (MRSA) Infections—General Information*, CTRS. FOR DISEASE CONTROL & PREVENTION, *available at* http://www.cdc.gov/mrsa/community/index.html (last visited Oct. 6, 2019).

you have HIV or another immune-system disorder, because a MRSA infection may lead to more serious problems.[58]

C. Constitutional Rights in a Prison Setting

The rest of this Chapter discusses your rights to treatment for and protection from infectious diseases in prison. It also explains when and how a correctional facility can limit your rights to treatment and protection. This Part explains the general legal standard that courts use to determine if a prison policy is constitutionally valid. Knowing the rule will help you better understand the court decisions in this Chapter.

In general, correctional facilities can limit your constitutional rights if their actions are "reasonably related to a legitimate penological (meaning, prison-related) interest."[59] To decide if a prison policy has a legitimate penological interest, courts look at four factors:[60]

(1) The existence of a valid, rational connection between the prison policy and a legitimate state interest (which means that the state has a real or good reason for the policy);[61]
(2) Whether alternative means of exercising the right are limited (which means that there is another way you can exercise your constitutional right);[62]
(3) The impact that allowing exercise of the right will have on guards, other incarcerated people, or the allocation of prison resources (which means that a court will look at how your constitutional right affects guards, other incarcerated people and the prison's resources, like the prison's money or visitor safety);[63] and
(4) Whether the prison policy or regulation is an exaggerated response to prison concerns, as shown by the ready availability of alternative means of exercising the right (which means that a court will consider if the policy is an extreme reaction to the prison's concern).[64]

These four factors are often referred to as the *Turner* standard, because the Supreme Court first used them in the case *Turner v. Safley*.[65]

If you think a prison policy illegally violates your constitutional rights, you may want to argue that "there is no legitimate penological interest which justifies the violation" which means that there is no real reason for the prison to limit your constitutional right so their policy is illegal. At the least, you can argue that the interest is not "reasonably related" to the actions or policy of the prison officials.

---

58. *See* Divya Ahuja & Helmut Albrecht, *HIV and Community-Acquired MRSA*, J. WATCH (Feb. 9, 2009), *available at* https://www.jwatch.org/ac200902090000001/2009/02/09/hiv-and-community-acquired-mrsa (last visited Oct. 6, 2019).

59. Turner v. Safley, 482 U.S. 78, 87, 107 S. Ct. 2254, 2261, 96 L. Ed. 2d 64, 79 (1987) (superseded by statute) (holding that prison systems' regulations of marriages between incarcerated people and incarcerated person-to-incarcerated person correspondence must meet a "reasonable relationship" standard).

60. Turner v. Safley, 482 U.S. 78, 89–91, 107 S. Ct. 2254, 2262, 96 L. Ed. 2d 64, 79–80 (1987) (superseded by statute).

61. *See*, *e.g.*, Beard v. Banks, 548 U.S. 521, 530, 126 S. Ct. 2572, 2578, 165 L.Ed.2d 697, 706 (2006) (finding that the prohibition on access to newspapers, magazines, and personal photographs was necessary in order to motivate better behavior on the part of incarcerated people who had already been deprived of almost all privileges).

62. *See*, *e.g.*, Overton v. Bazzetta, 539 U.S. 126, 135, 123 S. Ct. 2162, 2169, 156 L. Ed. 2d 162, 172 (2003) (holding restrictions on incarcerated people's visitation rights to be legitimate when restricted incarcerated people have available alternative means of exercising the right of association, even if those alternative means (letters, telephone calls, and messages sent through those permitted to visit) are not ideal).

63. *See*, *e.g.*, Overton v. Bazzetta, 539 U.S. 126, 135, 123 S. Ct. 2162, 2169, 156 L. Ed. 2d 162, 172 (2003) (stating that courts will be "'particularly deferential' to prison administrators' regulatory judgments" where the allocation of prison resources and the safety of visitors, guards, and other incarcerated people are implicated).

64. *See*, *e.g.*, Overton v. Bazzetta, 539 U.S. 126, 136, 123 S. Ct. 2162, 2169–2170, 156 L. Ed. 2d 162, 172–173 (2003) (finding that, although *Turner* requires looking to whether the prison policy is an exaggerated response, *Turner* does not impose a least restrictive alternative test).

65. Turner v. Safley, 482 U.S. 78, 107 S. Ct. 2254, 96 L. Ed. 2d 64 (1987) (superseded by statute).

This is different from saying there is no legitimate interest because you're saying that the prison has a real interest, but limiting your rights has nothing to do with it. You can also try to argue that there are other ways for the prison to achieve their goal without limiting your constitutional rights.

D. Legal Rights Concerning Testing for Infectious Diseases

1. Involuntary Testing

Mandatory testing policies, or testing that you are required to do, are different depending on which state you are in. States may also have different policies for different diseases. For example, a state may require incarcerated people to take a TB test but not an HIV test. If you are outside New York State, you should check your state's laws to find out what its testing policies are. Because courts find that the prevention of disease is a legitimate state interest under the *Turner* standard discussed above, courts will generally allow prisons to test you for infectious diseases, even without your consent (which means that you can be tested even if you do not voluntarily agree to testing).[66]

(a) HIV Testing

In New York State prisons, you normally cannot be tested for HIV without your consent (which means that you will not be tested unless you voluntarily agree).[67] But, if you are convicted of certain sex offenses, you can be tested for HIV against your will if the victim requests that you be tested.[68] You will be given your test results, and the results will also be sent to the victim, and possibly to the victim's immediate family, guardian, physicians, attorneys, and medical or mental health providers. Past and future contacts of the victim may also be notified if there has been a risk of HIV transmission to that contact.[69] Your test results cannot be used against you in a civil or criminal proceeding if they are related to the events that caused you to be convicted.[70]

Federal prisons, unlike New York State prisons, can require you to undergo HIV testing, although federal prisons do not test all incarcerated people. If you have a sentence of six months or longer, and if medical personnel think you might have HIV, they may require you to take an HIV test.[71] If you refuse the test, you might receive an incident report for failing to follow an order.[72] Also, if you refuse HIV testing, you may not be able to file a claim for failure to receive adequate medical care for HIV.[73] Additionally, federal prisons conduct mandatory random testing once a year. If you test positive, the prison cannot subject you to disciplinary action based solely on your results, though you may be punished if you are caught performing an act that could transmit the disease.[74] Also, federal prisons

---

66. *See*, *e.g.*, Rossi v. Portuondo, 277 A.D.2d 526, 527, 714 N.Y.S.2d 816, 817 (3d Dept. 2000).

67. N.Y. PUB. HEALTH LAW § 2781(1) (McKinney 2012) (stating that consent must be "written" and "informed" from a person who is capable of consenting; if the person is incapable, someone authorized by law may consent for the person). *See* McLain v. Grosso, 31 A.D.3d 765, 766, 820 N.Y.S.2d 93, 94 (2d Dept. 2006) (holding that a prison could not administer an HIV test on an incarcerated person because according to § 2781(1), "HIV-related testing is prohibited without the written informed consent of the person to be tested, except as authorized by CPLR 3121 or otherwise specifically permitted by statute"). *See also* Siegrist v. State, 55 A.D.3d 717, 718, 868 N.Y.S.2d 670, 671 (2d Dept. 2008) (explaining that a nurse could not administer an HIV test to an incarcerated person in a coma because the incarcerated person could not consent to the test).

68. N.Y. CRIM. PROC. LAW § 390.15(1)(a) (McKinney 2018) (stating that the sex offense must be an act of "sexual intercourse," "oral sexual conduct," or "anal sexual conduct" as defined by N.Y. Penal Law § 130.00).

69. N.Y. CRIM. PROC. LAW § 390.15(6)(a)(ii) (McKinney 2018).

70. N.Y. CRIM. PROC. LAW § 390.15(8) (McKinney 2018).

71. 28 C.F.R § 549.12(a)(1) (2020).

72. 28 C.F.R. § 549.12(a)(1) (2020). *See* Chapter 18 of the *JLM*, "Your Rights at Prison Disciplinary Hearings," for more information about the consequences of prison incident reports.

73. Walker v. Peters, 989 F. Supp. 971, 975 (N.D. Ill. 1997) (finding that deprivation of HIV medication cannot be considered deliberate indifference unless incarcerated person has received a positive HIV test first). *See* Chapter 23 of the *JLM,* "Your Right to Adequate Medical Care," for more information on the deliberate indifference standard.

74. 28 C.F.R. § 549.13(c) (2020).

can test you if you are being considered for release, parole, good conduct time release, furlough, or placement in a community-based program. If you test positive, the prison cannot deny you participation in activities and programs just because of the result.[75]

Outside of New York State, many states conduct involuntary HIV tests when you enter prison,[76] during custody, and/or upon your impending release.[77] Involuntary HIV testing has been challenged in court on the basis of the Eighth Amendment, which prohibits cruel and unusual punishment, the Fourth Amendment, which prohibits unreasonable searches and seizures, the right to privacy, and the Equal Protection Clause of the Fourteenth Amendment. However, courts tend to uphold involuntary testing because it is reasonably related to a "legitimate penological interest," which means that it is a valid interest for the prison to have.[78]

(b) TB Testing

While HIV cannot be passed from person to person by casual contact, TB is spread through the air. So, prison TB testing policies are usually different from prison HIV testing policies. In New York State, Department of Corrections and Community Supervision ("DOCCS") policy requires all incarcerated people entering prison to be tested for TB. The TB screening includes a chest x-ray and a skin test, where a small amount of purified protein derivative ("PPD") is injected beneath your skin and observed for a reaction. After the initial test, you will be re-tested yearly. If you refuse testing, medical personnel will tell you about the benefits of the test. If you still refuse, then you will be placed in medical keeplock (also known as "tuberculin (TB) hold") for up to a year until you have received three negative chest x-rays or you agree to be tested. While in TB hold, you are only allowed one hour of solitary exercise per day and three showers a week. You will lose your telephone privileges but you can receive visits from lawyers.[79]

Courts have generally upheld the New York State DOCCS TB testing policy against challenges claiming that the policy violates the Fourth Amendment protection against unreasonable searches and challenges claiming the policy violates the Eighth Amendment prohibition against cruel and unusual punishment. This is because courts think the policy is reasonably related to preventing the spread of TB in prisons.[80] Additionally, some courts have said mandatory TB testing or confinement in TB hold

---

75. *See* 28 C.F.R. § 549.13(b) (2020) (stating that incarcerated people may be limited in programming if they have an infectious disease that can be transferred through casual conduct. HIV cannot be transmitted through casual conduct). *See also* 42 U.S.C. § 2000cc-1 (stating generally that the government shall not impose "substantial burdens" on the religious activity of incarcerated people unless the government can show that such burdens further a compelling governmental interest using the least restrictive means possible). Various circuits have their own tests for "substantial burden." This is limited to federally funded programs available to institutionalized persons. *See also* 42 U.S.C. § 2000d-4a(1)(A) (defining "program or activity" as "all of the operations of a department, agency, special purpose district, or other instrumentality of a state or local government"). Note that this only applies to religious activity, which means that this law does not prevent you from being excluded from a nonreligious activity if you test positive for HIV. But, you may still be excluded from religious activities if the government can show a compelling interest in doing so.

76. Alabama, Georgia, Idaho, and Missouri are among the states that mandate testing of incarcerated people entering the prison system. *See* ALA. CODE § 22-11A-17(a) (LexisNexis 2019) (subjecting all persons sentenced to confinement or imprisonment for more than 30 consecutive days to mandatory testing); GA. CODE ANN. § 42-5-52.1(b) (2009); IDAHO CODE § 39-604(1) (2013); MO. ANN. STAT. § 191.659(1) (2003).

77. Alabama, Idaho, and Missouri are among the states that test upon release. *See* ALA. CODE § 22-11A-17(a) (LexisNexis 2019); IDAHO CODE ANN. § 39-604(1) (2013); MO. ANN. STAT. § 191.659(1) (2003).

78. *See, e.g.*, Dunn v. White, 880 F.2d 1188, 1196–1198 (10th Cir. 1989) (finding no 1st, 4th, or 14th Amendment constitutional violations when incarcerated person claimed he was threatened with disciplinary segregation if he failed to submit to the HIV blood test even though he claimed his religious beliefs did not allow the test).

79. *See* N.Y. Dept. of Corr. Servs., Request for Proposals #2016-11, at 133 (2016), *available at* http://www.doccs.ny.gov/pdf/RFP_2016-11_Operation_of_a_Skilled_Nursing_Services_Program.pdf (Last visited Oct. 13, 2019); Smith v. Wright, No. 9:06-CV-00401 (FJS/DEP), 2011 U.S. Dist. LEXIS 109058, at *5—6 (N.D.N.Y. Aug. 31, 2011) (describing the conditions and rules for TB hold).

