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Prisoners with HIV/AIDS

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❖ **Introduction**

Prisoners with HIV/AIDS are ubiquitous in today's lockups, detention centers, jails, and prisons. Courts have addressed a variety of issues over the years about the treatment and handling of such prisoners.

This two-part article takes a brief look at five specific areas that have come up fairly frequently: whether to segregate out or quarantine such prisoners, providing them with adequate medical care, privacy concerning an individual prisoner's HIV/AIDS status, protecting HIV/AIDS prisoners from assault, and assertions that a facility or one or more of its programs engages in discrimination against or provides substandard services for prisoners with HIV/AIDS. A short section addresses claims by other prisoners who are not HIV positive about HIV/AIDS related issues.

There is a medical difference between prisoners who test positive for the HIV virus but are asymptomatic and those with full blown AIDS. Additionally, there have been many advances in the treatment of the disease which has led to longer life spans and a variety of treatment regimens.

This, however, is a legal article, not a medical one, and those who are merely HIV positive and those who have full blown AIDS will be discussed together here. At the end of the article, there is a section of useful resources and reference.

❖ Segregation

When HIV/AIDS was a relatively new phenomena in the correctional system (and in society at large), there was initially a great deal of panic and uncertainty about how to respond. Accordingly, many called for segregating such prisoners or were unsure about what to do. Over time, however, with a scattering of exceptions, the “solution” of segregating, quarantining, or isolating such prisoners has largely been rejected by consensus.

Much earlier, courts had upheld Alabama’s segregation policy, an approach that a number of states then adopted. See [Onishea v. Hopper](#), #96-6213, 171 F.3d 1289 (11th Cir. 1999), cert. denied, sub nom, [Davis v. Hopper](#), #98-9663, 528 U.S. 1114 (2000), which justified the segregation policy then as a means of preventing the spreading of AIDS.

Most recently, the settlement of a lawsuit ending the segregation of HIV-positive prisoners in Alabama correctional facilities was approved by a federal trial court, and left South Carolina as the only state still segregating HIV positive prisoners (there may be some exceptions in various localities within individual states).

In Alabama, female prisoners who are HIV-positive are now integrated into the general prison population and the same will be true of male positive prisoners sometime in 2014. \$1.3 million in legal fees and costs was to be paid by the state. The prior segregation policy was found to violate federal disability discrimination statutes. The plaintiffs argued it also denied them the opportunity to be considered for various rehabilitative services and programs offered to other prisoners, [Henderson v. Thomas](#), #2:11cv224, 2013 U.S. Dist. Lexis 140098 (M.D. Ala.).

The court found that the Americans with Disabilities Act (ADA) prohibits blanket disability-based exclusions and mandates that prisoners with disabilities must be housed in the most integrated setting appropriate to the needs of the individuals. Exceptions may be made only on an individualized, case-by-case basis if the specific situation warrants different treatment.

The court ordered Alabama to develop a plan to end its discriminatory practices, which the plaintiffs argued included its categorical exclusion of prisoners with HIV from work-release jobs in the food industry, from assignment to faith-based honor dorms, and from a variety of other rehabilitative, educational, trade skills and vocational programs. The court also found that HIV-positive prisoners with substance abuse problems

and serious mental health needs were improperly excluded even from critically important treatment programs. Expert witnesses in the case presented evidence that Alabama's HIV policy was not based on legitimate interests in safety. They said that it was unnecessary to prevent the transmission of HIV. The defendant's own associate commissioner in charge of security stated during cross-examination that he no longer believed the HIV-segregation policy was justified.

There was other earlier case law that held differently. In [Carter v. Lowndes County](#), 89 Fed. Appx. 439 (5th Cir. 2004), *cert. denied*, #03-9917, 542 U.S. 924 (2004), for instance, the court held that a county's policy of segregating inmates with contagious diseases did not violate a pre-trial detainee's right to freely exercise his religion by preventing him, because of his HIV status, from attending religious services. The policy served a legitimate purpose, the court found, and a minister would have visited his cell upon his request.

