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THE HIV AND AIDS IN PRISON HANDBOOK

Updated August 2009

Your Responsibility When Using this Information:

When we wrote this information, we did our best to give you useful and accurate information because we know that prisoners often have difficulty obtaining legal information and we cannot provide specific advice to all the prisoners who request it. The laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this material every time the law changes. If you want legal advice backed by a guarantee, try to hire a lawyer to address your specific problem. If you use this pamphlet it is your responsibility to make sure that the law has not changed and is applicable to your situation. Most of the materials you need should be available in your institution law library.

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The HIV and AIDS in Prison Handbook: What Every CDCR Prisoner Should Know
August 2009

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INTRODUCTION

This Handbook is written for prisoners in the California Department of Corrections and Rehabilitation (CDCR), their legal advocates, and their family members. We hope it will be useful for prisoners who are learning to live with HIV, as well as for other prisoners and legal advocates who want to learn more about HIV and AIDS.

At the end of 2006, over 1,100 prisoners in the California prison system were reported to be HIV-positive.¹ Prison medical staff estimate that between 5,000 and 8,500 prisoners (about 3% to 5% of the total prisoner population) could carry the virus, although some prisoner advocates estimate that there are probably close to 24,000 HIV-positive prisoners in California, most of whom either have not revealed their HIV status to the prison or do not themselves know that they are HIV-positive.²

The field of HIV research has advanced rapidly over the past ten years, and is continuing to progress further. Consequently, the health information in this Handbook tends to be more general than specific. More current information may be requested by contacting the organizations listed in the Appendix. In addition, the CDCR's policies change often, and different prisons have different policies. You should keep a lookout for Administrative Bulletins or other memos that announce policy changes.

WHAT YOU NEED TO KNOW ABOUT HIV AND AIDS

What Are HIV and AIDS?

AIDS (Acquired Immunodeficiency Syndrome) is a disease caused by the Human Immunodeficiency Virus (HIV), a virus that destroys the immune system of the infected person. People with healthy immune systems are able to defend against bacteria and viruses that are present in the environment; certain blood cells in the body fight off the harmful germs and prevent disease. However, when a person is infected with HIV, the virus slowly breaks down these natural defenses. The virus starts killing off the CD4 "T" cells that are crucial to fighting infection. It also causes some other types of blood cells to stop working properly. Eventually, the body can no longer protect itself. A person with HIV is then likely to develop one or more

¹ Laura M. Maruschak, HIV in Prisons, 2006 (2008), available at www.ojp.usdoj.gov/bjs/pub/html/hivp/2006/hivp06.htm.

² These figures are based on data that show that the prevalence of confirmed HIV and AIDS among the prison population is more than three times higher – and may be as much as 14 times higher – than the prevalence among the general U.S. population. E.g., Centers for Disease Control and Prevention, "HIV Testing Implementation Guidance for Correctional Settings" (Jan. 2009), p. 4, available at www.cdc.gov/hiv/topics/testing/resources/guidelines/correctional-settings.

It should also be noted that HIV rates among female prisoners are higher (3%) than among males (1.9%), even though only 1 in 10 inmates in U.S. prisons and jails is a woman. Moreover, incarcerated women are 15 times more likely to be HIV-infected than women on the outside. "HIV Infection Among Women in Prison: Considerations for Care," IDCR, Vol. 8, Issues 5-6 (May/June 2005), p. 1.

illnesses. These illnesses are called “opportunistic infections” (OIs) because they take the opportunity to infect the person whose immune system has been weakened by HIV.

Having the HIV infection is not the same as having AIDS. The virus can live in a person’s body for years before his or her immune system begins to break down. Many people feel or look healthy and can lead normal lives for quite some time before they show any signs of infection.

A federal governmental agency called the Centers for Disease Control and Prevention considers an HIV-infected person to have AIDS either when (1) he or she develops one or more specific opportunistic infections or cancers (“AIDS-defining conditions”) or (2) his or her T-cell count drops below 200.³

No one knows how many of HIV-infected people will go on to develop AIDS. Prior to the mid-1990s, experts believed that most or all HIV-infected persons eventually would get AIDS, and that about 50% of those people would develop AIDS within 10 years after becoming infected with HIV. However, many people with HIV infections now are able to stay healthy for longer periods of time due the use of powerful new medications.

How Is HIV Transmitted?

We know how HIV is transmitted (how people catch it) and how it is not transmitted. It is what you do, not who you are, that puts you at risk of being infected. HIV and AIDS affect people of every race, color, gender, sexual orientation, social class, and marital status.

The virus is spread through a direct exchange of blood, semen, or vaginal fluids between an HIV-infected person and someone else. Most commonly, this exchange occurs by having unprotected sex or sharing dirty drug or tattoo needles with an HIV-infected person. HIV also may be spread from a mother to her unborn baby, either while the baby is in the womb or by exposure to blood during birth, and may also spread to a newborn baby through breast-feeding.

It is possible for a person to come into contact with the bodily fluids of someone who has HIV and remain uninfected (“HIV-negative”). However, any time you engage in an activity where bodily fluids are exchanged with an HIV-positive person, you risk getting HIV. The risk varies depending on which types of fluid are exchanged and into what part of the body they are introduced. In general, the risk is highest for needle sharing and unprotected anal sex, and lowest for contact such as a splash to the eyes or mouth.⁴

It is important to remember that anyone infected with HIV, even a person who looks and feels healthy, can pass the virus to someone else. Do not assume, for example, that it is safe to have unprotected sex with someone just because he or she looks fine. Even if someone tells you that he or she does not have HIV, it is still important to practice safe sex. Indeed, even if a

³ Centers for Disease Control and Prevention, “Revised Surveillance Case Definitions for HIV Infection Among Adults, Adolescents, and Children Aged < 18 Months and for HIV Infection and AIDS Among Children Aged 18 Months to < 13 Years – United States, 2008,” MMWR, Vol. 57, No. RR-10 (Dec. 5, 2008), p. 2.

⁴ See, e.g., “HIV Infection Among Women in Prison: Considerations for Care,” Infectious Diseases in Corrections Report [IDCR], Vol. 8, Issues 5-6 (May/June 2005), p. 2.

person has been tested recently, the test may not be accurate because it can take up to six months before someone who has been exposed to the virus will test positive for HIV. During this time, the virus can still be transmitted to another person.

What Does Not Transmit the AIDS Virus?

Although HIV and AIDS were discovered more than 25 years ago, there is still a great deal of misunderstanding about them. HIV is not spread through casual contact. The virus is rarely found in sweat, saliva or tears, and when it is, the amount of the virus is too small to infect someone else. There have been no reported cases of anyone contracting AIDS from coming into contact solely with an HIV-infected person's sweat, saliva or tears.⁵

The virus is not spread by touching, kissing, hugging, sneezing, or coughing. It is not spread by sharing the same prison cell, cigarette, telephone, toilet, or shower stall as an infected person. HIV is not spread in food or on sheets. One cannot be infected by using sheets washed by an HIV-positive laundry worker or by eating food prepared by someone with HIV. One cannot be infected by coming into contact with someone's sweat while playing sports. A guard cannot be infected by escorting an HIV-positive prisoner.

An infected mother will not infect her child by taking care of him or her, but she can infect her child by breast-feeding. There are ways to reduce the risk of passing the virus through breast milk. Because of the many advantages to the baby from breast-feeding, mothers with HIV should talk to a health care provider when making the decision whether or not to breast-feed.⁶

How Can I Protect Myself From Becoming Infected?

The only way to eliminate the risk of becoming infected with HIV is to not do any of the things that are known to permit transmission of the virus. However, there are other ways you can reduce the risk of contracting the virus. Also, you should take precautions against HIV infection even if you have already tested positive for HIV. Do not assume, for example, that you can have unprotected sex just because both you and your sexual partner are HIV-positive. It is possible to become re-infected with HIV, which can increase both the amount of the virus in your body and the number of different types of the virus in your body. Also, even if you have tested positive for HIV, you need to avoid getting other sexually transmitted diseases such as herpes, hepatitis, syphilis, Epstein-Barr virus, and cytomegalovirus.⁷ There are no cures for

⁵ Although there are no documented cases of HIV transmission through biting or spitting, advocates say that known or suspected HIV-positive inmates receive much harsher punishments than other prisoners for the same infractions, and that “[t]he CDC maintains a written policy encouraging corrections officers and medical staff to charge HIV+ prisoners with attempted murder for merely spitting or biting.” Judy Greenspan, “AIDS in Prison: The New Death Row for Prisoners?” (Oct./Sept. 1996), available at <http://sonic.net/~doret/Issues/96-10%20OCT/aidsprison.html>, accessed July 13, 2009.

⁶ CDCR policy provides that pregnant inmates are to be informed of the benefits of breast-feeding, and educated about breast-feeding with certain conditions such as HIV infection. DOM § 54045.19.

⁷ For instance, recent figures indicate that the prevalence of hepatitis C (HCV) infection among prisoners approaches 40% (and the figure is much higher for incarcerated women than for incarcerated men), far exceeding that of HIV. Co-infection with HCV and HIV is very common among prisoners. See “HIV Infection Among Women in Prison: Considerations for Care,” *IDCR*, Vol. 8, Issues 5-6 (May/June 2005), p. 3. Although this Handbook does not specifically address the topic of HCV, the Appendix lists some organizations you can contact to learn more about the

many of these diseases, and being infected with them in addition to HIV may cause you to become ill much sooner.

Prevention of Sexual Transmission

Keep in mind that the virus can be passed from man to man, man to woman, woman to man, and woman to woman during vaginal or anal sex using a penis, fingers, fist, or a shared object, and during oral sex.

If you are having sex (including oral sex) with a man, have him use a latex condom and a personal water-based lubricant such as K-Y Jelly.⁸ Do not use oil-based products like petroleum jelly, baby oil, or hand lotion as a lubricant because they will weaken the latex, making the condom ineffective as protection against HIV.

If you are having sex with a woman, be aware that HIV has been found in vaginal fluids, in menstrual blood, and in discharge from yeast infections. This means that you and your partner should use rubber gloves for hand-genital sex, because your fingers may have small cuts that permit entry of the virus. In addition, use a barrier method like a dental dam for oral sex. A dental dam is a square piece of latex that you use to cover the vagina during oral sex. You can make your own dental dam by cutting open a condom.

Using latex condoms all the time for any sexual activity has long been considered the most effective way to reduce the risk of becoming infected with HIV. Nevertheless, most prisons in the United States do not permit distribution of condoms to inmates.⁹ Many places have laws that make it a crime for prisoners to engage in sexual activities. For example, in California, some sexual acts are crimes if they are done by prisoners, even if they are consensual,¹⁰ and prisoners can be disciplined for almost any type of “sexual behavior.”¹¹ Some people argue that distributing condoms would encourage illegal behavior. Some officials also object to condoms in prisons on the grounds that they could be used to hide drugs or other contraband or used as weapons.¹²

disease, its treatment, and the effects of co-infection with HIV.