80. *See* Smith v. Wright, No. 9:06-CV-00401, 2011 U.S. Dist. LEXIS 109058, at *60–62 (N.D.N.Y. Aug. 31,

is legal even if the test is against the incarcerated person's religious beliefs.[81] However, DOCCS TB policy states that the prison may, though is not required to, make changes to the TB test if the prison can do this without putting other incarcerated people's and staff's health in significant danger.[82] According to the policy, if you refuse the PPD test because of your religion, you will be placed in TB hold while the Chief Medical Officer decides if you are telling the truth. If the Chief Medical Officer thinks that you actually hold a religious belief that prohibits PPD testing, he may ask you to take a blood test and chest x-ray instead of the skin test. You will remain in TB hold until the results of the blood test, chest x-ray, and physical examination show that you do not have latent TB (TB that is hidden because you do not have any symptoms).[83]

If the TB test is against your religion and you want to challenge the policy as a violation of your First Amendment right to free exercise of religion, you should try to show how the policy, as applied to you, does not make sense.[84] If you have submitted to the test in the past or are willing to undergo a

---

2011) (*unpublished*) (stating that DOCS has a strong, legitimate interest in containing contagious diseases, including TB, within its facilities and that confinement in keeplock under normal conditions does not constitute a violation of an incarcerated person's 8th Amendment rights); Lee v. Frederick 519 F. Supp. 2d 320, 327 (W.D.N.Y. 2007) (finding that incarcerated person's 8th Amendment rights were not violated when he was placed on TB hold because, while plaintiff did suffer some loss of his freedom of movement, he did not present evidence that he suffered a serious deprivation of his rights or that defendants acted with the required state of mind associated with the "unnecessary and wanton infliction of pain"); Delisser v. Goord, No. 9:02-CV-00073 (FJS/GLS), 2003 U.S. Dist. LEXIS 488, at *4, *16, *18–19, *22–23 (N.D.N.Y. Jan. 15, 2003) (*unpublished*) (holding that an incarcerated person, who was placed in TB hold for a total of 52 days for refusing to submit to PPD test and then for refusing to take TB medication, did not suffer a violation of his 8th or 14th Amendment rights); Word v. Croce, 169 F. Supp. 2d 219, 222, 222 n.1, 225, 230 (S.D.N.Y. 2001) (finding that where plaintiff alleged violations of the 4th Amendment because she was put on TB hold, her claims were more appropriately brought under the 8th Amendment, but also finding that the TB hold was not a violation of her constitutional rights); Davidson v. Kelly, No. 96-2066, 1997 U.S. App. LEXIS 33796, at *4–5, *8 (2d Cir. Nov. 24, 1997) (*unpublished*) (holding that placing an incarcerated person in TB hold for three days until he agreed to be tested for TB did not violate the incarcerated person's 8th Amendment rights because it furthered a legitimate penological (prison-related) interest).

81. *See* Smith v. Wright, No. 9:06-CV-00401, 2011 U.S. Dist. LEXIS 109058, at *49–53 (N.D.N.Y. Aug. 31, 2011) (*unpublished*) (stating that DOCS amended its testing policy in 2004 to accommodate those with religious objections to the PPD test and there is no case law for concluding it to violate the 1st Amendment); Redd v. Wright, 597 F.3d 532, 537 (2d Cir. 2010) (finding that the TB policy was motivated by a legitimate public health concern, not animus, and so did not target incarcerated people for engaging in a religious practice); Rossi v. Portuondo, 277 A.D.2d 526, 527, 714 N.Y.S.2d 816, 817 (3d Dept. 2000) (holding that giving incarcerated people the option of testing or being placed in medical confinement is "reasonably related" to the "legitimate penological interest" of preventing the spread of the disease; therefore, the testing policy did not violate incarcerated person's 1st Amendment right to free exercise of religion).

82. *See* Smith v. Wright, No. 9:06-CV-00401, 2011 U.S. Dist. LEXIS 109058, at *53–54 n.26 (N.D.N.Y. Aug 31, 2011) (*unpublished*).

83. *See* Smith v. Wright, No. 9:06-CV-00401, 2011 U.S. Dist. LEXIS 109058, at *6–8 (N.D.N.Y. Aug 31, 2011) (*unpublished*).

84. Reynolds v. Goord, 103 F. Supp. 2d 316, 337 (S.D.N.Y. 2000) (holding that Rastafarian incarcerated person who expected to be in tuberculin hold for a year after refusing a TB test showed a clear likelihood of proving at trial that the prison policy as applied to him violated his 1st Amendment rights because it was a substantial burden on his constitutional rights). Note that an incarcerated person making a 1st Amendment claim in this context must frame the 1st Amendment right as one that is clearly established and not too generalized. *See*, *e.g.*, Redd v. Wright, 597 F.3d 532, 536 (2d Cir. 2010) (holding that, if the court can determine that the rights were not clearly established at the time of the alleged violation, the court is not required to determine if the incarcerated person's rights are violated under the 1st Amendment). If you are incarcerated in federal prison, also see Jolly v. Coughlin, 76 F.3d 468, 478–480 (2d Cir. 1996) (stating that prison officials likely violated the incarcerated person's religious freedom under the Religious Freedom Restoration Act (RFRA), 42 U.S.C. §§ 2000bb–bb-4). If you are incarcerated in state prison, however, RFRA is no longer good law and *Jolly* will not apply to your case. City of Boerne v. Flores, 521 U.S. 507, 117 S. Ct. 2157, 138 L. Ed. 2d 624 (1997). After RFRA was declared unconstitutional as applied to states, some states enacted state laws modeled on RFRA to fill the gap. If you are incarcerated in state prison, you should check to see if your state has enacted a "mini-RFRA" state law. If you are a state or federal incarcerated person, you may also be able to make an argument under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) which states that "[n]o government shall impose a substantial

chest x-ray, you might increase your chances of winning.[85] Although courts do not always agree with incarcerated people's Eighth Amendment claims, you may also be able to argue that being placed on TB hold is a violation of your Eighth Amendment right to be free from cruel and unusual punishment. This is especially true if your prison's ventilation system does not prevent the air in your cell from getting to other incarcerated people or staff. You might be able to argue that the keeplock policy should not be applied to you because the air from your cell can still reach others through the vents, which means that your confinement does not help protect others' safety.[86]

If you are in a federal prison, you must undergo a PPD test and possibly a chest x-ray when you enter the facility.[87] If you refuse both tests, the prison will test you without your consent, meaning that the prison can test you even if you do not agree to take the test.[88] Refusing to be tested may result in an incident report, although you will not be placed in medical isolation unless the prison has a reason to think you have TB.[89]

(c) Hepatitis B and Hepatitis C

New York State requires prisons to offer HCV (which means Hepatitis C virus) testing for all incarcerated persons born between 1945 and 1965. It also suggests prisons offer such testing to all

---

burden on the religious exercise of a person residing in or confined to an institution" unless the government establishes that the burden furthers "a compelling governmental interest," and does so by "the least restrictive means." 42 U.S.C. § 2000cc-1(a)(1)-(2). For a discussion of a possible RLUIPA argument, see Johnson v. Sherman, 2007 U.S. Dist. LEXIS 24098, at *6–7, *14 (E.D. Cal. Apr. 2, 2007) (*unpublished*) ("Preventing the spread of tuberculosis among the closely confined population within the prison by use of the least restrictive means possible greatly outweighs the harm posed to the plaintiff by submitting to the skin test. While the harm to plaintiff's ability to practice his belief is no doubt burdened, the CDCR has a grave responsibility to protect the inmate populations confined within its prisons from the spread of a highly contagious and debilitating disease.").

85. *See* Selah v. Goord, 255 F. Supp. 2d 42, 54-55 (N.D.N.Y. 2003) (holding DOCS TB policy as applied to petitioner was irrational since he had been tested while incarcerated); Word v. Croce, No. 00 CIV. 6496 (SAS), 2001 U.S. Dist. LEXIS 9071, at *10–13 (S.D.N.Y. July 5, 2001) (*unpublished*) (describing that it is DOCS practice to exempt an incarcerated person from TB hold if he who refuses the PPD test on religious grounds undergoes a chest x-ray instead); Reynolds v. Goord, 103 F. Supp. 2d 316, 337 (S.D.N.Y. 2000) (holding that Rastafarian incarcerated person who expected to be in TB hold for a year after refusing a PPD test showed a clear likelihood of proving at trial that the prison policy as applied violated his 1st Amendment rights).

86. Smith v. Wright, No. 9:06-CV-00401, 2011 U.S. Dist. LEXIS 109058, at *23–24 (N.D.N.Y. Aug. 31, 2011) (*unpublished*) (indicating that the 8th Amendment could be violated by keeplock confinement if it deprived an incarcerated person of a basic human need); Jolly v. Coughlin, 76 F.3d 468, 480 (2d Cir. 1996) (finding a substantial likelihood of an 8th Amendment violation when New York State prison officials placed an incarcerated person in "medical keeplock" for three-and-a-half years, after the incarcerated person refused to undergo a TB test for religious reasons). In *Jolly*, the court considered these facts: (1) incarcerated people who refused to be tested were placed in medical keeplock; (2) medical keeplock did not involve "respiratory isolation" and thus did not reduce the risks of infection; (3) incarcerated people were allowed to leave their cells only once each week for a 10-minute shower and could leave for meetings with counsel; and (4) plaintiff suffered headaches, hair loss, rashes, and difficulty standing or walking due to his confinement. Jolly v. Coughlin, 76 F.3d 468, 472 (2d Cir. 1996). Although the portion of *Jolly* addressing RFRA violations is no longer good law for people incarcerated in state prison (see footnote 72), it is still good law for both state and federal incarcerated people for arguments based on Eight Amendment violations.

87. FED. BUREAU OF PRISONS, U.S. DEPT. OF JUSTICE, PROGRAM STATEMENT P6190.04, INFECTIOUS DISEASE MANAGEMENT 7 (2014), *available at* http://www.bop.gov/policy/progstat/6190_004.pdf (last visited Oct. 5, 2019); *see also* Washington v. Cambra, No. 96-16925, 1998 U.S. App. LEXIS 30072, at *2–3 (9th Cir. 1998) (*unpublished table decision*) (holding that the policy of conducting TB tests was reasonably related to the legitimate penological goal of detecting and containing TB).

88. *See*, *e.g.*, Ballard v. Woodard, 641 F. Supp. 432, 437 (W.D.N.C. 1986) (performing a PPD test without an incarcerated person's consent does not constitute the denial of any federal constitutional rights where the prison had a legitimate interest in "orderly and uniform implementation" of the test); Dunn v. Zenk, No. 1:07-CV-2007-RLV, 2007 U.S. Dist. LEXIS 73891, at *9 (N.D. Ga. Oct. 1, 2007) (*unpublished*) (holding that involuntary testing for TB does not violate incarcerated person's constitutional rights).

89. FED. BUREAU OF PRISONS, U.S. DEPT. OF JUSTICE, PROGRAM STATEMENT P6190.04, INFECTIOUS DISEASE MANAGEMENT 9 (2014), *available at* http://www.bop.gov/policy/progstat/6190_004.pdf (last visited Oct. 5, 2019).

incarcerated persons who are determined to be at high risk.[90] You may be considered to be at high risk of Hepatitis B or Hepatitis C) if you have a history of any of the following: HIV, intravenous drug use (which means drugs that are injected), intranasal cocaine use (inhaling cocaine through your nose), sexually-transmitted diseases, blood transfusions before July 1992, hemodialysis, infusion of clotting factor before 1987, tattoos or body piercing with non-sterile equipment, solid organ transplants, or symptoms of hepatitis.

In New York State, during your initial health screening, you may be offered a hepatitis A or hepatitis B vaccine, and the New York State Department of Health recommends vaccination for hepatitis A and B if you have already been diagnosed with hepatitis C. The policies surrounding access and qualifications for these vaccines vary from facility to facility so check with your doctors and nurses about what is available.[91]

If you are in a federal prison, you will be screened to determine if you have HBV or HCV. Like the TB policy in the federal prison system discussed in Part (D)(1)(b), refusal to take the test will result in an incident report.

(d) MRSA

The Federal Bureau of Prisons recommends that all incarcerated people should be checked for skin infections at their initial intake screening and also after returning from the hospital.[92] Incarcerated people at high risk for MRSA infections are supposed to be screened at all routine medical examinations.[93] Incarcerated people with HIV, diabetes, or open wounds are considered high risk for MRSA.