❖ Medical Care

All prisoners have a constitutional right to adequate medical treatment. Prison and jail personnel cannot act with deliberate indifference to their serious medical needs. See [Civil Liability for Inadequate Prisoner Medical Care](#), 2007 (9) AELE Mo. L.J. 301. This is true for prisoners with HIV/AIDS, who clearly have a serious, and potentially deadly, medical condition.

What treatment is adequate? Clearly, getting no treatment at all does not meet the standard. In [Leavitt v. Correctional Medical Services, Inc.](#), #10-1432, 2011 U.S. App. Lexis 13269 (1st Cir.), an HIV-positive prisoner who said that he did not receive his medication during a 167-day period of incarceration at a county jail stated a viable claim for liability against a jail employee who allegedly stated that "we don't give away" HIV medications "here at this jail." There was also a genuine issue of fact as to whether a physician's assistant acted with deliberate indifference to the prisoner's medical needs.

In contrast was the result reached in [Simpson v. Suliene](#), #09-1047, 340 Fed. Appx. 331, 2009 U.S. App. Lexis 16636 (Unpub. 7th Cir.). In that case, an HIV-positive inmate claimed that prison personnel violated his Eighth Amendment rights by denying him medical treatment for a blood condition called [pancytopenia](#). The court found that any delay was in obtaining a diagnostic test, and that the prisoner failed to show that he was actually denied treatment, or even that there was an existing treatment available for pancytopenia. The prisoner did not claim that his HIV went untreated. Summary judgment was properly granted to a prison physician and to the manager of the prison's health service unit.

In order to be liable for the failure to provide treatment, there must be some basis to show that the defendants knew or should have known of the medical condition. In [*Estate of Chance v. First Correctional Medical, Inc.*](#), #08-4220, 329 Fed. Appx. 340, 2009 U.S. App. Lexis 13417 (Unpub. 3rd Cir.), after a prisoner died of [*cryptococcal meningitis*](#), an autopsy showed that he suffered from an undiagnosed case of HIV/AIDS that rendered him susceptible to the disease that killed him.

Summary judgment was upheld for defendant state correctional officials who were not shown to have had any reason to know or believe that the prison medical staff was not adequately treating the prisoner. Discovery in the case was properly limited to non-privileged documents concerning the allocation of resources, medical costs, and documents mentioning the deceased prisoner. The plaintiff's request for 26,000 documents that the Delaware Department of Corrections had furnished to the U.S. Department of Justice during a federal investigation of state prison conditions was overbroad.

See also [*Lee v. Stalder*](#), #06-30444, 2007 U.S. App. Lexis 5732 (5th Cir.), in which the court ruled that the mother of Louisiana inmate who died from complications of HIV failed to show that prison medical personnel acted with deliberate indifference to a known excessive risk that he would die from such complications. The defendants were therefore entitled to summary judgment in a federal civil rights lawsuit.

General complaints about treatment or disagreements about the proper course of treatment to follow are not enough to establish civil rights liability for deliberate indifference. In [*Jackson v. Fauver*](#), #CIV.98-2890, 334 F. Supp. 2d 697 (D.N.J. 2004), the court found that a prisoner failed to show that correctional employees were deliberately indifferent to his serious need for treatment for his HIV/AIDS condition and Hodgkin's disease as he did not demonstrate that any alleged lapses in his treatment resulted in any injuries.

Similarly, in [*Smith v. Carpenter*](#), #01-0294, 316 F.3d 178 (2nd Cir. 2003), while agreeing that a prisoner's HIV-positive status constituted a serious medical condition, a federal appeals court nevertheless affirmed a trial court's denial of a new trial in his lawsuit over having been deprived of his medication for several days during two periods of time following a jury verdict for defendant prison officials.

The prisoner was denied his medications for seven days the first time due to a delay in refilling the prescriptions, while he later was not provided with replacement medication for five days after his HIV medication was confiscated during a random search of his living quarters.