⁸ Until the late 1990s, men routinely were advised to use a lubricant that contains spermicide (such as Nonoxynol-9) with the condom. However, further studies revealed that Nonoxynol-9 actually may increase the risk of HIV infection, at least among women, because it kills healthy bacteria in the vagina that help fight off infection. E.g., Daniel J. DeNoon, “Vaginal Gel to Prevent AIDS Shows Potential” (Nov. 1, 2005), available at www.webmd.com/hiv-aids/news/20051101/vaginal-gel-to-prevent-aids-shows-potential, accessed May 21, 2009.

⁹ Currently, condoms are available in state prisons in Vermont and Mississippi, and in urban jail systems in New York City, Philadelphia, Los Angeles, San Francisco, and Washington, D.C.

¹⁰ Penal Code §§ 286(e) (sodomy while in state prison) and 288a(e) (oral copulation while in state prison).

¹¹ 15 CCR §§ 3007, 3323(b)(5) and (g)(3).

¹² See, e.g., Elizabeth Kantor, “HIV Transmission and Prevention in Prisons” (April 2006), available at <http://hivinsite.ucsf.edu/InSite?page=kb-07-04-13>, accessed July 16, 2009.

The CDCR does allow spouses and domestic partners to bring condoms on family visits.¹³

Until recently, attempts to require condom distribution in the prisons had been unsuccessful. However, in October 2007, Governor Schwarzenegger directed the CDCR to develop a pilot program in one state prison to test the “risk and viability” of condom distribution. The pilot program began in November 2008 at CSP–Solano. Inmates are allowed to have one packaged condom at a time, which they obtain from dispensing machines. Inmates are advised that the distribution of condoms does not relax any of the laws prohibiting sexual activity in prison; those laws will still be enforced, and inmates engage in sexual activity at their own risk. The provision of condoms “is simply an acknowledgement that CDCR cannot prevent all instances of inmates engaging in sexual conduct” and “an attempt to reduce the instances of disease transmission that can affect not only the inmate population but the public at large.”¹⁴ The pilot program is scheduled to run through September 2009, and then state officials will decide if such a program could be put in place throughout the CDCR. As of February 2009, the program had been “going smoothly” and there had not been any incidents in which state-provided condoms were used as weapons or to hide contraband or drugs.¹⁵

Prevention of Needle-Sharing Transmission

Drug use involving shared needles is another common way by which HIV is transmitted. If you shoot drugs, make every effort to stop. Indeed, drug use, whether inside or outside of prison, is illegal and can be punished as a crime and/or violation of prison rules. Counseling and treatment for drug addiction is available both in the prisons and on the street; seeking help for drug addiction is crucial if you want to be healthy.

Obviously, overcoming drug addiction is easier said than done, so this Handbook also provides information about how to reduce the risk of transmitting HIV through drug use. Please note that we are NOT recommending drug use or sharing needles, only providing you with information about the risks of HIV transmission and how to reduce the risk of HIV infection.

If you shoot drugs, do not share your dirty works (needles, syringes, or other drug paraphernalia like cookers) with anyone else. The blood of the HIV-positive person contains the virus. Blood remains on the needle after injection and can be spread to the next person if he or she uses that same needle for injection. Unfortunately, no prison system in the United States currently distributes sterile syringes to inmates.¹⁶

Also, do not share toothbrushes, razors, or instruments used for ear-piercing or marking the skin with a tattoo. These personal items could be contaminated with infected blood.

¹³ DOM 54020.33.15.

¹⁴ 15 CCR § 3999.7.

¹⁵ Centers for Disease Control and Prevention, “California: Prison Condom Program Reports No Major Problems” (Feb. 12, 2009), available at www.thebody.com/content/whatis/art50546.html, accessed July 14, 2009.

¹⁶ Elizabeth Kantor, “HIV Transmission and Prevention in Prisons” (April 2006), available at <http://hivinsite.ucsf.edu/InSite?page=kb-07-04-13>, accessed July 16, 2009.

If you do share needles or personal items, you are at risk for HIV infection. There are steps that you can take to reduce the risk somewhat, but you cannot eliminate the risk. If you must share needles or other items, you should clean the equipment with bleach after each person uses the needle. (You should also consider getting tested for HIV periodically.) First, pour bleach into a glass. Fill the syringe with bleach. Empty the bleach from the syringe. Repeat this four times. Then fill a glass with clean water. Fill the syringe with water. Empty the water from the syringe. Repeat this procedure four times. Hot water alone will not kill the virus; you must use bleach. (However, like condoms and sterile syringes, no correctional system in the United States systematically provides bleach to inmates.) You should be aware that even if you carefully follow this procedure every time, it is not a very effective method for reducing the risk of contracting HIV.¹⁷

The virus lives for only a short time outside the body, but lives longer in wet fluid. If you share needles and do not have bleach, at least wash the needle with hot water and soap thoroughly after use and let the needle dry out before reusing it. It is best to wait as long as possible after each use. Keep in mind that some viruses live longer than the HIV virus, so that even if the HIV virus on the needle has died, you still may be at risk of contracting one of these other viruses. Again, this is not a very effective method for reducing the risk of HIV infection, but it is better than sharing a needle that has not been rinsed or is wet.

Post-Exposure Prevention Measures

As described above, the best way to prevent HIV infection is to avoid exposure to the virus in the first place (by safe sex practices, not sharing needles, and so forth). Doctors have discovered, however, that taking antiretroviral drugs after HIV exposure can sometimes keep the HIV virus from taking hold.¹⁸ This form of treatment is known as Post-Exposure Prophylaxis (“prophylaxis” means “prevention”), or PEP. For PEP to be effective, patients generally must start treatment within 72 hours after HIV exposure and undergo a 28-day course of Highly Active Antiretroviral Therapy (HAART; see below).

In California, a prisoner has been subject to rape or sexual assault should immediately request a medical examination, at which HIV prevention measures should be discussed and provided. Later, testing for sexually transmitted diseases must also be provided.¹⁹

What Are the Symptoms of HIV Infection and AIDS?

It is important to know that the symptoms of HIV infection and AIDS are the same as the symptoms of many other diseases, and none of the symptoms is specific for HIV or AIDS. In other words, having these symptoms might or might not be related to whether or not you are HIV-positive.

¹⁷ See Center for Health Justice, HIV Inside: Everything You MUST Know To Stay Healthy While You’re Down.

¹⁸ Centers for Disease Control and Prevention, “Antiretroviral postexposure prophylaxis after sexual, injection-drug use, or other nonoccupational exposure to HIV in the United States: Recommendations from the U.S. Department of Health and Human Services,” MMWR, Vol. 54, No. RR-2 (2005), p. 1.

¹⁹ Penal Code § 2638(a); DOM § 54040.7.

Some people experience symptoms when they first become HIV-positive. During this stage of the disease (known as “primary” or “acute” HIV infection), symptoms may include fever, tiredness, headache, skin rash, diarrhea, and swollen lymph glands in the neck, armpits, or groin. Most of the symptoms are similar to severe flu-like symptoms, because flu and HIV are both viruses and the symptoms are the body’s natural response to the presence of a virus. These symptoms usually disappear on their own within a few weeks.

However, many people do not have any symptoms at all when they are first infected. Even if they have symptoms at first, many people may then feel healthy for a long time. This stage may last from a few months to more than 10 years.

Once the infected person’s immune system begins to weaken, he or she is likely to have some or all of the following symptoms: diarrhea, fevers and night sweats, being tired every day, unexpected weight loss, skin rashes or flaky skin, short-term memory loss, yeast infections on the tongue (thrush), loss of feeling in the hands and feet, and open sores or bumps in the mouth, genital area, or rectum. In addition, women may have an abnormal Pap smear or develop vaginal infections (such as yeast infections) that will not go away, pelvic inflammatory disease (PID), or stomach pain. Symptoms usually are mild at first and then become more severe over time.

AIDS is the most advanced stage of HIV infection. A person with HIV is considered to have AIDS if his or her T-cell count drops below 200 or if he or she develops certain infections or cancers. Among the most common of those infections or cancers are *Pneumocystis jiroveci* Frenkel 1999 (formerly known as *Pneumocystis carinii* pneumonia, or PCP); Kaposi’s sarcoma (KS), a skin tumor that looks like brown, reddish, or purple blotches; cervical cancer; non-Hodgkin’s lymphoma; and tuberculosis (TB). (Please note that people who are not infected with HIV and do not have AIDS sometimes also get these types of infections or cancers.) If you suffer from any of these illnesses, you should see a doctor at the prison or jail clinic as soon as possible. HIV infection is what weakens your immune system, but these “opportunistic illnesses” are what actually lead to death.

Other symptoms of full-blown AIDS may include chronic diarrhea; dry cough and shortness of breath; seizures and lack of coordination; memory loss; depression; dementia; loss of vision; nausea, abdominal cramps, and vomiting; rapid weight loss; profound and unexplained fatigue; severe headaches with neck stiffness; and white spots or unusual blemishes in the mouth.

What Kind of Treatment Is There?

Common Types of Treatment

In the early 1980s, when the AIDS epidemic began, people with AIDS were unlikely to live longer than a few years. There is still no known cure for HIV and AIDS. Scientists have been attempting to create a vaccine, but so far have been unsuccessful. However, there are now medications that can significantly slow down (and in some cases stop) the progression of the disease, as well as treatments for some of the illnesses associated with AIDS. These advances allow many people with HIV to live long and healthy lives. As a result, HIV is now considered a treatable chronic condition rather than as a death sentence.

If tests show that you are infected with HIV, ask your doctor at the jail or prison to order a more thorough test of your immune system, including a complete blood count (CBC), T-cell count, and a measure of your viral load (the amount of HIV in your blood). These will help the doctor understand what stage the disease is in and whether you need to begin treatment. There is strong evidence that early treatment with HIV medications can keep you feeling healthier for a longer period of time. Tests should be done every three months to develop a medical treatment plan and to assess whether the treatment you are receiving is effective.

Many HIV-positive people have lived for a long time before becoming seriously ill with an AIDS-related infection. It is important to take care of yourself, as difficult as that task can be within a prison or jail. Try to exercise and get enough sleep, eat whatever fruits and vegetables are available, stay away from sick people and wash your hands frequently to avoid catching other people's illnesses. Try not to drink or do drugs. The organizations listed at the end of this Handbook can provide you with information and free newsletters that will help you make decisions about HIV treatment and how to stay healthy.