2. Right to Testing upon Request

(a) HIV Testing

Many states provide HIV tests for incarcerated people upon request. If you are denied a test, you might want to challenge the denial as a violation of the correctional facility's own policy. In New York State prisons, you will be offered a test when you first enter the facility. Also, anonymous testing (which means a test where you do not include your identity) is available through the Criminal Justice Initiative ("CJI").[94]

If you are incarcerated in federal prison, you can request HIV testing, but only once per year.[95] Some federal courts do not recognize the constitutional right to HIV testing, especially if you cannot give a reason for why you think you might have HIV.[96] But, even in those courts, you may have an

---

90. *See* N.Y. Dept. of Health, DOH Review of Corrections HIV and HCV Policy and Procedures 14, 18 (2015).

91. *See* N.Y. Dept. of Health, "Hepatitis C in Prison and Jail", *available at https://www.health.ny.gov/diseases/aids/providers/corrections/docs/hcv_inmate_brochure.pdf.*

92. FED. BUREAU OF PRISONS, U.S. DEPT. OF JUSTICE, MANAGEMENT OF METHICILLIN-RESISTANT STAPHYLOCOCCUS AUREUS (MRSA) INFECTIONS—CLINICAL PRACTICE GUIDELINES 2 (2012), *available at* https://www.bop.gov/resources/pdfs/mrsa.pdf (last visited Oct. 5, 2019).

93. FED. BUREAU OF PRISONS, U.S. DEPT. OF JUSTICE, MANAGEMENT OF METHICILLIN-RESISTANT STAPHYLOCOCCUS AUREUS (MRSA) INFECTIONS—CLINICAL PRACTICE GUIDELINES 2 (2012), *available at* https://www.bop.gov/resources/pdfs/mrsa.pdf (last visited Oct. 5, 2019).

94. The Criminal Justice Initiative is a project funded by the New York Department of Health's AIDS Institute. Community-based organizations go into prisons and provide tests, counseling, peer education, and discharge planning through the initiative. *Criminal Justice Initiative, HIV/STD/HCV Prevention and Related Services*, N.Y. DEPT. OF HEALTH, https://www.health.ny.gov/diseases/aids/general/about/prevsup.htm#cji (last visited Oct. 5, 2019).

95. 28 C.F.R. § 549.12(a)(4) (2020).

96. *See* St. Hilaire v. Lewis, No. 93-15129, 1994 U.S. App. LEXIS 14867, at *9–10 (9th Cir. June 7, 1994) (*unpublished*) (finding no constitutional violation for failure to provide an HIV test because incarcerated person was not a member of a high-risk group and had no alleged exposure to HIV); Doe v. Wigginton, 21 F.3d 733, 738–739 (6th Cir. 1994) (finding no 8th Amendment violation where an incarcerated person was refused an HIV test

Eighth Amendment claim if you are high-risk and are denied an HIV test, because this will prevent you from getting proper medical care. Additionally, if your prison has listed standards for who should get an HIV test and you meet them but are refused a test, you may have a claim.[97] You should check to see how the courts in your state have decided this issue.

(b) Hepatitis

While there is no right to be tested for Hepatitis B specifically, if you are a federal incarcerated person given a work assignment which staff think might expose you to blood or bodily fluids, you should be offered the Hepatitis B vaccine.[98]

(c) MRSA

If you have a skin infection that you think may be caused by MRSA, you can ask to be tested. If you were recently hospitalized, you may be specifically instructed to self-report any skin infections or fevers for a few weeks after.[99]

3. Consequences of Testing Positive for HIV in New York

States have different rules about what happens after an incarcerated person tests positive for HIV. New York State has had the HIV Reporting and Partner Notification (HIVRPN) law since 2000.[100] This law requires doctors and other medical providers (including the laboratories doing the tests) to report to the Department of Health the names of people infected with HIV, HIV-related illness, or AIDS.[101] The information is supposed to remain confidential.[102] However, New York regulations allow for HIV status to be given to employees or agents of the Division of Probation and Correctional Alternatives, Division of Parole, Commission of Correction, or any local probation department. An incarcerated person's HIV status can only be given to people who need the information in order to

---

because the state policy required an HIV test only if an incarcerated person "provides a presumptive history of exposure" and the incarcerated person did not provide such information).

97. *See* Doe v. Wigginton, 21 F.3d 733, 739–740 (6th Cir. 1994) (holding the prison did not violate the 8th or 14th Amendments for refusing to test for HIV on request because the prison could reasonably limit the testing based on an incarcerated person's history, medical symptoms, prior drug use, or sexual activity). It is possible the court would have allowed Doe's claim if he had given officials information indicating that he met the criteria for testing and was still refused a test.

98. 28 C.F.R. § 549.15(b) (2020) (providing that an incarcerated person given a work assignment with risk of exposure to blood or bodily fluids will receive annual training to reduce exposures and be offered vaccination for Hepatitis B).

99. *See* Fed. Bureau of Prisons, U.S. Dept. of Justice, Management of Methicillin-Resistant *Staphylococcus aureus* (MRSA) Infections (2012), *available at* https://www.bop.gov/resources/pdfs/mrsa.pdf (last visited Oct. 14, 2019).

100. N.Y. COMP. CODES R. & REGS. tit. 10, §§ 63.1–63.11 (2020). *See also What You Need to Know about the Law*, N.Y. Dept. of Health, http://www.health.ny.gov/diseases/aids/regulations/reporting_and_notification/about_the_law.htm#quest1 (last visited Oct. 5, 2019).

101. N.Y. COMP. CODES R. & REGS. tit. 10, § 63.4(a)(1) (2020). *See also What You Need to Know about the Law*, N.Y. Dept. of Health, http://www.health.ny.gov/diseases/aids/regulations/reporting_and_notification/about_the_law.htm#quest1 (last visited Oct. 5, 2019).

102. N.Y. COMP. CODES R. & REGS. tit. 10, § 63.6 (2020). *See also What You Need to Know about the Law*, N.Y. Dept. of Health, http://www.health.ny.gov/diseases/aids/regulations/reporting_and_notification/about_the_law.htm#quest1 (last visited Oct. 5, 2019) ("Under the law, identifying information about people with HIV infection is ONLY to be used to help the Health Department track the epidemic and for partner notification. The Health Department will NOT disclose this information to other government or private agencies like…police, welfare, insurance companies or landlords."). The Health Department will also not disclose this information to Immigration and Customs Enforcement (ICE).

carry out their jobs.[103] If you are diagnosed with an HIV-related illness, your medical care provider will ask for the names of your spouse, sexual partners, and/or needle-sharing partners.[104] If you provide those names, those individuals will receive notice they are at risk of being infected with HIV,[105] and they will be offered counseling and HIV testing.[106] Your name will not be given to them.[107] You have the right to refuse to tell your doctor the names of your partners, and will not face any legal penalty (civil or criminal) if you choose not to share this information.[108]

E. Legal Rights and Prevention of Infectious Diseases

1. Prevention and Prison Policy

The government has a responsibility to give medical care to incarcerated people.[109] This duty may also include protecting incarcerated people from infectious diseases, such as TB.[110] But, it is also very important to take the necessary precautions to protect yourself and others from disease. If you have anal, vaginal, or oral sex, it is extremely important to use latex condoms in order to protect yourself against HIV infection and other sexually-transmitted diseases. This is particularly important in the prison system, where more people are HIV-positive. Very few jails or prisons provide condoms for incarcerated people. A few jails in Los Angeles, New York City, Philadelphia, San Francisco, Washington, D.C., Mississippi, and Vermont supply condoms on a limited basis.[111]

Prisons have some duty to prevent MRSA's spread once they know the infection is present within the prison. As an incarcerated person, you have limited options to make the prison protect you. If you show that the prison is "deliberately indifferent" to your serious medical needs, you can bring an Eighth Amendment claim against the jail or prison for failing to protect you from MRSA.[112] Courts generally say that prisons do not have to take every possible measure to prevent MRSA's spread. As long as a prison takes reasonable steps, you will not be able to make a constitutional claim by showing that the prison could have done more to protect you.[113]

---

103. N.Y. COMP. CODES R. & REGS. tit. 10, § 63.6(a)(13) (2020).

104. N.Y. COMP. CODES R. & REGS. tit. 10, § 63.8(a)(3) (2020).

105. N.Y. COMP. CODES R. & REGS. tit. 10, § 63.8(a)(3) (2020).

106. N.Y. COMP. CODES R. & REGS. tit. 10, § 63.8(g) (2020).

107. N.Y. COMP. CODES R. & REGS. tit. 10, §§ 63.6(b)(3), 63.8(a)(3) (2020).

108. *What You Need to Know about the Law*, N.Y. Dept. of Health, http://www.health.ny.gov/diseases/aids/regulations/reporting_and_notification/about_the_law.htm#quest1 (last visited Oct. 5, 2019).

109. *See* Estelle v. Gamble, 429 U.S. 97, 103, 97 S. Ct. 285, 290, 50 L. Ed. 2d 251, 259 (1976) (confirming "the government's obligation to provide medical care for those whom it is punishing by incarceration"). *See JLM* Chapter 23 for more information on a prison's duty to provide medical care and what you can do if you are not receiving proper care.

110 *See* Lareau v. Manson, 651 F.2d 96, 109 (2d Cir. 1981) (finding that a prison's failure to adequately screen incoming incarcerated people constituted a serious "threat to the well-being of the inmates," and because defendants lacked justification for the policy the practice was considered punishment under the Due Process clause); Smith v. Sullivan, 553 F.2d 373, 380 (5th Cir. 1977) (holding that though a prison is not required to conduct medical exams on incarcerated people within 36 hours of entering the facility, leaving persons with communicable or contagious diseases, like scabies or gonorrhea, among other incarcerated people for a month or more without medical care, violated the standard of adequate medical services).

111. Beth Shuster, *Sheriff Approves Handout of Condoms to Gay Inmates*, L.A. Times, Nov. 30, 2001, at A38, *available at* http://articles.latimes.com/2001/nov/30/news/mn-10008. George Lavender, *California Prisons Aim to Keep Sex Between Inmates Safe, If Illegal*, Npr, Jan. 21, 2015, *available at* https://www.npr.org/2015/01/21/378678167/california-prisons-aim-to-keep-sex-between-inmates-safe-if-illegal.

112. *See* Estelle v. Gamble, 429 U.S. 97, 104, 97 S. Ct. 285, 291, 50 L. Ed. 2d. 251, 260 (1976).

113. *See* Lopez v. McGrath, No. C 04-4782 MHP, 2007 U.S. Dist. LEXIS 39409 at *24–25 (N.D. Cal. May 31, 2007) (*unpublished*) (stating that while taking more hygienic measures would have reduced the risk of infection, there is no evidence they were necessary to reduce risk to the plaintiff to acceptable levels); Walker v. Floyd County, No. 4:07-CV-0014-SEB-WGH, 2007 U.S. Dist. LEXIS 56134 at *25–27 (S.D. Ind. July 31, 2007) (*unpublished*) (holding that a showing that there were additional measures a prison could have taken to stop MRSA's spread is not enough to demonstrate a constitutional violation).

2. Segregation of Incarcerated People with Infectious Diseases

(a) Mandatory Segregation

(i) Mandatory Segregation of Incarcerated People with TB

Prisons may want to segregate (separate) incarcerated people with infectious diseases from other incarcerated people to prevent the disease's spread. This type of segregation is often mandatory and involves separate housing. New York State law allows prison officials to separate incarcerated people if a "contagious disease" (which means a disease that spreads easily) becomes widespread.[114] But, New York law also says that all incarcerated people who are "sick shall receive all necessary care and medical assistance," and that all such incarcerated people should be transferred back to the general population as soon as possible.[115]

Because TB can be spread through the air, the law often treats incarcerated people with TB differently from incarcerated people who have other diseases. Normally, prisons *can* separate incarcerated people who are suffering from TB to prevent the spread.[116] New York City law even allows non-incarcerated persons infected with TB to be detained in a hospital in certain circumstances.[117] DOCCS TB policy requires incarcerated people with contagious TB to be placed in respiratory isolation. If you are in respiratory isolation, you are only allowed to leave the area for certain medical treatment and you will have to wear a surgical mask.[118]

(ii) Mandatory Segregation of Incarcerated People with HIV

Because HIV does not spread as easily as TB, New York state prisons[119] and federal prisons[120] do not decide housing or program assignments based only on HIV status. New York prisons are not allowed to automatically separate HIV-positive incarcerated people. New York state courts have found

---

114. N.Y. CORRECT. LAW § 141 (McKinney 2014).

115. N.Y. CORRECT. LAW § 141 (McKinney 2014).

116. *See* Washington v. Cambra, No. 96–16925, 1998 U.S. App. LEXIS 30072, at *3 (9th Cir 1998) (*unpublished*) (holding that a policy of testing incarcerated people twice for TB is reasonably related to the legitimate penological goal of detecting and containing TB and that the second test did not violate the incarcerated person's rights under the 8th or 14th Amendments); Davidson v. Kelly, No. 96-2066, 1997 U.S. App. LEXIS 33796, at *4 (2d Cir. Nov. 24, 1997) (*unpublished*) (holding that placing an incarcerated person in TB hold for three days until he agreed to be tested for TB did not violate the incarcerated person's 8th Amendment rights because it furthered a legitimate penological interest); McCormick v. Stalder, 105 F.3d 1059, 1061–1062 (5th Cir. 1997) (holding that prison policy requiring TB patients to be medicated or isolated was reasonably related to legitimate penological interests); Dunn v. Zenk, No. 1:07-CV-2007-RLV, 2007 U.S. Dist. LEXIS 73891, at *9 (N.D. Ga. 2007) (*unpublished*) (holding that states have a legitimate penological interest in controlling the spread of tuberculosis so that the involuntary administration of a TB test does not offend the Constitution); Delisser v. Goord, No. 9:02-CV-00073 (FJS/GLS), 2003 U.S. Dist. LEXIS 488, at *16, *18–19, *23 (N.D.N.Y. Jan. 15, 2003) (*unpublished*) (holding that incarcerated person, who was placed in TB hold for a total of ninety-three days for refusing to submit to PPD test and then for refusing to take TB medication, did not suffer a violation of his 8th or 14th Amendment rights).