While there was testimony in his case that strict compliance with his drug regimen was required to prevent deterioration of his immune system and to slow the progression of his HIV infection, a condition that can ultimately lead to death from full blown AIDS, the appeals court found that the jury was also entitled to consider evidence regarding the absence of actual medical injury resulted from these two brief denials of medication as relevant factors in determining whether prison officials had been deliberately indifferent to his serious medical needs.

In this case, while the prisoner testified that he suffered temporary itching, severe headaches, and stress, he did not introduce any evidence that his HIV infection or overall health worsened as a result of the “two isolated episodes of missed medication.” The court rejected the argument that the trial court, in determining whether to grant him a new trial, should have only required him to establish a “potential” for serious future injury in order to state an Eighth Amendment denial of medical care claim.

It is the “particular risk of harm faced by a prisoner due to the challenged deprivation of care,” the court stated, “rather than the severity of the prisoner’s underlying medical condition, considered in the abstract, that is relevant for Eighth Amendment purposes.” Under the circumstances, the jury was entitled to find that the prisoner failed to demonstrate deprivation of a serious medical need.

Slight delays in providing medication do not constitute deliberate indifference. In [*Evans v. Bonner*, #CV-01-1131](#), 196 F. Supp. 2d 252 (E.D.N.Y. 2002), a New York federal trial court rejected the claim of an HIV-positive prisoner that a county correctional center nurse’s alleged failure to provide him his medication in a timely fashion was sufficient to state a claim for violation of his Eighth Amendment rights.

The prisoner claimed that the medication was supposed to be distributed every eight hours, but that it was instead sometimes distributed after greater periods of time, sometimes as much as three to four hours late. At other times, he claimed that the pills were given to him “too close together” so that they “would not work.” He claimed that this caused emotional distress and other health problems.

The prisoner admitted that he received all his medication, and the court noted that the plaintiff failed to produce any medical evidence that the hours delay in taking the medication were a producing cause of symptoms such as nausea, pain in his joints, a stiff back and legs, etc. Unrefuted testimony established that his HIV condition “improved” by the time he left the facility.

The court found that any alleged delay in administration of the medication was, at most, negligence, and could not be a basis for a constitutional claim for deliberate indifference to a serious medical need. Even if the delay were assumed to have caused the aches, pains and joint problems the prisoner described--which he failed to prove--such symptoms did not constitute a “condition of urgency” or one “that may produce death, degeneration or extreme pain” sufficiently serious to support a constitutional claim.

In order to be entitled to complain about medical treatment or the lack thereof, a prisoner has to at least be willing to cooperate with a minimal medical testing and examination to allow a physician to diagnose and treat his or her condition. The court in [Walker v. Peters](#), #97-1058, 233 F.3d 494 (7th Cir. 2000) ruled that a prisoner with AIDS could not recover damages for allegedly inadequate medical treatment when he refused to take an HIV test to show that he needed the requested drugs. Because he “refused to take a reasonably requested confirmatory test that would have led to appropriate treatment, we conclude that he cannot make out a claim for deliberate indifference to his serious medical needs.”

Some other cases of interest in this area are:

- [Leon v. Johnson](#), #97-CV-6041L, 96 F. Supp. 2d 244 (W.D.N.Y. 2000), finding that an alleged delay in providing a Spanish-speaking prisoner with AIDS medication was not a violation of the Eighth Amendment when there was no claim that the failure to adequately advise him of prison medical policies was deliberate. The prisoner had no clearly established right to Spanish-speaking medical personnel, so prison officials were not liable for an “invasion of privacy” allegedly resulting from inmate’s need to use other prisoners as interpreters.
- [Taylor v. Barnett](#), #98-827, 105 F. Supp. 2d 483 (E.D.Va. 2000), ruling that an assertion that a prison doctor changed the medication of a prisoner suffering from AIDS solely on the basis of cost, causing serious side effects and shortening life expectancy, was sufficient to state a claim for deliberate indifference to serious medical needs.
- [McNally v. Prison Health Services](#), #98-290, 52 F. Supp. 2d 147 (D. Me. 1999), concluding that an HIV-positive prisoner who was denied his prescribed medication for three days was entitled to summary judgment. The evidence was sufficient to show that he suffered physical harm from the medication denial.

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