Antiretroviral Therapy (ART) is a name for treatment with drugs that help prevent HIV from reproducing and infecting cells in the body. This type of treatment is effective in slowing the progression of HIV disease in many people. There are currently six main types of antiretroviral medications used to treat HIV and AIDS:

1. Non-nucleoside Reverse Transcriptase Inhibitors (NNRTIs) bind to and disable a protein that HIV needs to make more copies of itself. This class include the drugs delavirdine (Rescriptor, DLV); Efavirenz (Sustiva, EFV); etravirine (Intelence, TMC125, ETR); and nevirapine (Viramune, NVP).
2. Nucleoside Reverse Transcriptase Inhibitors (NRTIs) stall reproduction of the HIV virus. Drugs in this class include abacavir (Ziagen, ABC); didanosine (Videx, ddI, Videx EC); emtricitabine (Emtriva, FTC, Coviracil); lamivudine (Epivir, 3TC); stavudine (Zerit, d4T); Tenofovir DF (Viread, TDF); and zidovudine (Retrovir, AZT, ZDV).
3. Protease inhibitors (PIs) interrupt the virus at a later step in its life cycle. Medications in this group include amprenavir (Agenerase, APV); atazanavir (Reyataz, ATV); darunavir (Prezista, TMC114, DRV); fosamprenavir (Lexiva, FPV); indinavir (Crixivan, IDV); nelfinavir (Viracept, NFV); ritonavir (Norvir, RTV); saquinavir (Invirase, SQV); and tipranavir (Aptivus, TPV).
4. Entry/fusion inhibitors block the virus' ability to enter human cells and infect them. The two FDA-approved drugs in this class are enfurvitide (Fuzeon, T-20) and maraviroc (Selzentry, Celsentri, MVC).
5. Integrase inhibitors disable the protein that HIV uses to insert its genetic material into an infected cell. As of this writing there is only one FDA-approved drug in this class: raltegravir (Isentress).
6. Fixed dose combination tablets contain two or more antiretroviral medications that can be from one or more drug classes. Drugs in this category include Atripla (efavirenz, emtricitabine, tenofovir DF); Combivir (lamivudine, zidovudine); Epzicom (abacavir,

lamivudine); Kaletra (lopinavir, ritonavir); Trizivir (abacavir, lamivudine, zidovudine); and Truvada (emtricitabine, tenofovir DF).

The recommended treatment for HIV and AIDS is a combination of three or more medications from the six different classes; this is known as Highly Active Antiretroviral Therapy (HAART). Most people respond well to HAART, meaning that the amount of HIV in their blood drops to and remains at an undetectable level. However, HAART does not cure HIV infection, and people taking these medications can still transmit HIV to others. Moreover, some people experience “drug failure” (meaning that the drugs do not have any effect). This is usually because they had taken another drug, such as AZT, before beginning HAART, or because they develop a resistance to the drugs by not following the medication instructions.

It is extremely important to take your medications according to the instructions. Sometimes the instructions require that a medication be taken in the morning and at bedtime. Sometimes you must take a medication with a meal, or a certain amount of time before or after a meal. It is important to keep the drugs at the same level in your body. Taking a “drug holiday” (not taking the medication for several days or more) or skipping doses can be very dangerous. Missing one or more doses can allow the virus to become resistant, meaning that it mutates (changes form) and no longer is affected by the medication.

Unfortunately, it is often very difficult for prisoners to take the medications as directed.²⁰ One of the most common complaints among HIV-positive prisoners is that they want to take their medications as instructed but are unable to do so. Prescriptions may not be refilled on time. An inmate’s daily work or yard schedule may not coincide with his or her medication schedule. Gaps in treatment occur due to transfers. Prison staff may sometimes confiscate medications in the course of searches for contraband. These and many other incidents of prison life make it especially difficult for inmates to stick with a drug therapy according to the instructions and without interruption.

In the past few years new drugs have been approved that may lead toward medication plans that are simpler and more flexible.²¹ It is hoped that simplification of HIV therapy will make it easier for people to comply with their medication instructions.

Potential Side Effects of Treatment

Side effects are another issue to be aware of when taking HIV medications. People react to medications in different ways. Some people will have mild side effects or none at all, while others may have many side effects or severe, even life-threatening, reactions. Several factors (such as alcoholism or co-infection with hepatitis B or C) may predispose individuals to certain side effects.²² You should talk to a doctor or nurse when deciding whether to start or stop taking HIV medications.

²⁰ See Elizabeth Kantor, “HIV Transmission and Prevention in Prisons” (April 2006), available at <http://hivinsite.ucsf.edu/InSite?page=kb-07-04-13>, accessed July 16, 2009.

²¹ See, e.g., “Coverage of the 14th Conference on Retroviruses and Opportunistic Infections (CROI),” *IDCR*, Vol. 9, Issue 15 (April 2007), p. 3.

²² Department of Health and Human Services, Panel on Antiretroviral Guidelines for Adults and Adolescents, “Guidelines for the Use of Antiretroviral Agents in HIV-1-Infected Adults and Adolescents” (Nov. 3, 2008), p. 96.

Following is a list of possible side effects of HIV medications. You may not suffer any of these side effects, and even if you do it may be only temporary. In addition, you should know that many of these side effects are also symptoms of the HIV infection itself.

- Nausea/vomiting/abdominal pain.
- Diarrhea.
- Headaches.
- Chills and fever.
- Fatigue.
- Low blood pressure.
- Skin problems (rash or dry, itchy skin).
- Mouth problems (ulcers or sores, infections with dark red or white patches).
- Taste changes.
- Numbness/tingling sensations (especially of the fingers/hands, toes/feet, and around the mouth).
- Central nervous system problems (for example, dizziness, impaired concentration, and insomnia).

More serious side effects include liver problems, diabetes, high cholesterol, abnormal fat distribution, decreased bone density, pancreatitis, and kidney/bladder problems.

Special Treatment Considerations for Women

HIV-positive women who are pregnant, plan to become pregnant, or could become pregnant should avoid the medications Atripla, Kaletra, Rescriptor, and Sustiva, as use of these medications prior to or during pregnancy may lead to birth defects. Pregnant women also should be aware that the physical and emotional changes after birth, along with the stresses and demands of caring for a new baby, can make it even more difficult to follow an HIV treatment regimen.

How Do I Know If I Have Been Infected With HIV?

What Types of Tests Are Available?

The fact that you may or may not have certain symptoms will not tell you whether you have been infected with HIV; the only way to know for sure is to take an HIV test. When a person is infected with HIV, his or her body develops antibodies – proteins the body forms in the blood to fight off diseases. (In the case of HIV, however, the antibodies do not keep you from getting sick because the HIV virus changes and reproduces too quickly for the antibodies to catch up.) Current HIV tests search for the antibodies rather than for the virus itself. New tests that search for the virus itself – which should show up much sooner in the body after infection than the antibodies – are being developed.

There are several types of HIV tests that the CDCR may use.²³ One is a conventional blood test; if the initial screening test shows the presence of HIV antibodies, then a second test

²³ See Penal Code § 7502(f).

is done to confirm the result.²⁴ This test is very accurate if a person has been infected with HIV for some time, but may give a false negative result during the very early stage of HIV infection (although the false-negative “window” has been getting smaller with the development of more sensitive tests). Turnaround time for results ranges from several days to weeks.

Another test is an oral fluid HIV test; this test also includes a built-in second test to confirm the initial result. Results typically are available in a few business days. Since the test involves taking a saliva swab, no needles are necessary. This test is slightly less sensitive than the conventional blood test during early HIV infection.

There are six FDA-approved rapid HIV tests available in the United States. Some test the patient’s blood, while others test saliva swab. Results are generally available within 10-30 minutes; however, a positive result must be confirmed by using one of the other types of tests.

What Does a Positive Test Result Mean?

A positive test result means that you have been infected with HIV. This means that you are “HIV-positive” (HIV+). An HIV-positive result does not necessarily mean that you have AIDS, and does not predict whether or when you will go on to develop symptoms of AIDS. However, if you are HIV-positive, you are capable of spreading the virus to others. Also, if you test HIV-positive, you should seek medical treatment as soon as possible in order to slow down the effect that the HIV virus has on your body.

What Does a Negative Test Result Mean?

A negative test result means that no HIV antibodies were found. Since there is a delay of up to six months between HIV infection and the time when antibodies can be detected by tests, a negative test does not necessarily mean that you have not been infected with HIV. If you have had unprotected sex or have shared needles during the past six months you should get tested again in three to six months (and in the meantime attempt to not do things that put you at risk of becoming infected or of infecting others). Even if your first test is negative, you are capable of infecting others if you have already been infected with HIV.

Should I Be Tested?

There are many things to consider when deciding whether to be tested for HIV. The factors to consider are especially complicated for prisoners.

One matter to consider is how long you will be in prison. If you will not be in for a very long time, you might want to consider waiting until after your release. There are many more services available to HIV-positive people on the outside. And if you wait to be tested you will not risk beginning drug therapy while in prison only to have it interrupted upon release, which would increase the possibility that the virus will stop responding to certain medications.

However, a compelling reason to be tested before release is that, if you are in fact HIV-positive, you can start planning for your treatment and learning about resources. Research has

²⁴ Centers for Disease Control and Prevention, “HIV Testing Implementation Guidance for Correctional Settings” (Jan. 2009), pp. 15-16, available at www.cdc.gov/hiv/topics/testing/resources/guidelines/correctional-settings.

shown that early treatment of HIV infection can keep you healthy for a longer time (although there is no guarantee that you will get the treatment you need while incarcerated). There are now medications that, while not cures for HIV or AIDS, can greatly slow down the progress of the virus. These medicines are more effective if an HIV-positive person starts taking them sooner rather than later.

On the other hand, there are reasons why you might not want to be tested while in prison. The law requires that the testing procedure and results be confidential; only you and medical staff are supposed to know that you are being tested and what the results are. But despite this law, sometimes guards and other prisoners find out that a prisoner is HIV-positive. Also, some people assume that anyone who takes an HIV test is HIV-positive. Unfortunately, there are many misconceptions about HIV and people with HIV. As discussed above, HIV cannot be transmitted through casual contact, but many people still believe that it can. As a result, HIV-positive prisoners may face discrimination. You should also be aware that once you have a positive test result, you may be transferred to one of the prisons designated to house HIV-positive prisoners.

How Do I Go About Getting Tested?

A number of organizations recommend that routine voluntary testing, especially pre-release testing, should be available to all inmates in correctional facilities. Over the last several years California legislators have tried to enact laws requiring the CDCR to offer HIV testing to all inmates upon entering and/or leaving prison, but thus far they have been unsuccessful.

Inmates who want to request an HIV test first must consult with a physician.²⁵ You should contact the medical clinic at your institution, which should order a confidential test for you. The medical staff uses only new, sterile equipment for drawing blood or taking an oral swab, so you will not get AIDS by taking the test. Generally, inmates who have funds are charged \$5.00 for each health care visit; however, the co-payment requirement does not apply to diagnosis and treatment of communicable diseases such as HIV and AIDS.²⁶ Nor can the prison charge you money for an involuntary test (see below for information on involuntary testing).²⁷ If you have any problems, you should contact one of the legal offices that focuses on helping people with HIV and AIDS (see Appendix).

If you decide to be tested, you should ask for information after the test about what the results mean. A staff member trained in HIV testing is supposed to provide counseling to prisoners before and after they are tested for HIV.²⁸

²⁵ Do not assume that any blood drawn at initial screening was to be tested for the HIV virus; it was more likely tested for other sexually transmitted diseases (STDs) or hepatitis C. If you are not sure of the reason for any blood tests, ask the medical staff at the institution. Center for Health Justice, HIV Inside: Everything You MUST Know To Stay Healthy While You're Down, p. 5.

²⁶ 15 CCR § 3354.2(c)(3)(B).

²⁷ Penal Code § 7514(b).

²⁸ Admin. Bulletin 91/8.

Despite these rules, some prisoners have reported that no pre- or post-test counseling has been made available to them. If this happens to you, you might want to file a CDCR Form 602-HC Inmate/Parolee Health Care Appeal Form (see below for more information). You, or someone on the outside who is helping you, should also contact outside agencies such as those listed in the Appendix.