117. *See* 24 RCNY Health Code § 11.21(d)(1) (2018) (authorizing "the removal to and/or detention in a hospital or other treatment facility for appropriate examination for tuberculosis of a person who has active tuberculosis or who is suspected of having active tuberculosis and who is unable or unwilling voluntarily to submit to such examination by a physician or by the Department"); City of New York v. Doe, 205 A.D.2d 469, 470, 614 N.Y.S.2d 8, 9 (1st Dept. 1994) (holding that a patient could be detained pursuant to then-New York City Health Code § 11.47 where there was no less restrictive way to treat patient's TB infection).

118. DIV. OF HEALTH SERVS., NEW YORK DEPT. OF CORR. SERVICES, HEALTH SERVICES POLICY MANUAL: TUBERCULOSIS, § 1.18 at 10–11 (June 21, 2004).

119. *See*, *e.g.*, Nolley v. Erie, 776 F. Supp. 715, 719 (W.D.N.Y. 1991) (noting that "DOCS stopped isolating HIV+ inmates from the general population in 1987").

120. 28 C.F.R. § 549.13(c) (2020) ("Except as provided for in disciplinary policy, no special or separate housing units may be established for HIV-positive inmates."). However, as a person incarcerated in federal prison, you can be placed in controlled housing if there is reasonable evidence that you will pose a health risk to others. 28 C.F.R. § 541.61 (2020).

that mandatory segregation because of your HIV status violates your right to privacy—specifically, your right to medical confidentiality. This is because housing in an AIDS unit tells other incarcerated people and staff that you are HIV-positive.[121] If you are incarcerated in federal prison and have HIV or AIDS, the prison can only separate you if prison officials have reasonable evidence to think that you pose a health risk.[122] For more information on confidentiality issues, see Part F of this Chapter, and for information regarding discriminatory treatment based on your health status, see Part H of this Chapter.

Although New York prisons cannot separate HIV-positive incarcerated people, some states say that all HIV-infected incarcerated people must live separately from other incarcerated people. Many courts outside of New York have upheld prisons' decisions to separate HIV-positive incarcerated people. Courts generally think that segregation is a reasonable way to prevent other incarcerated people from getting HIV, and courts consider preventing the spread of HIV to be a legitimate interest of prisons.[123] Additionally, at least one federal court of appeals found that there is a high risk of HIV spreading in prison. In that case, the prison did not present evidence that HIV spread between incarcerated people, but the court thought that because there was high-risk behavior in the prison—like intravenous drug use, sex, and violence—this was enough to prove that there was a significant risk of HIV spreading.[124] The court also rejected the incarcerated people's argument that the prison should either hire more corrections officers or identify incarcerated people who were both HIV-positive and also likely to engage in high-risk conduct. The court found that these two suggestions were unreasonable and created an "undue hardship" on the prison facility.[125] The court's ruling might make it more difficult to argue that your segregation because of your HIV-positive status is unconstitutional.

(iii) Mandatory Segregation of Incarcerated People with MRSA

Prisons may segregate incarcerated people who have active MRSA infections to prevent the spread of the infection to others through contact. But the Federal Bureau of Prisons generally says that incarcerated people do not need to be housed separately if they have MRSA wounds that are not draining or that can be easily covered with bandages.[126] As the infection becomes more serious or develops into MRSA pneumonia, separate housing may be recommended or required.[127] A prison may have the right to threaten you with solitary confinement if you refuse to accept the prison's prescribed treatment for your MRSA infection.[128]

---

121. *See* Nolley v. Erie, 776 F. Supp. 715, 733–736 (W.D.N.Y. 1991) (holding that segregating HIV-positive incarcerated people violated constitutional and statutory rights to privacy because HIV status was improperly disclosed to non-medical personnel); Doe v. Coughlin, 697 F. Supp. 1234, 1240–1241 (N.D.N.Y. 1988) (holding that involuntary segregation of incarcerated people with HIV or AIDS violates incarcerated people's right to privacy).

122. 28 C.F.R. § 541.61 (2020).

123. *See, e.g.*, Moore v. Mabus, 976 F.2d 268, 271 (5th Cir. 1992) (holding that Mississippi prisons had reasonable interests in segregating HIV-positive incarcerated people, and that segregation did not violate rights to privacy, equal protection, or due process).

124. Onishea v. Hopper, 171 F.3d 1289, 1299 (11th Cir. 1999) (holding that risk of HIV transmission justified segregation of HIV-positive incarcerated people, including exclusion from programs and activities offered to other incarcerated people).

125. Onishea v. Hopper, 171 F.3d 1289, 1302–1304 (11th Cir. 1999) (finding that the cost of special programs to reduce the risk of HIV transmission would be too high).

126. *See* Fed. Bureau of Prisons, Management of Methicillin-Resistant Staphylococcus Aureus (MRSA) Infections—Clinical Practice Guidelines 33 (2012), *available at* http://www.bop.gov/resources/pdfs/mrsa.pdf (last visited Oct. 5, 2019).

127. *See* Fed. Bureau of Prisons, Management of Methicillin-Resistant Staphylococcus Aureus (MRSA) Infections—Clinical Practice Guidelines 33 (2012), *available at* http://www.bop.gov/resources/pdfs/mrsa.pdf (last visited Oct. 5, 2019).

128. *See* Keller v. County of Bucks, No. 05-2146, 209 F. App'x 201, 205–206 (3d Cir. 2006) (*unpublished*) (holding that it was not a constitutional violation to isolate a pre-trial detainee who refused treatment for a MRSA infection when the isolation was medically determined); Munoz v. Fortner, No. 6:07cv170, 2007 U.S Dist. LEXIS

(iv) Segregation Requested by Incarcerated People

If you are afraid of contracting an infectious disease, read Part B of this Chapter to get a sense of the steps that you can take to protect yourself. In general, incarcerated people who are afraid of getting infectious diseases from other incarcerated people have not been able to successfully sue prison officials. Some incarcerated people have tried to get prisons to separate other incarcerated people who are infected with a communicable disease, but these incarcerated people have been generally unsuccessful. Incarcerated people who already are infected have also been unsuccessful when they request that the prison give them a single cell or vaccinate other incarcerated people so that they do not spread their diseases.[129] Courts will generally support a prison's decision not to separate incarcerated people with HIV-related illnesses.[130]

Although prisons may have a legal responsibility to protect incarcerated people from exposure to communicable diseases,[131] to win a lawsuit against prison officials for exposing you to infectious diseases, you must prove that: (1) there was a specific and significant risk of infection, and (2) prison officials were aware of that risk, but disregarded it.[132] In order to win this kind of a lawsuit, you must show that there is a significant possibility that you will contract the virus or disease. For example, some courts have decided against a prison when incarcerated people are housed with people who have known MRSA infections. In order to meet the standard, however, the infected incarcerated person must have open wounds that are not being adequately covered or cleaned and that are likely to infect other incarcerated people.[133] You will not win if you only have a general fear of getting the virus.

91543, at *20–21 (E.D. Tex. Dec. 13, 2007) (*unpublished*) (holding that it does not violate the Constitution to threaten to put incarcerated people in isolation who have MRSA and do not comply with recommended treatment).

129. Johnson v. Horn, 782 A.2d 1073, 1076–1077 (Pa. Commw. Ct. 2001) (refusing to give court order forcing prison officials to assign incarcerated person to a single cell so he would not spread hepatitis C to other incarcerated people).

130. *See* Glick v. Henderson, 855 F.2d 536, 539–540 (8th Cir. 1988) (holding that incarcerated person's fear of contracting HIV either through sharing work assignments with an HIV-infected incarcerated person or through eating food that might have been prepared by an HIV-infected incarcerated person was not sufficient to justify an order to segregate HIV-infected incarcerated people); Deutsch v. Fed. Bureau of Prisons, 737 F. Supp. 261, 267–268 (S.D.N.Y. 1990), *aff'd*, 930 F.2d 909 (2d Cir. 1991) (holding that incarcerated person did not have the right to have another HIV-positive incarcerated person segregated unless the incarcerated person poses a known health risk).

131. *See* Hutto v. Finney, 437 U.S. 678, 682–688, 98 S. Ct 2565, 2569–2572, 57 L. Ed. 2d 522, 529–533 (1978) (finding prison conditions unconstitutional under the Eight Amendment where, among other concerns, incarcerated people in "punitive isolation" were crowded into cells and some had infectious conditions such as hepatitis and venereal diseases); Lareau v. Manson, 651 F.2d 96, 109 (2d Cir. 1981) (finding that prison's failure to adequately screen incoming incarcerated people violated the due process and Eight Amendment rights of other incarcerated people) [overruled in part]; Smith v. Sullivan, 553 F.2d 373, 380 (5th Cir. 1977) (stating that leaving persons with communicable or contagious diseases, such as scabies or gonorrhea, without medical attention for over a month and in the midst of other incarcerated people violated the required standard of adequate medical services).

132. *See* Massick v. N. Cent. Corr. Facility, 136 F.3d 580, 581 (8th Cir. 1998) (holding that there was no Eight Amendment violation when prison officials placed the plaintiff in a cell with an HIV-positive incarcerated person, who had open bleeding wounds, without warning the plaintiff of his cellmate's HIV status; the court found no constitutional violation, because the risk of plaintiff contracting HIV was small and because prison officials acted reasonably by granting plaintiff's request to change cellmates); Billman v. Ind. Dept. of Corr., 56 F.3d 785, 788–789 (7th Cir. 1995) (holding that prison officials who knowingly and without warning assigned an incarcerated person to share a cell with an HIV-positive incarcerated person with a known propensity to rape, constitutes an Eight Amendment violation due to the official's "deliberate indifference" to the "fear and humiliation inflicted by the rape and the fear of contracting the AIDS virus"); DeGidio v. Pung, 920 F.2d 525, 532–533 (8th Cir. 1990) (holding that prison officials' pattern of reckless or negligent responses to tuberculosis outbreaks was sufficient to constitute deliberate indifference, violating the Eight Amendment).

133. *See* Lopez v. McGrath, No. C 04-4782 MHP, 2007 U.S. Dist. LEXIS 30409(N.D. Cal. May 31, 2007) (*unpublished*) (finding an issue of fact where plaintiff claimed that administrators knew medical staff were putting incarcerated people with MRSA infections back into the general population, possibly creating "substantial risk" to other incarcerated people); Kimble v. Tennis, No. 4:CV-05-1871, 2006 U.S. Dist. LEXIS 36285 (M.D. Pa.

Additionally, the Prison Litigation Reform Act ("PLRA") makes winning money damages even more difficult. Under the PLRA, if you seek money damages, you will have to show you were physically injured, not just mentally or emotionally injured, or placed at an increased risk of being infected. For more information on the PLRA, see *JLM* Chapter 14, "The Prison Litigation Reform Act."

F. Legal Rights and Confidentiality

Under the U.S. Constitution, you have a right to privacy (a "privacy interest") regarding the disclosure of personal matters.[134] For information about your medical privacy, please see Part E(3) of *JLM* Chapter 23, "Your Right to Adequate Medical Care."