People who continue to engage in high-risk behavior, such as sharing needles or having unprotected sex, should consider being tested regularly. Of course, it is best to stop these dangerous practices to lower your risk of becoming infected and the risk of infecting others.

What If I Am Pregnant and Want To Be Tested?

If you are pregnant, you can still take an HIV test. CDCR policy provides that pregnant inmates are to be referred for HIV counseling and testing.²⁹ If you decide to continue the pregnancy, experts recommend that all HIV-infected pregnant women – regardless of viral load or T-cell count – be offered HAART immediately to prevent the fetus or newborn from becoming infected with HIV and, in some cases, for the woman’s own health.³⁰ In general, it is recommended that pregnant women who are starting therapy for both their own health and the health of the child be treated as soon as possible, including in the first trimester. For women who are beginning therapy only to prevent mother-to-child transmission, delaying anti-HIV medication until after the first trimester can be considered. Even if a woman does not seek care until late in the pregnancy, having intravenous HIV treatment during labor and delivery, as well as a 6-week course of AZT for the newborn, can be effective in protecting the baby from HIV infection.³¹

Babies born to HIV-positive mothers are tested for HIV differently than adults. Adults are generally tested by looking for antibodies to HIV in their blood, but a baby keeps its mother’s antibodies, including antibodies to HIV, for up to 18 months after birth. Thus, babies are tested for the HIV virus directly (rather than for the antibodies). Usually a baby will be tested once between birth and 14 days of age, again at 1 to 2 months, and again at 3 to 6 months. A baby who tests negative on two of these tests should then have an antibody test between 12 and 18 months of age; a baby who tests negative for HIV antibodies at that time will be deemed to not be HIV-infected. A baby will be considered HIV-positive if he or she tests positive on two of the preliminary tests, and will need to be retested at 15 to 18 months to confirm HIV infection.

²⁹ DOM § 54045.4.

³⁰ E.g., AIDS Education and Training Centers (AETC) National Resource Center, Clinical Manual for Management of the HIV-Infected Adult: Correctional Settings (July 2006), available at www.aids-etc.org/aidsetc?page=cm-801_corrections, accessed July 16, 2009.

³¹ Other steps that can help protect the baby are elective Cesarean section when appropriate and formula feeding. “HIV Infection Among Women in Prison: Considerations for Care,” IDCR, Vol. 8, Issues 5-6 (May/June 2005), p. 2.

Can Prisons and Jails Force Me To Be Tested?

California does not currently require that all prisoners be tested for HIV. However, it is possible that the CDCR will require all prisoners to be tested at some point in the future.³²

There are a few laws that require incarcerated persons to be tested for HIV where certain risk factors are present. California prisoners may be required to be tested under the following circumstances:

- Sex Offense or Prostitution Conviction – Penal Code §§ 1202.1 and 1202.6: California requires that people convicted of certain sex offenses or of prostitution be tested. The Chief Medical Officer (CMO) or Health Care Manager (HCM) of a California state prison has no authority to decline to test a prisoner who is required by a criminal court to be tested on these grounds. The prisoner’s only way to challenge such a testing requirement would be by filing a direct criminal appeal or state petition for writ of habeas corpus challenging the court’s order.
- Symptoms of AIDS – Penal Code § 7512.5: The CMO (or HCM) may order a prisoner to take an HIV test if he or she concludes that the prisoner has shown symptoms of HIV infection or AIDS as recognized by the Centers for Disease Control and Prevention or the State Department of Health Services. A prisoner may not appeal this decision to a three-member administrative panel (described in the following section), but may appeal the decision directly to the local Superior Court.³³
- Law Enforcement Employee Exposed – Penal Code §§ 7510-7511: A law enforcement employee who believes that he or she came into contact with bodily fluids of a prisoner must report the incident. The employee must file a written incident report with the CMO within two days of the incident (although the CMO may waive this time period). Within 24 hours of receipt of the report, the CMO must decide whether to order HIV testing of the prisoner; the CMO may order an HIV test only if he or she finds there is a “significant risk” that HIV was transmitted. California Penal Code section 7511 lists factors the CMO must consider in making this decision.
- Observation of High-Risk Behavior – Penal Code § 7516: A prison officer or staff person may file a written report when he or she observes or is informed of a prisoner engaging in activity that could result in the transmission of HIV. Such activities include: (1) sexual activity resulting in exchange of bodily fluids; (2) intravenous drug use (using a needle or syringe to inject drugs); (3) incidents involving injury to inmates or staff in which bodily fluids are exchanged; (4) tampering with medical or food supplies or equipment; and (5) tattooing. The CMO may investigate the report. If the CMO concludes that “the situation reported caused the probable exchange of body fluids in a manner that could result in the transmission of HIV,” he or she shall require that the prisoner be tested.

³² Currently, 21 state prison systems test all inmates for HIV at admission, while in custody, or upon release. Centers for Disease Control and Prevention, “HIV Testing Implementation Guidance for Correctional Settings” (Jan. 2009), p. 4, available at www.cdc.gov/hiv/topics/testing/resources/guidelines/correctional-settings.

³³ Penal Code § 7516.5.

- Request By Another Prisoner – Penal Code § 7512: One prisoner may request that another prisoner be tested for HIV if he or she came into contact with the other prisoner’s bodily fluids. Situations where this might occur include rape or sexual contact, tattoo or drug needle sharing, an incident involving injury in which bodily fluids are exchanged, or confinement with a cellmate under circumstances involving possible mingling of bodily fluids. The prisoner’s request must be made within two days following the incident (unless the CMO finds that good cause exists for a delay).

How Do I Appeal an Order To Be Tested for HIV?

Within 24 hours of receiving a report or request pursuant to Penal Code sections 7510-7511, 7512 or 7516, the Chief Medical Officer (or Health Care Manager) must issue a written decision stating reasons for requiring or not requiring the prisoner to undergo HIV testing. The CMO cannot order a prisoner to be tested unless, “considering all of the facts and circumstances, there is a significant risk that HIV...was transmitted.”³⁴

Prisoners who have been ordered to submit to testing under Penal Code sections 7511, 7512, and 7516 have the right to appeal the decision to a three-member panel and have a closed hearing on the matter.³⁵ The appeal must be filed within three calendar days of receipt of the CMO’s decision, and must be heard by the panel within seven calendar days after filing.³⁶ The prisoner who is appealing the decision has the right to attend the hearing, speak on the issues presented, call witnesses to testify at the hearing, and appoint a representative to assist him or her at the hearing.³⁷

The people who sit on the panel are: (1) the CMO who made the original decision; (2) a surgeon who has knowledge of HIV and is selected by the CDCR; and (3) a surgeon who has knowledge of HIV and AIDS, is selected by the State Department of Health Services, and is not on the staff of or under contract with the prison.³⁸ The panel generally must issue its written decision within two days after the hearing, stating the reasons for the decision.³⁹ A unanimous vote is necessary in order to require that the prisoner undergo HIV testing.

The panel’s decision may be appealed to the Superior Court by the prisoner if the decision requires testing, or by the reporting inmate or law enforcement employee if the decision

³⁴ Penal Code § 7511.

³⁵ Penal Code § 7515(a) and (f).

³⁶ Penal Code § 7515(a)-(b).

³⁷ Penal Code § 7515(f)(2) and (g).

³⁸ Penal Code § 7515(c).

³⁹ Penal Code § 7515(h). When the appeal is of a test ordered pursuant to a correctional officer’s report of activity that may cause transmission of the HIV virus, the panel must render its decision within 20 days (total) from the date the hearing was sought by the CMO. Penal Code § 7516(d).

does not require testing. The Superior Court must uphold the panel’s decision if that decision is based upon “substantial evidence.”⁴⁰

Prisoners have argued that mandatory testing is unconstitutional on a number of grounds, including the Fourth Amendment prohibition against unreasonable search and seizure, the First Amendment right to privacy, the due process clauses of the Fifth and Fourteenth Amendments, the First Amendment right to free exercise of religion, and the Eighth Amendment prohibition against cruel and unusual punishment. However, courts generally have allowed testing so long as the legislature or prison officials provide a legitimate reason for doing so.⁴¹

How Reliable Are the Test Results?

A negative test result is not a guarantee that you are not infected with HIV; even if you test HIV-negative, you may still be infected and capable of passing the virus to others. The reason is that the antibodies that develop in reaction to HIV usually take six to twelve weeks – and can take up to six months – to become detectable. In other words, there is a lag time between when a person is infected and when he or she would test positive (a period known as “seroconversion”).

You should also be aware that due to testing procedures it is possible, although extremely rare, for you to get a “false positive” (meaning that your test comes back HIV-positive but you actually do not have the disease). It is a good idea to get a second test to confirm an initial HIV diagnosis.

Who Will Be Informed About My Positive Test Result?

California prison officials claim that the testing procedure and notification of results are handled in a confidential manner.⁴² Nonetheless, many prisoners say they are afraid to take the test because prisoners known to have HIV or AIDS are subjected to discrimination and harassment. California law requires that prisoners with AIDS or HIV infection be identified to all employees and medical personnel at the prison who have had direct contact with the prisoner’s bodily fluids.⁴³ Also, a law enforcement employee who reports an incident pursuant to section 7510 (see above) is to be notified of the results of any test administered a result of the

⁴⁰ Penal Code § 7516.5.

⁴¹ See, e.g., Walker v. Summer (9th Cir. 1993) 8 F.3d 33 (Table); Harris v. Thigpen (11th Cir. 1991) 941 F.2d 1495; People v. McVickers (1992) 4 Cal.4th 81 [13 Cal.Rptr.2d 850]; but see Walker v. Summer (9th Cir. 1990) 917 F.2d 382 (denying summary judgment against prisoner challenging requirement that all prisoners be tested for HIV, where prison officials offered not justification for the policy).

⁴² See, e.g., Penal Code § 7523 (“Information obtained by a law enforcement employee [or panel member] pursuant to this chapter shall be confidential, and shall not be disclosed except as specifically authorized by this chapter.”).

⁴³ Penal Code § 7522(a).

report.⁴⁴ Although unauthorized use or disclosure of a prisoner's HIV status constitutes a misdemeanor,⁴⁵ other staff and prisoners sometime learn about a prisoner's HIV test.

When you are released from a California prison, your parole officer will be notified if you have tested HIV-positive or if you have been diagnosed as having AIDS.⁴⁶ Your parole agent is responsible for ensuring that you contact either the county health department or your own physician to be made aware of the AIDS counseling and treatment available in your area. If an HIV-positive parolee does not notify his or her spouse of the diagnosis, California law permits a parole officer to ask the prisoner's doctor or the CMO to disclose this information to the spouse.⁴⁷ Also, if a parole officer asks local law enforcement officers to arrest an HIV-infected parolee who has a record of assault on a peace officer, the parole office must inform the officers of the parolee's condition so they can protect themselves from contracting AIDS.⁴⁸

If I Have Tested HIV-Positive, Will I Be Placed in a Separate Prison Housing Unit?