Incarcerated people with infectious diseases generally have a limited right to have information about their medical condition kept confidential. Some courts have held that the right to medical confidentiality also applies to an individual's HIV status.[135] But, other courts have held that there is no constitutional right to privacy regarding HIV status.[136] If you are in federal prison, your HIV test results, if positive, must be disclosed to the prison's employees.[137]

In New York state, your HIV-related information cannot be disclosed to anyone other than you and certain individuals or institutions who are authorized to know by law.[138] Individuals who are authorized to receive your HIV information include health care providers (when knowledge is necessary to provide you with adequate care),[139] employees of the Division of Parole,[140] employees of the Division of Probation and Correctional Alternatives or local probation department,[141] the medical director of the local correctional facility,[142] or an employee or agent of the Commission of Correction.[143] These authorized individuals are allowed to access your HIV information only if they need the information to carry out their duties and functions.[144]

In New York, incarcerated people have won lawsuits that found statutory and constitutional rights violations when their HIV status was improperly disclosed. In particular, it is not allowed for a prison official to disclose your HIV status to other incarcerated people or non-medical personnel.[145] The courts

---

June 5, 2006) (*unpublished*) (holding that evidence that prison doctor authorized release of a MRSA-infected incarcerated person with open sores to the general population may be sufficient to support a claim of deliberate indifference).

134. *See* Whalen v. Roe, 429 U.S. 589, 599–600, 97 S. Ct. 869, 876, 51 L. Ed. 2d 64, 73 (1977) (finding that the U.S. Constitution protects your right to make personal decisions about the disclosure of your personal information) (non-prison case); O'Connor v. Pierson, 426 F.3d 187, 201 (2d Cir. 2005) ("Medical information in general, and information about a person's psychiatric health and substance-abuse history in particular, is information of the most intimate kind.") (non-prison case).

135. *See* Doe v. Delie, 257 F.3d 309, 315–317 (3d Cir. 2001) (finding incarcerated people have a right to medical privacy and that the right is "particularly strong" regarding one's HIV status); Doe v. New York, 15 F.3d 264, 267 (2d Cir. 1994) ("Individuals who are infected with the HIV virus clearly possess a constitutional right to privacy regarding their condition.").

136. *See, e.g.,* Sherman v. Jones, 258 F. Supp. 2d 440, 444 (E.D. Va. 2003) (holding that there is no constitutional right to privacy of HIV status and noting that different circuit courts have reached different conclusions on this issue).

137. 28 C.F.R. § 549.14 (2020).

138. N.Y. PUB. HEALTH LAW § 2782 (McKinney 2012). State agencies authorized to obtain confidential HIV-related information should have regulations to prevent discrimination, prohibit unauthorized disclosure, and establish rules for determining who should receive the information and when. N.Y. PUB. HEALTH LAW § 2786(2)(a) (McKinney 2012).

139. N.Y. PUB. HEALTH LAW § 2782(1)(d) (McKinney 2012).

140. N.Y. PUB. HEALTH LAW § 2782(1)(l) (McKinney 2012).

141. N.Y. PUB. HEALTH LAW § 2782(1)(m) (McKinney 2012).

142. N.Y. PUB. HEALTH LAW § 2782(1)(n) (McKinney 2012).

143. N.Y. PUB. HEALTH LAW § 2782(1)(o) (McKinney 2012).

144. N.Y. PUB. HEALTH LAW §§ 2782(1)(l)–(o) (McKinney 2012).

145. *See* Lipinski v. Skinner, 781 F. Supp. 131, 140 (N.D.N.Y. 1991) (allowing incarcerated person to force protected media sources to give deposition testimony in connection with lawsuit against law enforcement officials and prison officials when they disclosed incarcerated person's HIV status to a newspaper); Matter of V. v. New

seem to permit disclosure of your HIV status only if such disclosure is reasonably related to legitimate prison interests, like protecting incarcerated people or corrections officers from infection. But unnecessary disclosure of such information for humor or gossip violates your constitutional rights.[146]

In other jurisdictions, courts are divided about medical privacy. Some courts find that an incarcerated person's right to medical privacy is not that strong.[147] Other courts protect medical privacy rights for incarcerated people and people who are arrested.[148] But now that the Prison Litigation Reform Act (PLRA) has been passed, similar cases brought today might turn out differently. For more information on the PLRA, see Chapter 14 of the *JLM*. It is important to remember that the PLRA requires a showing of *physical injury*, not just mental or emotional injury, to recover monetary damages. Thus, to be successful in a lawsuit, you would probably have to prove that the prison official's actions physically injured you. Some courts may require you to show the harm is likely to occur again in order to get injunctions (orders requiring officials to stop or change a policy).[149]

G. Legal Rights and Medical Treatment

1. Right to Medical Treatment

If you are denied medical treatment for an infectious disease, you may have a claim that the prison violated your rights under the Eighth Amendment. The Eighth Amendment protects you from cruel and unusual punishment. To win an Eighth Amendment claim, you must prove that prison officials showed "deliberate indifference" to your "serious medical needs."[150] It is important to remember that

York, 150 Misc. 2d 156, 157–158, 566 N.Y.S.2d 987, 988–989 (N.Y. Ct. Cl. 1991) (holding that an incarcerated person stated a proper claim for relief when he accused his prison of improperly revealing his HIV information); Doe v. Coughlin, 697 F. Supp. 1234, 1240–1241 (N.D.N.Y. 1988) (temporarily forbidding a plan to segregate AIDS-infected incarcerated people, because it would disclose their AIDS status and therefore violate their right to privacy). *But see* Cordero v. Coughlin, 607 F. Supp. 9, 11 (S.D.N.Y. 1984) (holding that a plan which segregated incarcerated people with AIDS did not violate the incarcerated people's 1st Amendment right to privacy, because the right to privacy is limited by the prison's needs and by the incarcerated people's confinement).

146. *See* Powell v. Schriver, 175 F.3d 107, 112–113 (2d Cir. 1999) (holding that a prison official does not violate an incarcerated person's right to medical privacy, if the official's actions are reasonably related to legitimate prison interests. A prison official does violate an incarcerated person's medical privacy if he discloses an incarcerated person's medical information as gossip or a joke); *see also* Baez v. Rapping, 680 F. Supp. 112, 115 (S.D.N.Y. 1988) (holding that prison officials did not violate an incarcerated person's right to confidentiality when they warned other officials to avoid contact with incarcerated person's body fluids). *But see* Nolley v. Erie, 776 F. Supp. 715, 725–728 (W.D.N.Y. 1991) (holding that a policy of putting red stickers on HIV-positive incarcerated people's possessions, and therefore revealing incarcerated people's HIV status, violated privacy rights under New York law).

147. *See* Anderson v. Romero, 72 F.3d 518, 523–524 (7th Cir. 1995) (holding that incarcerated people do not have a constitutional right to the confidentiality of their HIV status, especially in light of the fact that HIV-positive incarcerated people could be identified when segregated from the rest of the prison population); Doe v. Wigginton, 21 F.3d 733, 740 (6th Cir. 1994) (holding that the incarcerated person's right to privacy was not violated when a corrections officer opened his file in the presence of other witnesses after the incarcerated person refused to answer questions about his medical condition); Adams v. Drew, 906 F. Supp. 1050, 1055–1058 (E.D. Va. 1995) (stating that prison officials' unintentional disclosure of incarcerated person's HIV status to another incarcerated person did not violate right to privacy).

148. *See* A.L.A. v. W. Valley City, 26 F.3d 989, 990–991 (10th Cir. 1994) (stating that an arrestee brought a valid claim against the police for disclosing that he was HIV-positive to his family and strangers, even though it was later found that the arrestee was not HIV-positive).

149. *See* Davis v. District of Columbia, 158 F.3d 1342, 1346–1347 (D.C. Cir. 1998) (holding that an HIV-positive incarcerated person could not obtain an injunction against prison officials for the unauthorized disclosure of his medical files because he could not show a threat that it might happen again).

150. *See* Chance v. Armstrong, 143 F.3d 698, 702 (2d Cir. 1998) (describing the standard for bringing an 8th Amendment claim for failure to receive proper medical care) (citing Estelle v. Gamble, 429 U.S. 97, 104, 97 S. Ct. 285, 291, 50 L. Ed. 2d 251, 260 (1976)). HIV and hepatitis are generally considered "serious medical needs." Brown v. Johnson, 387 F.3d 1344, 1351 (11th Cir. 2004) (finding that the PLRA did not deprive the incarcerated person of his right to amend his complaint that defendants had withdrawn his prescribed medications and were deliberately indifferent to his serious medical needs).

courts do not think that every claim of inadequate medical care is bad enough to be a constitutional violation.[151] But a few courts have held that a denial of prescribed AIDS or hepatitis C medical treatment does violate an incarcerated person's constitutional rights.[152] See Chapter 23 of the *JLM,* "Your Right to Adequate Medical Care," for more information on how to bring an Eighth Amendment claim for failure to provide adequate medical treatment.

Courts generally do *not* believe incarcerated people have a constitutional right to a private doctor or experimental medication.[153] You may still be able to get experimental drugs, but you will probably not have an Eighth Amendment claim against your facility if it does not prescribe them for you. But some prisons have participated in clinical trials for anti-retroviral therapy for AIDS. To take part in such trials, you must first get approval from the Institutional Review Board of the testing site and your prison's medical department.[154]

If you believe that your health is suffering because you are being wrongfully denied medication, you will probably have to show that the medical community agrees that this medication will help your condition. Otherwise, the court may see your claim as a simple disagreement between you and the prison doctor.[155] If you want to bring a claim about medical treatment or medication that was denied to you sometime in the past, a court may look back to see what the accepted medical practices were at that time.[156]

If you got medical treatment, but you think that a prison doctor incorrectly diagnosed your condition, it will be hard to bring a successful case against the prison officials. In the past, courts have

---

151. *See* Smith v. Carpenter, 316 F.3d 178, 184, 186–87 (2d Cir. 2003) (citing Estelle v. Gamble, 429 U.S. 97, 104, 97 S. Ct. 285, 291, 50 L. Ed. 2d 251, 260 (1976)) (holding that brief interruptions of HIV medications, with no noticeable bad effects, was not a denial of serious medical needs. However, the court also noted that a showing of increased risk, even without noticeable symptoms, might be serious enough to be denial of medical care).

152. *See* Montgomery v. Pinchak, 294 F.3d 492, 500 (3d Cir. 2002) (finding HIV-positive incarcerated person's claim regarding violation of his right to adequate medical treatment had merit and holding that, because HIV is a life-threatening disease if left untreated, the incarcerated person had met the serious medical need prong of *Estelle v. Gamble*). *But see* Johnson v. Wright, 412 F.3d 398 (2d Cir. 2005) (finding that although a facility's refusal to give an incarcerated person the medication most incarcerated people received for hepatitis C because he had used illegal drugs constituted deliberate indifference, there was medical reason for denying the prison therapy); Niemic v. Maloney, 448 F. Supp. 2d 270 (9th Cir. 2006) (finding that the denial of a medicine subsequent to a failed drug test does not violate Due Process under the 14th Amendment, especially given that a decision to deny the medicine to active drug users is in accord with medical custom).

153. *See* Chance v. Armstrong, 143 F.3d 698, 703 (2d Cir. 1998) ("[M]ere disagreement over the proper treatment does not create a constitutional claim."); McKenna v. Wright, No. 01 Civ. 6571 (WK), 2002 U.S. Dist. LEXIS 3489 (S.D.N.Y. Mar. 4, 2002) (*unpublished*) (dismissing plaintiff's claim on the basis that the doctor's treatment decision was his medical judgment and consistent with current medical literature); Carter v. Cash, No. 92-CV-5526 (JG), 1995 U.S. Dist. LEXIS 22209 (E.D.N.Y. May 31, 1995) (*unpublished*) (finding that incarcerated person was not entitled to medication of his choice if doctor decided, based on his professional judgment, that it would not be in the incarcerated person's best interest).

154. You can find information about clinical trials from publications such as the American Foundation for AIDS Research ("AMFAR") AIDS/HIV Treatment Direction. AMFAR's contact information is included in Appendix A at the end of this chapter.

155. *See* Perkins v. Kan. Dept. of Corrs., 165 F.3d 803, 811 (10th Cir. 1999) (upholding the denial of protease inhibitor to incarcerated person with HIV because other treatment was provided); Loch v. County of Bucks, 2006 U.S. Dist. LEXIS 62620, at *10–11 (E.D. Pa. Sept. 1, 2006), No. 03-cv-4833, 2006 WL 2559296, at *3, *available at* http://www.paed.uscourts.gov/documents/opinions/06D1114P.pdf at 5 (last visited Oct. 6, 2019) (holding that an incarcerated person who had been treated for conditions including MRSA did not assert a constitutional violation simply because they claim the treatment they received was inadequate); Matthews v. Crosby, No. 3-06-CV-38, 2006 U.S. Dist. LEXIS 35049, at *7 (N.D. Fla. May 31, 2006) (holding that a complete denial of available treatment, but not a dispute over the care received, could be a constitutional violation).

156. *See* Parker v. Proffit, Civ. A. No. 94-00815-R, 1995 U.S. Dist. LEXIS 15941, at *19 (W.D. Va. Oct. 27, 1995) (*unpublished*) (evaluating denial of medication by standards of medical treatment at time of denial); Adams v. Poag, 61 F.3d 1537, 1543 (11th Cir. 1995) (holding that to show a prison official's actions were deliberately indifferent, a plaintiff could produce opinions of medical experts stating that the official's actions were contrary to medical practices accepted at the time).

dismissed cases for different reasons. One reason could be because the incarcerated person could not prove that the prison officials had personal involvement.[157] In other cases, the incarcerated person could not show any physical harm or the incarcerated person could not show that his needs were ignored.[158]

If you have hepatitis C and prison officials determine that you should receive a certain treatment for a certain length of time, and you are then denied that treatment, you may have a claim under the Eighth Amendment. The first requirements to bring a claim will be met if you can say that being denied the prescribed treatment is risking your life by not treating your disease.[159] You do *not* have to also claim that you have suffered a separate harm in addition to your disease in order to bring your claim.[160] Meeting these requirements allows you to begin your case, but does *not* mean that you will win. You will still need to show that there was "deliberate indifference" to your medical needs.[161]

This does not change the rule that courts do not like to question doctors' medical decisions. If you have received treatment for hepatitis C but think you should have been given different treatment,[162] or if your doctors said you do not have a condition requiring any treatment, this rule will *not* allow you to bring suit.[163]

2. Right to Refuse Medical Treatment

Some people, for a variety of reasons, choose to refuse medical treatment. Competent people—people who can think and understand well enough to make medical decisions for themselves—have the right to refuse treatment, even if it means they will die as a result.[164] However, your right to refuse treatment is limited as an incarcerated person.[165] Most courts have held that prisons can treat TB-

157. *See* Timmons v. N.Y. State Dept. of Corr. Servs., 887 F. Supp. 576, 580 (S.D.N.Y. 1995) (holding an incarcerated person's bringing a claim against prison officials for misdiagnosing him with HIV in 1986 had not shown the officials had any personal involvement in the alleged violations and was thus not entitled to relief under 42 U.S.C. § 1983). Section 1983 governs suits against prison officials for federal statutory and constitutional violations and is described in detail in *JLM* Chapter 16, "Using 42 U.S.C. § 1983 and 28 U.S.C. § 1331 to Obtain Relief From Violations of Federal Law."

158. *See* Smith v. Carpenter, 316 F.3d 178, 184 (2d Cir. 2003) (dismissing 8th Amendment claim because incarcerated person failed to show that he suffered any adverse medical effects from the sporadic lack of treatment).

159. *See* Erickson v. Pardus, 551 U.S. 89, 93, 127 S. Ct. 2197, 2200, 167 L. Ed. 2d 1081, 1085 (2007) (holding that the pleading requirements of Federal Rule of Civil Procedure 8(a)(2) were met by statements that an incarcerated person with hepatitis C had been removed from his prescribed course of treatment and denied all treatment for his disease due to suspicion of drug use).

160. *See* Erickson v. Pardus, 551 U.S. 89, 93, 127 S. Ct. 2197, 2200, 167 L. Ed. 2d 1081, 1085 (2007) (stating that allegations (that is, the incarcerated person's claims of harm) in complaint were sufficient to bring an initial claim and that no claim of "cognizable independent harm" (that is, separate harm) apart from removal from treatment is required).

161. *See* Estelle v. Gamble, 429 U.S. 97, 104, 97 S. Ct. 285, 291, 50 L. Ed. 2d 251, 260 (1976).

162. *See* Loukas v. Mich. Dept. of Corr., No. 2-07-CV-142, 2008 U.S. Dist. LEXIS 14724, at *2 (W.D. Mich. Feb. 27, 2008) (holding that an incarcerated person who has received medical care, but just questions whether the treatment he has been receiving is adequate, does not have an 8th Amendment claim).

163. *See* Hix v. Tenn. Dept. of Corr., 196 Fed.App'x. 350, 357 n.1 (6th Cir. 2006) (stating that hepatitis C does not require treatment in all cases, and a difference of opinion over medical treatment does not violate the 8th Amendment).

164. For New York law, see N.Y. Pub. Health Law §§ 2960–2979 (McKinney 2007) ("Orders Not to Resuscitate") (regulating right of "adult with capacity" to direct issuance of orders not to resuscitate); N.Y. Pub. Health Law §§ 2980–2994 (McKinney 2007) ("Health Care Agents and Proxies") (allowing appointment of agents to make important health care decisions including the refusal of life-saving treatment for the appointer); Quill v. Koppell, 870 F. Supp. 78, 84 (S.D.N.Y. 1994) ("It is established under New York law that a competent person may refuse medical treatment, even if the withdrawal of such treatment will result in death."). *See also* Quill v. Vacco, 80 F.3d 716 (2d Cir. 1996) (holding that physicians can prescribe death-inducing drugs for mentally competent patients who wish to end their lives during the end stages of terminal illness. This case could help the argument that a competent person may refuse medical treatment, even if such refusal will result in death).

165. *See* Washington v. Harper, 494 U.S. 210, 223–227, 110 S. Ct. 1028, 1037–1040, 108 L. Ed. 2d 178

infected incarcerated people without their consent.[166] Courts balance your interest in refusing treatment with the prison's "legitimate penological interest" in preventing the spread of disease. Courts will also consider whether the prison's actions are reasonably related to the prison's interests. If you do not have a disease that is transmitted through air, the prison will have a weaker argument for forcing you to take medication than if you have a disease such as TB that is easily spread. See Part C of Chapter 29, "Special Issues for Prisoners with Mental Illness," for more information about your right to refuse medical treatment.

H. Discriminatory Treatment and Infectious Diseases

1. Constitutional Rights

The Fourteenth Amendment may protect you from being discriminated against for having an infectious disease. For example, your rights under the Equal Protection Clause of the Fourteenth Amendment prohibit discrimination by the state that is not rationally related to a legitimate purpose.[167] The Due Process Clause of the Fourteenth Amendment forbids the prison facility from taking away your life, liberty, or property without due process of law.[168] The Eighth Amendment protects you from "cruel and unusual punishment."[169] Keep in mind, however, that the courts balance these constitutional rights against legitimate penological interests,[170] which may allow prison officials to lawfully infringe upon or violate your rights. Prison policies are valid if they are reasonably related to a legitimate penological (prison-related) interest; however, the prison is required to use the least restrictive means of achieving the goals of the policy.[171]

(1990) (recognizing 14th Amendment right to refuse medical treatment, using Turner v. Safley, 482 U.S. 78, 89–91, 107 S. Ct. 2254, 2262, 96 L. Ed. 2d 64 (1987) (superseded by statute), balancing incarcerated person's rights against the state's duty to treat mentally ill incarcerated people and protect the safety of incarcerated people and correction officers, and finding the state did not deprive right to refuse treatment without due process).

166. *See* McCormick v. Stalder, 105 F.3d 1059, 1062 (5th Cir. 1997) (holding that prison officials did not violate the 8th Amendment when they required an incarcerated person with TB to undergo drug therapy without his consent).

167. U.S. CONST. amend. XIV, § 1 ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.").

168. U.S. CONST. amend. XIV, § 1. ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.").

169. U.S. CONST. amend. VIII ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.").

170. *See* Turner v. Safley, 482 U.S. 78, 89–91, 107 S. Ct. 2254, 2262, 96 L. Ed. 2d 64 (1987) (superseded by statute) (analyzing whether prison regulations that burden fundamental rights are "reasonably related" to legitimate penological objectives).

171. *See* Turner v. Safley, 482 U.S. 78, 91, 107 S. Ct. 2254, 2262, 96 L. Ed. 2d 64, 80 (1987) (superseded by statute) ("But if an inmate claimant can point to an alternative that fully accommodates the prisoner's rights at *de minimis* cost to valid penological interests, a court may consider that as evidence that the regulation does not satisfy the reasonable relationship standard." This means if an incarcerated person can point to a different procedure not requiring more money or time, the alternative can be used as evidence that the challenged policy is not reasonable); Perkins v. Kan. Dept. of Corr., 165 F.3d 803, 810–11 (10th Cir. 1999) (holding HIV-positive incarcerated person could claim a constitutional violation for being forced to wear a face mask whenever he left his cell and noting that wearing such a mask could become a humiliating form of branding that violated the 8th Amendment's prohibition of punishing individuals for a physical condition). *But see* Parker v. Proffit, Civ. A. No. 94-00815-R, 1995 U.S. Dist. LEXIS 15941, at *19–21 (W.D. Va. Oct. 27, 1995) (*unpublished*) (stating that making an HIV-positive incarcerated person wear a mask and protective clothing may have caused some embarrassment, but the practice did not rise to a constitutional violation of the 8th Amendment prohibition on cruel and unusual punishment).

If you bring a suit challenging a prison practice under the Fourteenth Amendment's Due Process Clause, you must prove you were entitled to something the prison took away.[172] Any entitlement must be created by *state law*. If you think you are entitled to something, you should first determine whether or not a state statute or regulation gives you a right to that entitlement. Also know that prison officials *can* treat incarcerated people with infectious diseases differently from other incarcerated people if they have legitimate penological interests in doing so;[173] however, the reasons must be rational and not purely discriminatory.

The Fourteenth Amendment only applies to the *states*, but the Fifth Amendment's Due Process Clause protects your rights against the *federal* government. If you are in a federal prison, you might also consider bringing your lawsuit under federal statutes, instead of under the Fifth Amendment.

2. Statutory Rights

Certain laws protect you from forms of discrimination based on disabilities, including HIV status. The Federal Rehabilitation Act of 1973 ("FRA") prohibits discrimination, or denial of programs or benefits based on disability, by a federal, state, or local government agency, or any recipient of federal funding.[174] Similarly, the Americans with Disabilities Act ("ADA") prohibits public and private entities from discriminating, excluding, or denying services, programs, or activities to a person with a disability.[175] These laws recognize TB and HIV infection as a form of disability because they are physical impairments limiting major life activities.[176] Also, in *Bragdon v. Abbott*, the Supreme Court clearly stated that under the ADA, "HIV infection satisfies the . . . definition of a physical impairment during every stage of the disease."[177]

Although HIV is viewed as a disability according to the FRA and the ADA, your rights are limited to some extent if: (1) your HIV infection poses a significant risk to the health or safety of others; or (2)

---

172. *See* Anderson v. Romero, 72 F.3d 518, 527 (7th Cir. 1995). (ruling that a state statute making prisons provide "barber facilities" gave the plaintiff an entitlement to a haircut, and keeping plaintiff from this entitlement because of his HIV status deprived him of his property and liberty rights under the 14th Amendment's Due Process Clause).

173. *See* Laureano v. Vega, No. 92 Civ. 6056 (LMM), 1994 U.S. Dist. LEXIS 2107, at *23–24 (S.D.N.Y. Feb. 23, 1994) (*unpublished*), *aff'd*, 40 F.3d 1237 (2d Cir. 1994) (rejecting incarcerated person's claim that he had received difficult work assignments because of his HIV status; holding that he had failed to establish any retaliatory motive by prison officials and that there is no right to a particular prison job); Farmer v. Moritsugu, 742 F. Supp. 525, 528 (W.D. Wis. 1990) (finding that prison had legitimate interest in maintaining security and order and therefore refusal of HIV-infected incarcerated person's request for food service job was not denial of equal protection); Doe v. Coughlin, 71 N.Y.2d 48, 54, 56, 60, 518 N.E.2d 536, 540, 541, 544, 523 N.Y.S.2d 782, 786, 787, 790 (1987) (upholding prison officials' refusal to allow an incarcerated person with AIDS to participate in a Family Reunion Program and holding that incarcerated person's privacy rights and his rights under the Due Process Clause and the Equal Protection Clause had not been violated, reasoning that there is no right to marital relations and that the prison officials had a rational basis to believe that such visits would help the spread of a disease). Note, however, the New York State Department of Corrections and Community Supervision's official policy does not currently deny participation in the Family Reunion Program based solely on the HIV status of the incarcerated person. Instead, there is a special review of each incarcerated person's application because of potential health risks to the visitor. N.Y. Comp. Codes R. & Regs. tit. 7 §§ 220.2–220.9.

174. 29 U.S.C. §§ 701(a)–(c).

175. 42 U.S.C. § 12132.