In December 1991, the CDCR began using a housing policy under which all prisoners known to be infected with HIV were "clustered" in specified housing areas to promote better health care and safety.⁴⁹ As a result, most male mainline prisoners known to have HIV or AIDS are concentrated at the California Medical Facility, California Men's Colony, California Institution for Men, and San Quentin State Prison. Female prisoners with HIV and AIDS usually are housed at the California Institution for Women or Central California Women's Facility.

Until recently, many HIV-infected male inmates were also housed at CSP–Corcoran. However, Corcoran is located in a region of California where valley fever (*coccidioidomycosis*) is very common. Valley fever is a type of pneumonia that can result in death, especially among people with a weakened immune system such as those who are infected with HIV. As a result, the CDCR now prohibits any identified HIV-infected inmates from being housed at Corcoran.⁵⁰ HIV-infected inmates who require sensitive-needs yard placement are housed at the Richard J. Donovan Correctional Facility; those with Level IV placement scores who are not appropriate for Level III housing, are sentenced to life without the possibility of parole, and/or have an active Security Housing Unit term are housed at CSP–Sacramento.

In practice, HIV-positive prisoners within these institutions usually are housed in a separate unit from HIV-negative prisoners, but are able to eat with the rest of the general population and participate in general population programs. Prisoners who have engaged in high-

⁴⁴ Penal Code § 7522(c).

⁴⁵ Penal Code § 7540(b).

⁴⁶ Penal Code § 7520.

⁴⁷ Penal Code § 7521(a).

⁴⁸ Penal Code § 7521(b).

⁴⁹ See CDC Admin. Bulletin 91/29, "Housing Policy for Identified HIV-Infected Inmates" (Oct. 22, 1991).

⁵⁰ CDCR Memorandum from Dr. Dwight Winslow and Suzan L. Hubbard, "Exclusion of Inmate-Patients Susceptible to Coccidioidomycosis from Highest Risk (Hyperendemic) Area Institutions" (Nov. 11, 2007).

risk behavior may be placed in closed units, where they remain segregated from the general population at all times.⁵¹

Prison officials commonly justify their policies segregating HIV-positive prisoners on the grounds that segregation helps prevent HIV transmission, reduces violence against HIV-positive prisoners, and assists prison medical staff in providing medical care for prisoners who have HIV-related illnesses. Some outside observers agree: “[G]iven the dearth of high-quality HIV medical service providers in the prison system as a whole, it makes sense to house HIV positive prisoners where the medical staff is best able to provide competent treatment.”⁵²

Are There Advantages To Having Prisoners with HIV and AIDS Separated from Other Prisoners?

Segregation has not always ensured that prisoners with HIV and AIDS receive better medical care. Some prisoners have reported that their medical care has gotten worse since they tested HIV-positive and were transferred to an HIV-designated facility. Others, including many prisoners at the California Medical Facility, feel that their medical care has improved.

The fear of being placed in an AIDS unit and being discriminated against or harassed discourages many prisoners from volunteering to be tested. Since HIV is transmitted only through a direct exchange of blood, semen, or vaginal secretions, and not through casual contact, most prisoner advocates believe that it is not necessary to segregate all prisoners who test HIV-positive for the protection of people who are HIV-negative.

Some HIV-positive prisoners prefer to be housed separately so that they are not in close contact with or cellmates of HIV-negative prisoners who might treat them negatively because of their HIV status. Some HIV-positive prisoners prefer to keep their HIV status a secret when they are housed in the general population. However, this can be very difficult, and the difficulty of keeping one’s status a secret can be very stressful. Because having stress makes it harder for the body to fight infection, people with HIV should try to avoid stress as much as possible. For some people this is a factor in favor of segregated housing.

Do Prison Officials Have the Power To Exclude HIV-Positive Prisoners from Programs and Services?

Federal and state courts generally have upheld the right of prison officials to deny prisoners access to certain programs and privileges if the policy is based on legitimate medical, safety, or institutional security concerns.⁵³ In California, HIV-positive prisoners are allowed to participate in most prison programs. According to Administrative Bulletin 91/28, qualified prisoners with HIV may not be excluded from work furlough facilities based solely on their HIV status, so long as they meet the general requirement of requiring only routine medical

⁵¹ CDC Admin. Bulletin 91/29.

⁵² Mary Sylla, “HIV Treatment In U.S. Jails and Prisons” (2008), available at www.sfaf.org/beta/2008_win/jails_prisons, accessed July 16, 2009.

⁵³ See, e.g., Gates v. Rowland (9th Cir. 1994) 39 F.3d 1439.

monitoring. One exception is that HIV-positive prisoners at the California Medical Facility are not allowed to have food service jobs.⁵⁴

HIV-positive prisoners are allowed to have contact visits with their parents, spouses (or registered domestic partners), siblings, and children. HIV-positive prisoners also can have overnight family visitation with all the relatives listed above, except spouses or domestic partners, once the visitors are approved.⁵⁵ Minor children must be accompanied by an adult. An infected prisoner who applies for an overnight visit must sign an authorization to disclose his or her HIV status to the accompanying adult, the parent or legal guardian of the child(ren), and the child(ren) who may participate in the visit. Officials contend that public health considerations justify prohibiting prisoners with HIV from having overnight visits with their spouses or domestic partners.

One HIV-positive prisoner charged that the CDCR had denied him the right to participate in the family visiting program due to his disability (HIV-positive status), in violation of the Americans with Disabilities Act, 42 U.S.C. § 12132, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.⁵⁶ As a result of his lawsuit, the prisoner and the CDCR entered into a settlement agreement that allowed the HIV-positive prisoner to have overnight family visits with his wife. The general rule was not affected, however, meaning that other HIV-positive prisoners still cannot have conjugal visits.

Do Prisoners Have the Right To Receive Medical Treatment for HIV/AIDS?

There are no nation-wide mandatory guidelines or standards of HIV care for prisoners, although several organizations have developed voluntary standards and guidelines for HIV health care management in jails and prisons.⁵⁷ In practice, the CDCR's duties and protocols for the treatment of prisoners affected by HIV and AIDS are derived from various sources.

Federal Constitutional Right to Adequate Health Care

Under the Eighth Amendment to the U.S. Constitution, prisoners are entitled to protection from "cruel and unusual punishment" and to a "safe and humane environment." This includes the right to receive necessary medical care. To show a constitutional violation, a prisoner must show that prison officials acted with "deliberate indifference" to a serious medical need. "Deliberate indifference" means that the prison officials knew or should have known that the prisoner faced a substantial risk of serious harm without medical treatment.⁵⁸

⁵⁴ Gates v. Rowland (9th Cir. 1994) 39 F.3d 1439, 1448.

⁵⁵ Admin. Bulletin 90/58.

⁵⁶ See Bullock v. Gomez (C.D. Cal. 1996) 929 F.Supp. 1299.

⁵⁷ These organizations include the American Correctional Association, the American Public Health Association (APHA), the National Commission on Correctional Health Care (NCCHC), and the World Health Organization (WHO). Elizabeth Kantor, "HIV Transmission and Prevention in Prisons" (April 2006), available at <http://hivinsite.ucsf.edu/InSite?page=kb-07-04-13>, accessed July 16, 2009.

⁵⁸ Estelle v Gamble (1976) 429 U.S. 97 [97 S.Ct. 475; 50 L.Ed.2d 251]; Wilson v Seiter (1991) 501 U.S. 294 [111 S.Ct. 2321; 115 L.Ed.2d 27]).

Rights Under California Code of Regulations, Title 15

Title 15 of the California Code of Regulations (CCR), sections 3350 through 3359, describes prisoners' general rights to medical and dental care. You should have been given the full text of Title 15 when you came to prison.⁵⁹ It also should be available in your institution's law library. Following is a summary of the most relevant sections.

Initial and Pre-Release Screening – 15 CCR § 3355:

Every person entering the custody of the CDCR must be examined by health care staff for contagious diseases, illness, or other health conditions within 24 hours of arrival. Prior to discharge or release to parole, every inmate must be screened by health care staff. Staff conducting the screening must alert the inmate's parole officer about any current health problems and provide the inmate with any necessary maintenance medication until he or she can obtain medication in the community.

Sick Call – 15 CCR § 3354(e):

Each CDCR facility is required to provide times and locations for "sick call," at which general population inmates can request and obtain medical attention. Staff conducting sick call evaluate medical problems to determine if further medical attention is required; this is done by Registered Nurses (RNs). A medical doctor or nurse must make daily visits to each specialized housing unit to provide medical attention to inmates unable to use the sick call services provided for the general population. In addition, a physician must visit each specialized housing unit at least once each week.

Provision of Medical Care – 15 CCR § 3350:

This section states that the CDCR shall only provide inmates with medical services that are medically necessary and that studies have shown to be effective. "Medically necessary" means health care services that are reasonable and necessary to protect life, prevent significant illness or disability, or alleviate severe pain.⁶⁰ "Severe pain" means a degree of discomfort that significantly disables the patient from reasonable independent function. "Significant illness and disability" means any medical condition that causes, or if left untreated may cause, a severe limitation of function or ability to perform the daily activities of life, or that may cause premature death. Section 3350.1 provides a list of treatment exclusions (for example, conditions that will improve on their own without treatment or conditions that are so far advanced that the outcome would not change), but notes that treatments such as pain management and nutritional support should still be available for those conditions.

⁵⁹ Penal Code § 2930; 15 CCR § 3002(a).

⁶⁰ 15 CCR § 3350(b). Treatment can include prescribing an "investigational new drug" if the treating physician believes such medication is in "the best medical interest of the patient, and the patient has given informed consent." Penal Code § 3502.5.

Right To Refuse Treatment – 15 CCR § 3351:

Unless you have been found to be mentally incompetent, prison staff generally cannot force you to take medication or to receive medical treatment.⁶¹ Some HIV-positive prisoners have refused medications because they want to avoid the side effects, which can be very unpleasant. Another concern is that medication will be interrupted when a prisoner is transferred from one facility to another, or when other administrative decisions or delays in getting medication refills interrupt treatment. This is a valid concern, because if you begin taking an HIV medication and then stop taking it, that medication and other medications may no longer work for you.

You may want to prepare a Durable Power of Attorney for Health Care. A power of attorney is a document in which you give permission to someone you trust, such as a family member, to make health care decisions for you if you are unable to make them for yourself, such as in an emergency or if you are unable to speak.⁶² On the power of attorney form, you can write your desires regarding life-prolonging treatment. For example, some people prefer that extreme measures such as surgery not be taken to save their lives in an emergency or do not want to be attached to life-support machines.

Treatment Guidelines for the Medical Care of HIV-Positive Prisoners

The CDCR's Health Care Services Division (HCSD) is responsible for the policies and procedures to be followed in the treatment of HIV-positive prisoners. On June 15, 1999, the HCSD issued a memo to all Chief Medical Officers, Health Care Managers, and Public Health Designees attaching the "Guidelines for the Use of Antiretroviral Agents in HIV-1-Infected Adults and Adolescents" and stating that they are "valuable references for patient care." The Guidelines, developed by the U.S. Department of Health and Human Services, provide recommendations for antiretroviral therapy, including when to start treatment, what drugs to initiate, when to change therapy, and options when changing therapy. As of December 2008, the Guidelines recommend that people taking HAART for the first time receive a course of medication consisting of (in alphabetical order): Atripla; Kaletra and Truvada; Lexiva, Norvir, and Truvada; Prezista, Norvir, and Truvada; Reyataz, Norvir, and Truvada; or Sustiva and Truvada.⁶³

⁶¹ 15 CCR § 3351; Thor v. Superior Court (Andrews) (1993) 5 Cal.4th 725 [21 Cal.Rptr.2s 357]. There are exceptions; prison officials can force a prisoner to take medication or receive medical treatment if he or she has tuberculosis (TB), if there is a medical emergency, or if there is a threat to prison safety and security. 15 CCR § 3351; Thor v. Superior Court (Andrews) (1993) 5 Cal.4th 725 [21 Cal.Rptr.2s 357].

⁶² For more information, contact the Prison Law Office and ask for the Power of Attorney information packet.

⁶³ Current and past versions of the Guidelines are available on the Department of Health and Human Services' *AIDSinfo* website at www.aidsinfo.nih.gov.

Inmate Medical Services Policies and Procedures and the Receiver's Turnaround Plan

California's prison medical care system has long been criticized as being inadequate.⁶⁴ In 2005, after decades of lawsuits, injunctions, and settlements designed to improve a system the CDCR admitted was unconstitutionally deficient, a federal judge ordered that the management of the state's entire prison health care system be turned over to a court-appointed receiver.⁶⁵

The CDCR thereafter adopted standards for its medical delivery system known as Inmate Medical Services Policies and Procedures (IMSP&Ps). The IMSP&Ps are supposed to be available to inmates in the prison law libraries. The IMSP&Ps consist of 11 volumes; general standards for access to medical care are addressed primarily in Volume Four.

Volume Seven contains the Chronic Care and High-Risk Program Policy Guidelines, designed to provide a system for screening, identifying, treating, and monitoring prisoners with chronic health conditions, including HIV and AIDS, and providing education and counseling to encourage healthy behaviors among these populations. The Chronic Care Program (CCP) Guidelines in Chapter One specify the procedures for referral, evaluation, and enrollment in a CCP. It states that the initial lab tests for HIV-infected prisoners are to include a complete blood count (CBC), platelet count, viral load, T-cell count, HIV antibody, and (for women) a Pap smear; the recommended schedules for follow-up visits (HIV-infected inmates generally are to be seen at least monthly). It also describes the specifics of ongoing chronic-care visits related to HIV and the provision of health care education to prisoners. Further details of the CCP for HIV-positive prisoners, including the procedures for in-patient treatment, are found in Chapter Six. Chapter Four provides guidelines for end-of-life care, including comfort, support, and relief from pain. Terminally ill inmates who meet the criteria for hospice care generally are transferred to the California Medical Facility.

Despite these policies, the CDCR medical care system is still inadequate. According to new federal receiver J. Clark Kelso, "it is a misnomer to call the existing chaos a 'medical delivery system' – it is more an act of desperation than a system." At the time of his appointment on January 23, 2008, all health care positions remained severely understaffed. Staff complained that the written policies made little sense, that they had little or no training on how to implement the policies, and that the strict protocols they contained rarely matched the medicines available. Sick-call procedures were fraught with opportunities for error. The outmoded paper filing system meant that staff had a very difficult time getting the right medicines to the correct patients, tracking follow-up care, and managing treatment of chronic conditions.⁶⁶

In June 2008, the federal court approved a document filed by the Receiver entitled "Achieving a Constitutional Level of Medical Care in California's Prisons: The Federal

⁶⁴ See, e.g., Legislative Assembly of California, Select Committee on Prison Reform and Rehabilitation, "An Examination of California's Prison Hospitals" (1972).

⁶⁵ Plata v. Schwarzenegger (formerly Plata v. Davis) (N.D. Cal. Oct. 3, 2005), No. C01-1351 THE, Findings of Fact and Conclusions of Law re: Appointment of Receiver.

⁶⁶ Plata v. Schwarzenegger (N.D. Cal. Mar. 14, 2008), No. C01-1351 TEH, Receiver's Seventh Quarterly Report.

Receiver's Turnaround Plan of Action" as being a "reasonable and necessary strategy to address the constitutional deficiencies in California's prison health care system."⁶⁷ The Turnaround Plan consists of over two dozen projects, initiatives, and programs, to be undertaken over three to five years, to address the problems found by the Receiver. These problems include lack of timely access to medical services; inadequate staffing; records mismanagement and lack of access to information; inadequate housing; and lack of medical equipment.⁶⁸ For example, the Receiver has begun rolling out an electronic Chronic Care Registry designed to more easily identify prisoners with chronic health conditions and provide them with ongoing medical attention.⁶⁹ Another recent change is that all Reception Center prisoners are to be received at a single location for initial health care triage by a Registered Nurse (RN) or doctor, and every prisoner will be held within the Reception Center area buildings until the health screening has been completed (unless the prisoner has an urgent or emergent medical condition that requires special housing).⁷⁰ Initial planning has also begun to include a disability evaluation with the Reception Center medical screening process.⁷¹

It should be noted that given the severe fiscal crises facing both California and the federal government, it is likely that many of these reforms will be delayed or never be implemented.

What Rights Do Prisoners Have To Receive HIV/AIDS Education and Counseling?

The CDCR is supposed to provide all California prisoners with information about how to avoid contracting and transmitting the HIV virus, should there be finding to support such a program. The Director of Corrections also should provide all inmates who are within one month of release or parole with information about agencies and facilities that provide testing, counseling, medical care, and support services for patients with HIV and AIDS.⁷² In addition, a staff member trained in HIV testing must provide counseling to prisoners before and after they are tested for HIV.⁷³

Despite these laws, many prisoners with AIDS do not receive counseling or help with pre-release planning. Some of the HIV and AIDS support groups on the outside have been listed in the Appendix. You are encouraged to contact them for help and support.

⁶⁷ These documents are available at www.cphcs.ca.gov/docs/court.

⁶⁸ Plata v. Schwarzenegger (N.D. Cal. June 6, 2008), No. C01-1351 THE, Achieving a Constitutional Level of Medical Care in California's Prisons: The Federal Receiver's Turnaround Plan of Action, p. iii.

⁶⁹ California Prison Health Care Services, The Turnaround Lifeline, Vol. 2, Issue 2 (Feb. 10, 2009), p. 3.

⁷⁰ Plata v. Schwarzenegger (N.D. Cal. Jan. 15, 2009), No. C01-1351 THE, Achieving a Constitutional level of Medical Care in California's Prisons: Tenth Tri-Annual Report of the Federal Receiver's Turnaround Plan of Action, p. 18.

⁷¹ Plata v. Schwarzenegger (N.D. Cal. June 6, 2009), No. C01-1351 THE, Achieving a Constitutional level of Medical Care in California's Prisons: Eleventh Tri-Annual Report of the Federal Receiver's Turnaround Plan of Action, p. 13.

⁷² Penal Code §5008.1.

⁷³ Admin. Bulletin 91/8.

Can I Be Released from Prison Early Because I Have AIDS?

There are two different provisions under California law for the early release of terminally ill prisoners (meaning prisoners who are dying): compassionate release and executive clemency.

Compassionate Release

In certain circumstances, state law allows prisoners to get a “compassionate release,” officially known as “recall of commitment for terminally ill prisoners.” Some prisoners with HIV and AIDS have gotten compassionate releases. However, the procedure is complicated and time-consuming, and many terminally ill prisoners do not live to see the end of the process.

In order to recall a prisoner’s sentence, a court must find both that the prisoner is “terminally ill with an incurable condition caused by an illness or disease that would produce death within six months, as determined by a physician employed by the department” (or that the prisoner is permanently incapacitated with a medical condition that did not exist at the time of the original sentencing), and that the “conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.”⁷⁴ Compassionate release is not available to prisoners serving sentences of death or life without the possibility of parole.⁷⁵

The prisoner, or someone acting on his or her behalf, may start the process by making a request to the CMO or to the Director of CDCR to be considered for a recalled sentence.⁷⁶ For prisoners with determinate sentences, the Director must make a recommendation to the court within 30 days of the request. A physician employed by the CDCR who determines that a prisoner has six months or less to live also must inform the CMO.⁷⁷ If the CMO agrees with the prognosis, he or she must inform the warden, who is then required to inform the prisoner and his or her advocate of the compassionate release procedures.

If the Director or Board makes a recommendation for compassionate release to the trial court, the court is required to hold a hearing within 10 days to consider whether the prisoner’s sentence should be recalled.⁷⁸ If the court grants the recall, the CDCR must release the prisoner within 48 hours after receiving the court’s order, unless the prisoner agrees to a delay.⁷⁹

⁷⁴ Penal Code § 1170(e)(2)(A)-(C).

⁷⁵ Penal Code § 1170(e)(2); 15 CCR § 3076(a).

⁷⁶ Penal Code § 1170(e)(6).

⁷⁷ Penal Code § 1170(e)(4).

⁷⁸ Penal Code § 1170(d).

⁷⁹ Penal Code § 1170(e)(9).

Executive Clemency

Another California law permits early release from prison when executive clemency (commutation of sentence) is granted by the governor.⁸⁰ In 1991, then-Governor Wilson's office declared that it "does not consider applications of executive clemency for individuals currently under sentence except on grounds of either extreme and unusual hardship or innocence."⁸¹ In practice, executive clemency is rarely granted and has never been granted to any prisoner with AIDS. The Governor generally also requires a prisoner to first pursue any judicial remedies (meaning that before applying for clemency, a terminally-ill prisoner should pursue a request for a compassionate release as described in the preceding section).

To begin the clemency process, a prisoner or advocate should fill out an Application for Clemency. Before sending the completed application back to the Governor's Office, the applicant must also fill out and send a Notice of Intention To Apply for Executive Clemency to the district attorney of each county in which he or she was convicted of a felony.⁸² Once the Governor's Office receives the application, the Board of Parole Hearings conducts a background investigation, which is followed by a review by the Governor's Office.⁸³ If the prisoner has been convicted of more than one felony in separate proceedings, a majority of the California Supreme Court must also approve any commutation of the sentence.⁸⁴

How Do I Complain When the Prison Has Violated My Rights?

California regulations guarantee prisoners the right to file administrative appeals.⁸⁵ In general, it is recommended that prisoners follow the prison system's administrative appeal process all the way through to the final level. The courts, for example, will refuse to hear most legal actions unless you have pursued an administrative appeal through the highest level of review. In addition, many attorneys and advocacy groups will not help you unless you already have tried to resolve the problem through the grievance process.

If you feel that your rights are being or have been violated should file an administrative appeal immediately. There are three different types of administrative appeals that prisoners with HIV or AIDS might need to file, depending on what exactly is the problem. These are: Health Care Appeals (602-HCs), Disability Accommodation or Modification Requests (1824s), and

⁸⁰ California Constitution, art. V, § 8; See Penal Code §§ 4800-4813,

⁸¹ Letter from Patricia C. Esgro, Deputy Secretary, Legal Affairs Office, State of California, to Carrie Kojimoto (May 23, 1991).

⁸² Information on clemency, and the application and notice forms, can be obtained by writing to: Governor's Office, State Capitol, Attention: Legal Affairs Secretary, Sacramento, CA 95814 or on the Governor's website at http://gov.ca.gov/pdf/interact/how_to_apply_for_a_pardon.pdf and http://gov.ca.gov/pdf/interact/executive_clemency_and_notice.pdf.