176. 28 C.F.R. §§ 35.108(a)(1)(i), (b)(2) (2018) ("Physical or mental impairment includes, but is not limited to, contagious and non-contagious diseases and conditions such as . . . [HIV disease] (whether symptomatic or asymptomatic), tuberculosis . . ."); 42 U.S.C. § 12102(1)(A)–(C) ("The term 'disability' means . . . a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such impairment; or being regarded as having such an impairment.").

177. *See* Bragdon v. Abbott, 524 U.S. 624, 637, 118 S. Ct. 2196, 2204, 141 L. Ed. 2d 540, 556–57 (1998). This case was about a dentist's refusal to examine an HIV-infected patient in his office. Though the facts did not involve incarcerated people, the legal principle is the same regarding HIV infection as a disability. For a lower court decision finding an HIV-positive incarcerated person disabled under the FRA and ADA, see, e.g., Dean v. Knowles, 912 F. Supp. 519, 521 (S.D. Fla. 1996).

it would be an undue hardship on the prison facility to accommodate your needs.[178] Also, the U.S. Supreme Court has decided that individuals cannot recover monetary damages from the state for its failure to comply with the ADA.[179] However, you can still seek injunctive relief, which means that you can file a claim in which you ask the court to require the state to end practices that violate the ADA.[180]

If you are suing for violation of your statutory rights, you should cite both the FRA and the ADA, since the remedies, procedures, and rights are the same under both laws.[181] The only difference is the FRA only applies to public (government) entities while the ADA can support a claim against both private and public entities. You should also check the law of your state and city since sometimes states and localities enact additional laws to protect people with communicable diseases, like HIV or hepatitis, from discrimination. In New York State, the Executive Law prohibits discrimination in several settings against people who carry diseases like HIV or hepatitis.[182] If you are suing in New York, you should review New York law to see if it applies to your circumstances.

Most prison facilities are controlled and financed by federal, state, or local governments, so the ADA and FRA usually apply to prison facilities. Furthermore, the U.S. Supreme Court has stated the ADA and FRA prohibit discrimination in the prison system.[183] This means prison facilities cannot exclude or deny incarcerated people "benefits of the services, programs, or activities of a public entity" or subject them to discrimination.[184] Benefits include recreational activities, medical services, and educational and vocational programs.[185]

However, when a court evaluates a prison policy, it will consider whether the restriction is reasonably related to a legitimate penological interest.[186] When a prison is defending a policy, it only has to show that the possibility of a risk exists; it does not have to demonstrate that the risk has actually occurred. Examples of interests cited by prison authorities include prison safety and undue financial or administrative burden.[187]

---

178. *See* Onishea v. Hopper, 171 F.3d 1289, 1297–1299, 1305 (11th Cir. 1999) (holding any amount of risk through a "specific and theoretically sound means of possible transmission" is a significant risk, and allowing segregation of HIV-positive incarcerated people).

179. *See* Bd. of Trs. of the Univ. of Ala. v. Garrett, 531 U.S. 356, 374, 121 S. Ct. 955, 968, 148 L. Ed. 2d 866, 884 (2001) (holding Alabama State employees could not recover damages because of state's failure to comply with the ADA).

180. *See* Bd. of Trs. of the Univ. of Ala. v. Garrett, 531 U.S. 356, 374 n.9, 121 S. Ct. 955, 968 n.9, 148 L. Ed. 2d 866, 884 n.9 (2001) ("[ADA] standards can be enforced by . . . private individuals in actions for injunctive relief.").

181. 42 U.S.C. § 12133 ("The remedies, procedures, and rights set forth in [29 U.S.C. § 794(a)] shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of [42 U.S.C. § 12132].").

182. *See* N.Y. EXEC. LAW § 296 (McKinney 2018).

183. *See* Pa. Dept. of Corr. v. Yeskey, 524 U.S. 206, 213, 118 S. Ct. 1952, 1956, 141 L. Ed. 2d 215, 221 (1998) ("[T]he plain text of Title II of the ADA unambiguously extends to state prison inmates.").

184. 42 U.S.C. § 12132.

185. *See* Pa. Dept. of Corr. v. Yeskey, 524 U.S. 206, 210, 118 S. Ct. 1952, 1955, 141 L. Ed. 2d 215, 219 (1998) (stating that "[m]odern prisons provide inmates with many recreational 'activities,' medical 'services,' and educational and vocational 'programs,' all of which at least theoretically 'benefit' the prisoners.").

186. *See* Gates v. Rowland, 39 F.3d 1439, 1448 (9th Cir. 1994) (finding that a legitimate penological interest allowed prison to discriminate against HIV-positive incarcerated people by denying them food service jobs). In *Gates* the prison claimed that although the medical risk of infecting other incarcerated people through food service is admittedly small, the perception of a risk by other incarcerated people could be threatening and could lead to violence. Thus, the prison interest was not in preventing the spread of HIV so much as promoting prison safety, a typical prison interest. *See also* Onishea v. Hopper, 171 F.3d 1289, 1300−1301 (11th Cir. 1999) (finding that the prison's interest in avoiding violence based on incarcerated people's HIV status was a valid penal interest).

187. *See* Bullock v. Gomez, 929 F. Supp. 1299, 1305–1308 (C.D. Cal. 1996) (finding the California Men's Colony possibly violated the ADA and the FRA when it prohibited HIV-infected incarcerated people from visiting their spouses in a family visiting program permitting incarcerated people to visit immediate family members in private conditions for relatively extended periods of time, including overnight stays; stating that the discrimination may be justified under the standard in Turner v. Safley, 482 U.S. 78, 89, 107 S. Ct. 2254, 2261–2262, 96 L. Ed. 2d 64, 79 (1987) (superseded by statute), as a legitimate penological interest if accommodating

I. Sentencing Persons with Infectious Diseases

If you have an infectious disease and you have been indicted for a crime but not yet sentenced, you may be able to ask the judge to dismiss the indictment or decrease your sentence because of your health condition. Different states have different rules, so be sure to look at your state's statutes and cases.

If your case is in New York State and you have a terminal illness, you may: (1) ask for lower bail, (2) ask to be released on your own recognizance, or (3) make a *Clayton* motion to have your case dismissed "in the interest of justice" (under New York Criminal Procedure Law § 210.40 and § 210.45).[188] The court will look at the evidence of guilt, the seriousness of the offense, your character, and your criminal record.[189] To support a request for dismissal, try to provide medical documentation that imprisonment would worsen your health.

If you have a terminal disease and are in prison because you violated your parole, you can request to: (1) be returned to parole status, (2) be released to time served or granted conditional release to probation, or (3) have your case adjourned in contemplation of dismissal. The adjournment may be extended indefinitely, which may allow you to live your last days out of prison.

If you are facing sentencing in federal court, judges consider the sentencing guidelines on an advisory basis.[190] This means the court can give you a lesser sentence ("downward departure") if mitigating circumstances exist.[191] The U.S. Sentencing Commission Guidelines Manual states, "an extraordinary physical impairment may be a reason to depart downward; e.g., in the case of a seriously infirm defendant, home detention may be as efficient as, and less costly than, imprisonment."[192] Courts usually do not reduce sentences for diseases like AIDS unless the defendant's AIDS is serious enough to be an "extraordinary physical impairment."[193] Some courts only consider the defendant's health at the time of sentencing, even if the disease will likely worsen in prison.[194]

HIV-positive incarcerated people proved to be an undue financial or administrative burden, or if the concerns of other incarcerated people could lead to prison violence; and noting that proof of previous prison violence is not required to prove a legitimate penological interest).

188. *See* People v. Clayton, 41 A.D.2d 204, 208, 342 N.Y.S.2d 106, 110 (2d Dept. 1973) (listing factors a court should consider where defendant seeks to dismiss case "in the furtherance of justice," including the (1) nature of the crime; (2) available evidence of guilt; (3) defendant's prior record; (4) punishment already suffered by defendant; (5) purpose and effect of further punishment; (6) any prejudice to defendant by the passage of time; and (7) the impact of the indictment's dismissal on the public interest); *see also* People v. Lawson, 198 A.D.2d 71, 73, 74, 603 N.Y.S.2d 311, 313 (1st Dept. 1993) (dismissing indictment of defendant, described as "'thin as a rail'" and unable to stand properly, who had not been involved in any other criminal activity, was honorably discharged from the Air Force, and was in final stages of AIDS), *aff'd*, People v. Herman L., 83 N.Y.2d 958, 960, 639 N.E.2d 404, 405, 615 N.Y.S.2d 865, 866 (1994) (dismissing indictment pursuant to N.Y. Crim. Proc. Law § 210.40 (McKinney 1993), which allows dismissals "in furtherance of justice" and in judge's discretion).

189. *See*, *e.g.*, People v. Sierra, 149 Misc. 2d 588, 590–591, 566 N.Y.S.2d 818, 819 (Sup. Ct. Kings County 1990) (refusing to dismiss conviction because defendant suffered from AIDS Related Complex ("ARC") and would eventually develop AIDS, since he was a repeat felon with a long criminal history; the court also considered the evidence of the defendant's guilt, the offense's seriousness, his character, and criminal history to find he was not entitled to dismissal).

190. *See* United States v. Booker, 543 U.S. 220, 245, 125 S. Ct. 738, 756–757, 160 L. Ed. 2d 621, 651 (2005) (holding that the use of facts under the sentencing guidelines are not binding on federal judges).

191. U.S. SENTENCING GUIDELINES MANUAL, § 5H1.4 (U.S. Sentencing Comm'n 2015); § 5C1.1 app. n.7 (U.S. Sentencing Comm'n 2015).

192. U.S. SENTENCING GUIDELINES MANUAL, § 5H1.4 (U.S. Sentencing Comm'n 2015).

193. *See* Downward Departure Under § 5H1.4 of United States Sentencing Guidelines Permitting Downward Departure for Extraordinary Physical Impairment, 16 A.L.R. Fed. 2d 113 (2007).

194. *See* United States v. Thomas, 49 F.3d 253, 261 (6th Cir. 1995) (denying downward departure because defendant's HIV infection had not progressed into advanced AIDS and was not an "extraordinary physical impairment"); United States v. Woody, 55 F.3d 1257, 1275–1276 (7th Cir. 1995) (refusing downward departure because HIV-positive defendant did not have "full-blown AIDS"); United States v. Rabins, 63 F.3d 721, 729 (8th Cir. 1995) (denying downward departure because defendant's AIDS had not become life-threatening; also holding that the defendant's condition should be assessed at the time of sentencing, regardless of the serious physical

Most courts require you to be very sick before dismissing an indictment or reducing your sentence. But one federal district court did grant a downward departure to an HIV-positive defendant in stable condition. The court thought that the defendant believed his good health was a result of his special regimen of strict diet, regular exercise, acupuncture, and a combination of vitamins and natural supplements under the close supervision of a medical professional.[195] In this case the judge was not worried about whether the treatment actually contributed to the defendant's good health. The judge thought that since the defendant believed his regimen was effective, he would suffer emotional harm if he had to change treatments in prison.[196]

If you are trying to get your sentence dismissed or reduced because of your health, you have a greater chance of success if you suffer from a very serious illness, like advanced-stage AIDS. You should try to present medical documentation that being in prison will harm your health. Also, keep in mind that courts might not be sympathetic to you if you have a long criminal history. Remember, courts have discretion to grant downward departures. The law does not say exactly what an "extraordinary physical impairment" is, so you may be able to get a reduced sentence or dismissal even if you do not have AIDS but have TB or hepatitis instead.

J. Life After Imprisonment: Planning for Your Release

Chapter 35 of the *JLM*, "Getting Out Early: Conditional & Early Release," contains information about compassionate release and medical parole. If you have been diagnosed with an infectious disease, you should read that Chapter carefully to see whether you might be eligible for either of these options.

If you are about to be paroled or released, you should get a confidential HIV test before leaving prison. Getting a test can be more difficult or expensive outside of prison. If you do have HIV/AIDS or hepatitis, you should continue to take preventative measures to protect others. Before release, you should also try to contact local agencies and organizations for help transitioning from prison to community life. You can contact the public health department in your area for free brochures. Appendix A lists other helpful agencies.

K. Conclusion

If you have AIDS, TB, hepatitis B or C, MRSA or another infectious disease, people may treat you differently due to ignorance and fear. Protect yourself by becoming aware of the facts of the disease and your legal rights. As an incarcerated person, you may find that information and support is not always readily available. But many of the organizations in Appendix A of this Chapter work with incarcerated people and may be able help you.

---

difficulties that may develop over the years).

195. *See* United States v. Blarek, 7 F. Supp. 2d 192, 212 (E.D.N.Y. 1998).

196. *See* United States v. Blarek, 7 F. Supp. 2d 192, 212 (E.D.N.Y. 1998).

APPENDIX A

RESOURCES FOR INFORMATION, COUNSELING, AND SUPPORT

National AIDS Organizations

Center for Disease Control National AIDS Hotline (CDC-INFO)
Centers for Disease Control and Prevention, 1600 Clifton Rd., Atlanta, GA 30333
Phone: (800) CDC-INFO (232-4636) (Monday through Friday, 8:00 am to 8:00 pm, in English, en Español)
TTY (for callers with hearing impairments): (888) 232-6348 (Monday through Friday, 8:00 am to 8:00 pm)

Center for Disease Control HIVInfo
Phone: (800) 448-0440
TTY (for callers with hearing impairments): (888) 480-3739 (M–F 9:00 am to 6:00 pm ET)

HIV/AIDS Treatment Information Service (AIDSinfo)
P.O. Box 4780
Rockville, MD 20849
Toll-free: (800) 448-0440 (M–F 1:00 pm to 4:00 pm ET)
http://www.aidsinfo.nih.gov/
Free literature, including U.S. guidelines on HIV treatment from the Department of Health and Human Services (DHHS).

HIV/AIDS/HCV Education Project
ACLU NATIONAL PRISON PROJECT
915 15th St. NW, 7th Floor
Washington D.C. 20005
https://www.aclu.org/issues/hiv
Referrals to city and state programs nationwide. Resource center, including free copies of PLAY IT SAFER, a booklet on STIs (sexually transmitted infections), and HIV/AIDS magazines.

National Hepatitis Corrections Network
1621 South Jackson Street, Suite 201
Seattle, WA 98144
Phone: (206) 732-0311 or (800) 218-6932
E-mail: mandy@hepeducation.org
http://www.hcvinprison.org/
Education, advocacy and support for incarcerated people with hepatitis C and HIV co-infection.

National Minority AIDS Council
Prison Initiative
1000 Vermont Ave. NW, Ste. 200
Washington, DC 20005-4903
Phone: (202) 870-0918
http://www.nmac.org/
E-mail: info@nmac.org

The Prison Initiative is a project of NMAC, which helps community and faith-based organizations, correctional facilities and health departments evaluate, improve, and implement effective discharge planning for HIV positive incarcerated people and formerly incarcerated people.

National Native American AIDS Prevention Center
1031 33rd St #270
Denver, CO 80205
Phone: (720) 382-2244
Fax: (720) 382-2248
Automated fax info: (800) 283-6880
Hours: Monday–Friday 9:00 am to 5:00 pm
http://www.nnaapc.net/
E-mail: information@nnaapc.org
The National Native American AIDS Prevention Center (NNAAPC) offers a variety of programs to help promote education about HIV/AIDS, support prevention efforts, and help foster healthy attitudes about sexuality and sexual health in the Native community.

AIDS Organizations in New York

Hudson Valley Community Services
HVCS Headquarters
40 Saw Mill River Road Suite UL-5
Hawthorne, NY 10532
Tel: (914) 345-8888
Fax: (914) 785-8299

Orange County
280 Broadway 4th Floor
Newburgh, NY 12550
Phone: (845) 562-5005
Fax: (845) 562-5212
http://www.hudsonvalleycs.org/
Counseling, education, food, and pantry.

American Foundation for AIDS Research
120 Wall Street, 13th Floor
New York, NY 10005-3902
Phone: (212) 806-1600
Toll-free: (800) 392-6327
Fax: (212) 806-1601
This group is a non-profit organization that supports AIDS research, HIV prevention, treatment education, and the advocacy of AIDS-related public policy.

Asian Pacific Islander Coalition on HIV/AIDS
400 Broadway
New York, NY 10013
Phone: (212) 334-7940
(866) 274-2429 (Infoline)
Fax: (212) 334-7956
This group is a non-profit organization providing HIV/AIDS-related services, education, and research to Asian and Pacific Islander Communities in New York City. Services include HIV testing, STI screening and treatment, acupuncture, and more.

Correctional Association of New York
PO Box 793
Brooklyn, NY 11207
Phone: (212) 254-5700
Fax: (212) 473-2807
This organization provides advocacy, research, information, and referral to incarcerated people and parolees living with HIV.

Gay Men's Health Crisis
307 W 38th St.
New York, NY 10018
Phone: (212) 367-1000
Toll-free: (800) 243-7692 (Hotline) (in English, en Español) (Mon-Fri. 9:00 am to 6:00 pm)
Assists incarcerated people with obtaining public benefits when on parole, and publishes a variety of informational brochures. It provides legal services to anyone who is HIV-positive. It also provides referrals and serves women and children.

HIV Law Project
81 Willoughby St.
Brooklyn, NY 11201
Phone: (212) 577-3001 (in English, en Español)
Fax: (212) 577-3192
This organization provides legal advocacy. However, it only deals with civil law, not criminal law, cases. It provides free civil legal services primarily related to entitlements, housing, immigration (including permanency planning), and family law. It serves residents of Manhattan and the Bronx, and homeless people in all five boroughs. Collect calls are accepted.

Hispanic AIDS Forum, Inc.
Manhattan Office:
1767 Park Avenue, 4th Floor
New York, NY 10035
Phone: (212) 563-4500 (in English, en Español)
Fax: (212) 868-6237

Bronx Office:
975 Kelly Street, Suite 402
Bronx, NY 10459
Phone: (718) 328-4188 (in English, en Español)
Fax: (718) 328-2888

Queens Office:
76-11 37th Avenue, Suite 206
Jackson Heights, New York 10372
Phone: (718) 409-5309
The Hispanic AIDS Forum is New York's largest Latino-run AIDS outreach organization. It has a bilingual staff and provides seminars, outreach programs, case management services, counseling and other support, and referrals to other organizations.

Latino Commission on AIDS
24 West 25th Street, 9th Floor
New York, NY 10010
Phone: (212) 675-3288
Fax: (212) 675-3466
A grass-roots organization working in collaboration with the AIDS in Prison Project.

Legal Action Center (LAC)
225 Varick Street #401
New York, NY 10014
Phone: (212) 243-1313
Toll-free: (800) 223-4044
Fax: (212) 675-0286
This organization provides legal services for ex-offenders with HIV, such as help with housing and employment discrimination.

New York AIDS Coalition (NYAC)
400 Broadway
New York, NY 10013
Phone: 646-744-1597
Fax: 212-334-7956
Brings together community-based HIV/AIDS organizations and their supporters to work for increased funding and fair policies for people living with HIV/AIDS in New York State.

The Osborne Association AIDS in Prison Project
809 Westchester Avenue
Bronx, NY 10455
Phone: (718) 707-2600
Fax: (718) 707-3102
E-mail: info@osborneny.org
AIDS in Prison Project Hotline (718) 378-7022 (T,W,R, 3:00 to 8:00 pm; collect calls accepted)
http://www.osborneny.org
https://healthyoxfordhills.org/resources/aids-prison-projects-hotline/
Provides information, counseling, education, placement in service organizations, and medical advocacy for incarcerated people in New York.

Prisoners' Rights Project of the Legal Aid Society
199 Water Street
New York, NY 10038
Phone: (212) 577-3300
Fax: (212) 509 8433
Provides services to incarcerated people only. It also helps incarcerated people in New York City and New York State with medical concerns and brutality cases.

Prisoners Legal Services of New York (PLSNY)
Albany Location:
41 State Street, Suite M112
Albany, NY 12207
Prisons served: Bedford Hills, CNYPC, Coxsackie, Downstate, Eastern, Edgecombe, Fishkill, Great Meadow, Greene, Greenhaven, Hale Creek, Hudson, Marcy, Midstate, Mohawk, Otisville, Queensboro, Shawangunk, Sing Sing, Sullivan, Taconic, Ulster, Wallkill, Walsh, Washington, Woodbourne.

Buffalo Location:
14 Lafayette Sq,, Suite 510
Buffalo, NY 14203
Prisons served: Albion, Attica, Collins, Gowanda, Groveland, Lakeview, Orleans, Rochester, Wende, Wyoming.

Ithaca Location:
114 Prospect St.
Ithaca, NY 14850
Prisons served: Auburn, Cape Vincent, Cayuga, Elmira, Five Points, Southport, Watertown, Willard.

Plattsburgh Location:
24 Margaret St., Suite 9
Plattsburgh, NY 12901
Prisons served: Adirondack, Altona, Bare Hill, Camp Gabriels, Chateaugay, Clinton, Franklin, Gouverneur, Lyon Mountain, Moriah Shock, Ogdensburg, Riverview, Upstate.

(Due to the large number of inquiries, PLSNY does not accept telephone calls from incarcerated people and their family members). PLSNY is a non-profit legal services organization providing civil legal services to indigent incarcerated people in New York State correctional facilities in cases where no other counsel is available.

Women's Prison Association
Reentry Unit
110 2nd Avenue
New York, NY 10003
Phone: General Info: (646) 292-7740
Reentry Services: (718) 637-6877
Fax: (646) 292-7763
*WPA **Reentry Services** include a full array of prison, jail, and community-based assistance aimed at helping women become full participants in community life following incarceration or other criminal justice involvement.*

AIDS Organizations in California

San Francisco AIDS Foundation
1035 Market St, Ste. 400
San Francisco, CA 94103
Phone: (415) 487-8000
Fax: (415) 487-8079
http://www.sfaf.org
Provides vital services and programs designed to improve the quality of life for people living with HIV/AIDS and to reduce the number of new infections that occur each year.

Center for Health Justice
900 Avila Street, Stes. 102 & 301
Los Angeles, CA 90012
Phone: (213) 229-0985
Fax: (213) 229-0986
E-mail: info@healthjustice.net
http://www.healthjustice.net
Provides HIV legal and education information inside and outside correctional facilities.

Project Inform's National HIV/AIDS Treatment Hotline
273 Ninth Street
San Francisco, CA 94103
Toll-free: (800) 822-7422
Hours: Monday-Friday, 10:00 amto 4:00 pm Pacific Time (PT).
Nightline: (800) 628-9240
Hours: 5:00 pm to 5:00 am every day.
Provides legal and educational information for those with HIV/AIDS. Will mail out materials to incarcerated people and accepts collect calls from correctional institutions.

AIDS Project Los Angeles
611 South Kingsley Drive
Los Angeles, CA 90005
Phone: (213) 201-1600
http://www.aplahealth.org/

AIDS Organizations in Illinois

Illinois AIDS Hotline
Toll-free: (800) 243-2437 (in English, en Español)
Hours: daily 8:00 am to 10:00 pm Central Time (CT).
Up-to-date information on HIV transmission, HIV counseling and testing sites. Offers information and support resources, risk reduction. Bilingual.

AIDS Organizations in Pennsylvania

Lewisburg Prison Project
115 Farley Circle, Suite 110
Spring Run Professional Park
Lewisburg, PA 17837
Phone: (570) 523-1104
Fax: (570) 523-3944
E-mail: info@lewisburgprisonproject.org
Non-profit organization that provides legal and other assistance to incarcerated people in Central Pennsylvania for non-criminal issues. Counsels and assists incarcerated people who encounter treatment they perceive as illegal or unfair, including medical treatment.

Pennsylvania AIDS Hotline
Toll-free: (800) 662-6080
Up-to-date information on HIV transmission, HIV counseling and testing sites. Offers information and support resources, risk reduction.

AIDS Organizations in Texas

Prism Health North Texas
351 West Jefferson Blvd. #300
Dallas, Texas 75208
Phone: (214) 521-5191
Fax: (214) 528-5879
TDD: (214) 231-0151
http://www.phntx.org
Assists individuals in accessing the healthcare, resources, and support necessary to successfully manage the challenges of living with HIV/AIDS. Assists incarcerated people in obtaining information regarding HIV/AIDS and other STIs.

AIDS Foundation Houston
6260 Westpark Dr. #100
Houston, TX 77057
Phone: (713) 623-6796
Fax: (713) 623-4029
E-mail: info@AFHouston.org
http://www.aidshelp.org
Special Prison Initiative Program. Prevention counseling, health education/risk reduction, HIV prevention education, STI prevention education, street outreach, peer education, case management for HIV/AIDS, hepatitis education/counseling, hotline/telephone counseling, peer counseling, food pantry, nutrition services, volunteer services, HOPWA, emergency financial assistance, clothing assistance, housing programs.

National Hepatitis B Organization

Hepatitis B Foundation
3805 Old Easton Rd.
Doylestown, PA 18902
Phone: (215) 489-4900
Fax: (215) 489-4920
E-mail: info@hepb.org
Hepatitis B Foundation provides information and support for people with Hepatitis B and supports research for a cure. It also offers an online support group.