⁸³ Penal Code § 4812 and § 5075.1(h).

⁸⁴ California Constitution, art. V, § 8.

⁸⁵ 15 CCR § 3084.1(a).

regular Administrative Appeals (602s). The different types of appeals are described in the following subsections.

It is very important to keep copies of all grievances you file and the responses. Furthermore, you should take care to meet all the timelines and other requirements for pursuing the appeal. Failure to do so may cause your appeal to be “screened out;” your appeal then will not be processed by the prison officials and you probably won’t be able to exhaust administrative remedies as required to bring a court action.

Health Care Appeals (602-HCs)

For problems with medical testing or treatment, or for problems getting medical appliances such as wheelchairs, canes, hearing aids or glasses, you should file a CDCR Form 602-HC Inmate/Parolee Health Care Appeal Form. The form is pink.

CDCR has recently changed the way health care-related appeals are processed. The federal medical care Receiver has assumed responsibility for receipt, tracking and responses as to all health care-related appeals. All 602-HC appeals should be filed directly to the First Level of review by sending the completed appeal form to Health Care Appeals Coordinator (not the regular appeals coordinator). You do not need to seek Informal Level review for a health care appeal. Log numbers will be assigned to every appeal, and each appeal will be tracked through the Medical Appeals Tracking System (MATS).

If you do not receive a satisfactory response to your appeal at the First Formal Level, you may explain why you are not satisfied and send the 602-HC form back to the Health Care Appeals Coordinator. If the Second Level review does not solve the problem, you may fill out the appropriate section of the form and send the 602-HC to Sacramento for Third Level review. An Office of Third Level Appeals–Health Care has been set up to address health care appeals, and all Third Level health care appeals will be reviewed by licensed health care staff. The address for the Office of Third Level Appeals–Health Care is on the bottom of the 602-HC form.

The timelines for prison staff to respond to 602-HC appeals are generally the same as for regular 602 appeals: 30 working days at the First Level and 20 working days at the Second Level (or 30 working days if the First Level was bypassed). However, the Health Care Appeals Coordinator is required to identify 602-HC appeals that raise an emergency or urgent issue. If the Coordinator determines that a health care 602 raises such an issue, it must be immediately sent to the prison’s the Health Care Manager (HCM) or designee for review. If the HCM agrees that the appeal raises an emergency or urgent issue, the prisoner must be evaluated by an appropriate clinician within one day. Such appeals also will skip the first level and be answered at the second level within five working days.

Disability Modification or Accommodation Requests (1824s)

Another form, the yellow CDCR Form 1824 Reasonable Modification or Accommodation Request, is used for disability issues. HIV is considered a disability under the Americans with Disabilities Act (ADA), a federal statute that bans discrimination against people

– including prisoners – with disabilities.⁸⁶ CDCR rules state that no qualified inmate with a disability, as defined in the ADA, shall, because of that disability, be excluded from participation in or denied the benefits of the services, programs, or activities of the Department, or be subjected to discrimination.⁸⁷

If you feel that you are being discriminated against because of your HIV status (for example, you are being denied access to a work program), you should file an 1824. The 1824 form can also be used to report discrimination based on other types of disabilities, such as if you are unable to walk, or have a hearing or vision impairment. Through an 1824, you can ask the prison staff to modify policies, provide services, or make structural changes that will allow you to have equal access to CDCR services, programs, or activities.

The CDCR has a special, faster process for 1824s. If you file an 1824, you do not need to get an informal level review. Instead, you should submit the completed CDCR Form 1824 to the Appeals Coordinator. The appeal will either be screened out and returned to you or given a log number and assigned to a first-level reviewer. The first-level response must be provided within 15 working days after the 1824 is received by the Appeals Coordinator. If you are dissatisfied with the response, you should attach the 1824 to a 602 form, fill out section F of the 602, and submit everything to the Appeals Coordinator. The Second Level answer is then due in 15 working days. If you are still not satisfied, you can send the appeal to the Third Level (Inmate Appeals Office) in Sacramento; you should get the Third Level response within 20 working days.

Regular Administrative Appeals (602s)

If your problem is not about medical care or disability discrimination, then you will have to file a regular administrative appeal on a green CDCR Form 602 Inmate/Parolee Appeal Form. For example, you could use a regular 602 to complain about a disciplinary rule violation finding or a safety issue.

For most types of 602 appeals, a prisoner must first attempt to informally solve the problem with the staff member most directly involved, by filling out sections A and B and giving the 602 form to that staff member for review. The staff member has 10 working days to write a response and return the 602 to the prisoner.⁸⁸ Informal review is not required for some types of appeals, including alleged misconduct by a correctional officer or an appeal that should be

⁸⁶ 42 U.S.C. § 12131 et seq.; Pennsylvania Dept. of Corrections v. Yeskey (1998) 524 U.S. 206 [118 S.Ct. 1952; 141 L.Ed.2d 215]; Gates v. Rowland (9th Cir. 1994) 39 F.3d 1439, 1446.

Prisoners with mobility (walking), hearing, vision, developmental or learning disabilities, and kidney impairments are also protected from discrimination by Remedial Plans that were adopted as a result of two ADA class action lawsuits, Armstrong v. Davis (N.D. Cal.), No. C94-2307CW and Clark v. California (N.D. Cal.) No. C96-1486FMS. Although prisoners with HIV can use the special 1824 procedures adopted by the Armstrong and Clark Remedial Plans, prisoners with HIV are not otherwise covered by the Armstrong or Clark cases unless they also have one of the specified disabilities covered by those cases. The court-ordered rules regarding the 1824 process can be found in Armstrong v. Davis Remedial Plan in each prison's law library.

⁸⁷ 15 CCR § 3085.

⁸⁸ 15 CCR §§ 3084.2(b), 3084.5(a), and 3084.6(b)(1).

handled as an emergency because waiting for a response in the regular appeal timelines could cause the prisoner serious and irreparable harm.⁸⁹

After a prisoner seeks informal review (if necessary), he or she can seek formal review of an administrative appeal. After two levels of formal review within the institution, there is a third formal review at the Director's Level (Inmate Appeals Office) in Sacramento. The timelines for responses are 30 working days at the First Level, 20 working days at the Second Level (or 30 working days if the First Level was bypassed), and 60 working days at the Third Level.

Whom Should I Contact If My Problems Are Not Resolved Through an Administrative Appeal?

As discussed in the previous sections, if you believe that your rights have been violated by the CDCR, you should first file a Form 602, a Form 602-HC for health-care related appeals, or a Form 1824 for disability issues. If you have filed an administrative appeal and pursued it to the Third Level, but are still not satisfied, then you have a few options for continuing your grievance.

If you file an administrative appeal and it is denied all the way through the Third Level, you can send copies of the appeal and responses to the Prison Law Office to see if we can help or give you more advice. Alternatively, you may know a sympathetic doctor or legal advocate on the outside whom you can contact if you feel that you have been mistreated, and that person could write or talk to the prison administrators. You should also consider contacting your local legislator's office for assistance.

In addition, there are three other ways that you can ask state officials to help with your problem. Those officials are the CDCR Office of the Ombudsman, the CDCR Office of Internal Affairs, and the Office of the Inspector General.

CDCR Office of the Ombudsman

You can request help from a CDCR Ombudsman or Ombudswoman about any issue of confinement other than those relating to your sentence, criminal case, or INS deportation. The Ombudsmen and Ombudswomen are troubleshooters – CDCR employees who have been appointed to investigate inmate complaints and attempt to resolve problems. There is a Chief Ombudsman responsible for addressing complaints throughout the prison system. In addition, there are specific Ombudsmen and Ombudswomen designated for CSP–Sacramento, High Desert State Prison, Salinas Valley State Prison, Pelican Bay State Prison, Kern Valley State Prison, CSP–Corcoran, the California Correctional Institution, and all of the women's institutions.

A prisoner at an institution where there is an active Ombudsman or Ombudswoman can ask for assistance by sending a Request for Interview form in a U-Save-Em envelope, addressed to the Ombudsman. Alternatively, any person can contact the Office of the Ombudsman by mailing a letter to:

⁸⁹ 15 CCR § 3084.7(a)(1).

CDCR Office of the Ombudsman
1515 S. St., North Bldg.
Sacramento, CA 95814

If you write to the Ombudsman, you should write “Confidential Legal Mail” on the envelope. Non-prisoners also can contact the Ombudsmen and Ombudswomen by email or telephone; email addresses and telephone numbers are available on the CDCR’s website at <http://www.cdcr.ca.gov/Offices/Ombuds/OOContact.html>.

The most effective way to get help is to briefly describe the problem, what you have already done to try to resolve it on your own (for example, talking to staff, filing administrative appeals, contacting outside organizations), and what you want to have done. Be brief and clear. Do not include information on every problem you have had; focus on the one or two problems that are most urgent.

The Ombudsmen and Ombudswomen typically will not help prisoners who have not tried to resolve the problem through the regular grievance process. Non-emergency requests for help will simply be re-routed back into the prison. In cases of medical emergency, however, they will take action, and will not wait for a response to an administrative appeal.

CDCR Office of Internal Affairs

If your problem involves serious staff misconduct, you can request an investigation by the CDCR Office of Internal Affairs.⁹⁰ You must exhaust the administrative appeal process first.⁹¹ You can have a friend or family member call the Internal Affairs office at (916) 255-1300, but the office prefers contact by mail. The address is:

Office of Internal Affairs
P.O. Box 3009
Sacramento, CA 95812

Office of the Inspector General

You can also send complaints about prison conditions and staff misconduct to the Office of the Inspector General (OIG). Unlike the Office of Internal Affairs and Office of the Ombudsman, which are part of the CDCR, the OIG is an independent agency set up to investigate complaints against the CDCR and the Division of Juvenile Justice.⁹² Again, before sending a complaint to this office you should go through the administrative appeal process. If you are not satisfied with the appeal responses, write to:

⁹⁰ CDCR Admin. Bulletin 97/10.

⁹¹ DOM §§ 31140.1-31140.45 detail the policies and procedures for internal affairs investigations.

⁹² Penal Code §§ 6125-6133.

Office of the Inspector General
P.O. Box 348780
Sacramento, CA 95834-8760

Non-prisoners also may contact the OIG toll-free at (800) 700-5952, or by submitting a Contact Form through the OIG website at www.oig.ca.gov/pages/about-us/contact-oig.php.

Can I File a Lawsuit To Challenge a Violation of My Rights?

If you file an administrative appeal to the highest level, and still do not get help with your problem or compensation for personal injuries you have suffered, then you may be able to file some type of lawsuit. The type of lawsuit that you can file will depend on what your problem is and what relief or remedy you want the court to order. The rules and procedures for most lawsuits are too complex to be covered in this letter, but here is an overview of the most common lawsuits that can be brought to address prison conditions problems.

State Court Habeas Corpus Petition

California prisoners can file a state court petition for a writ of habeas corpus challenging any unlawful condition of confinement.⁹³ State petitions can be brought to ask for injunctive relief only (a court order requiring that prison officials do or stop doing something); awards of money damages for past wrongs do not appear to be authorized by California habeas law. Petitions can be based on violations of federal law, state law, or both. There is no set timeline for filing a state habeas petition, but you should not wait any longer than you need to because a court can refuse to hear your case if it decides there was too much delay before you filed your petition

Prisoners usually must exhaust their administrative appeal remedies before filing a habeas writ.⁹⁴ Exhaustion is not required in certain instances, such as if the administrative remedy is unavailable or inadequate⁹⁵ or if taking the time to exhaust administrative remedies would cause you to suffer an unreasonable risk of irreparable harm.⁹⁶ Nonetheless, we strongly recommend that you exhaust – or at the very least begin – the administrative appeal process before sending your petition to the court.

Compared to other types of legal actions, the rules and procedures for state habeas corpus actions are relatively simple. Also, if you file a state habeas petition and the court issues an order to show cause allowing the case to proceed, then the court must appoint a free attorney to represent you in the rest of the proceedings if you want an attorney and have no money to pay for one. For these reasons, state habeas petitions are one of the easiest cases for prisoners to litigate.

⁹³ Penal Code §§ 1473-1508; In re Davis (1979) 25 Cal.3d 384 [158 Cal.Rptr. 384]; In re Darrell (1970) 2 Cal.3d 675 [87 Cal.Rptr. 504].

⁹⁴ E.g., In re Strick (1983) 148 Cal.App.3d 906, 911 [196 Cal.Rptr. 293]; In re Dexter (1979) 25 Cal.3d 921, 925 [160 Cal.Rptr. 118].

⁹⁵ E.g., White v. California (1987) 195 Cal.App.3d 452, 464 [240 Cal.Rptr. 732]; Glendale City Employees' Assn., Inc. v. City of Glendale (1975) 15 Cal.3d 328, 342-343 [124 Cal.Rptr. 513].

⁹⁶ In re Serna (1978) 76 Cal.App.3d 1010, 1017-1019 [143 Cal.Rptr. 350] (Stephens, J., dissenting).

For more information about state court habeas petitions, contact the Prison Law Office and request a copy of the free Habeas Corpus Manual.

Federal Civil Rights Suit

The federal Civil Rights Act (42 U.S.C. § 1983) allows prisoners to sue state officials for violations of federal constitutional or statutory rights. These suits are known as “civil rights” or “section 1983” actions. This type of case can be filed in either state or federal court, but federal courts generally have better procedures for dealing with lawsuits brought by people who are incarcerated.

You can seek injunctive relief through a federal civil rights suit. However, court may not grant injunctive relief unless such relief is narrowly drawn, extends no further than necessary to correct the violation of the federal right, and is the least intrusive means for correcting the violation. The court must give “substantial weight” to any adverse impact on public safety or the operation of a criminal justice system caused by the relief.⁹⁷

In some circumstances, you may also be able to sue prison officials for money damages. To get money damages, you will usually have to show that the state officials’ conduct violated constitutional rights that were clearly established at the time⁹⁸ and that you suffered an actual physical injury.⁹⁹

There are a few very important requirements to be aware of when filing a civil rights action. First, a federal civil rights suit must be filed within a certain period of time after the cause of action “accrues” (which is generally the date of the event that caused the injury or the date you find out about an injury).¹⁰⁰ A person in California has two years to file a personal injury lawsuit.¹⁰¹ However, for prisoners serving a “term less than for life,” the two-year time limit for filing a suit for money damages is suspended (“tolled”) for up to an additional two years during the imprisonment.¹⁰² Thus, most prisoners have four years to file a federal civil rights suit. This includes prisoners serving determinate terms and prisoners serving life with the possibility of parole, but not those sentenced to life without the possibility of parole.

A prisoner who wants to bring a federal civil rights suit must first exhaust administrative appeal remedies by filing some form of administrative appeal to the highest possible level.¹⁰³

⁹⁷ 18 U.S.C. § 3626(a).

⁹⁸ Hope v. Pelzer (2002) 536 U.S. 730 [122 S.Ct. 2508; 153 L.Ed.2d 666]; Saucier v. Katz (2001) 533 U.S. 194 [121 S.Ct. 2151; 150 L.Ed.2d 272].

⁹⁹ 42 U.S.C. § 1997e(e). See Oliver v. Keller (9th Cir 2002) 289 F.3d 623.

¹⁰⁰ E.g., Bagley v. CMC Real Estate Corp. (9th Cir. 1991) 923 F.2d 758, 760.

¹⁰¹ Code of Civil Procedure § 335.1.

¹⁰² Code of Civil Procedure § 352.1.

¹⁰³ 42 U.S.C. § 1997e(a); O’Guinn v. Lovelock Corr. Center (9th Cir. 2007) 502 F.3d 1056, 1060-1061; Porter v. Nussle (2002) 534 U.S. 516 [122 S.Ct. 983; 152 L.Ed.2d 12]. At least one court has held that, since the requirement applies only to prisoners, a person who is released from prison prior to filing a civil rights complaint need not exhaust

The U.S. Supreme Court has held a prisoner must exhaust whatever administrative remedies are available, even if the prisoner is seeking money damages and money damages cannot be granted through the prison grievance system.¹⁰⁴ There are no established exceptions to the strict requirement that prisoners exhaust all administrative remedies prior to filing a federal civil rights case.

If you think you want to file a federal civil rights suit, and you want more information, write to the Prison Law Office and request the packet on Lawsuits for Money Damages Against Prison Officials.

State Law Tort Action

Prisoners may also file state court “tort” cases seeking injunctive relief or money damages for violations of state law. You want to allege violations of federal and state law, then you can just include state tort claims as part of a federal civil rights suit (see previous section). Alternatively, you can file a tort action in state civil court.

You must exhaust all administrative appeals prior to bringing personal injury actions under the California Tort Claims Act (Government Code § 810 et seq.).¹⁰⁵ In addition, if you want to ask for money damages, you must first file a claim with the California Victim Compensation and Government Claims Board prior to filing the lawsuit.¹⁰⁶ The deadline for filing a government claim for death or injury to a person or personal property is no later than six months after the cause of action accrues (one year for claims related to any other cause of action), and these time limits are not postponed because a person is imprisoned.¹⁰⁷ However, you can ask the Board to accept a late claim.¹⁰⁸

The time for filing a state tort lawsuit normally begins when the Government Claims Board denies a claim. However, if the claim is denied while your administrative appeal is still pending, additional time needed to complete that process should not count against the deadline.¹⁰⁹ The deadline varies from six months to two years depending on how the Claims Board denies the claim (for example, by providing written notice, or by failing to act on the claim at all).¹¹⁰ Unlike the case with federal civil rights cases, the timelines for filing state tort suits are not tolled just because the person bringing the suit is in prison.

administrative remedies. Greig v. Goord (2d Cir. 1999) 169 F.3d 165.

¹⁰⁴ Booth v. Churner (2001) 532 U.S. 731, 734 [121 S.Ct. 1819, 1821; 149 L.Ed.2d 958].

¹⁰⁵ Wright v. California (2004) 122 Cal.App.4th 659 [19 Cal.Rptr.3d 92].

¹⁰⁶ Government Code § 945.4.

¹⁰⁷ Government Code §§ 911.2 and 945.6(c).

¹⁰⁸ Government Code § 911.4.

¹⁰⁹ Wright v. California (2004) 122 Cal.App.4th 659 [Cal.Rptr.3d 92].

¹¹⁰ Government Code § 945.6(a)(1)-(2).

If you think you want to file a state tort claim, write to the Prison Law Office and request the packet on Lawsuits for Money Damages Against Prison Officials.

APPENDIX: RESOURCE LIST

HIV and AIDS

AIDS Action Committee of Massachusetts – HIV Health Library
294 Washington Street, 5th Floor
Boston, MA 02108
Telephone: (617) 450-1432 or (866) 799-0079 (toll free)
www.aac.org/health

Publishes bi-monthly newsletter Forward Living: HIV Health News and maintains links to thousands of fact sheets, articles, and reports about HIV infection and related health issues. Will send copies free upon request.

AIDSinfo (infoSIDA)
Telephone: (800) 448-0440
www.aidsinfo.nih.gov

A project of the United States Department of Health and Human Services, *AIDSinfo* provides fact sheets and booklets written to supplement the DHHS' treatment guidelines. The materials are written in plain language and are available in both English and Spanish. You can obtain copies by calling the toll-free number listed above, which operates Monday-Friday, 12 p.m.-5 p.m. EST. Both English- and Spanish-speaking health information specialists are available.

American Civil Liberties Union (ACLU) – National Prison Project
915 15th Street, NW, 7th Floor
Washington, DC 20005
Telephone: (202) 393-4930
www.aclu.org/prison

The ACLU's National Prison Project fights unconstitutional conditions of confinement through litigation of prison-condition cases on a national level, public education, and other forms of advocacy. It does not handle post-conviction cases or cases on behalf of individual prisoners.

The NPP publishes the Journal, a semi-annual newsletter featuring articles, reports, legal analysis, legislative news, and other developments in prisoners' rights. An annual subscription is \$35 (\$2 for prisoners). The Prisoners' Assistance Directory, updated in 2007 and available for \$35, includes contact information and services descriptions for over 300 national, state, local, and international organizations that provide assistance to prisoners, ex-offenders, and families of prisoners, as well as a bibliography of informative books, reports, manuals, and newsletters of interest to prisoners and their advocates. To order any of these publications, send a check or money order to National Prison Project Publications at the above address.

The NPP also publishes a 27-page booklet, Play It Safer, that describes 11 of the most common sexually transmitted diseases, the signs of disease, the importance of safer sex, and the need for treatment. The booklet also includes a national resource list for prisoners. Prisoners can receive a free copy; write to the attention of Jackie Walker, Infectious Diseases Information Coordinator, National Prison Project Publications.

Being Alive
621 North San Vicente Boulevard
West Hollywood, CA 90069
Telephone: (323) 874-4322
www.beingalivela.org

Provides free subscriptions to the regularly published Being Alive newsletter. (Write: “I am a prisoner with HIV and cannot afford to contribute.”) The newsletter focuses on HIV and policy issues. It is sent in an unmarked envelope, and subscribers’ names are kept confidential.

California AIDS/STD/Hepatitis Hotline
Hotline: (800) 367-AIDS (367-2437)

A program of the San Francisco AIDS Foundation, this toll-free hotline provides assistance in English and Spanish. Its hours of operation are Monday, Wednesday, Thursday, and Friday 9 a.m.-5 p.m. PST, and Tuesday 9 a.m.-9 p.m. PST.

Centerforce
2955 Kerner Boulevard, 2nd Floor
San Rafael, CA 94901
Telephone: (415) 456-9980
www.centerforce.org

Originally founded to provide services such as transportation, childcare, and referrals to prison visitors, Centerforce’s mission has expanded to include a variety of programs regarding HIV, hepatitis, and other health issues in prison and in the community. Examples include training women with incarcerated partners to be peer health educators and offering pre-release support and discharge planning for HIV-positive inmates.

Center for Health Justice (formerly CorrectHELP)
8235 Santa Monica Boulevard, Suite 214
West Hollywood, CA 90046
Telephone: (323) 822-3830
Hotline: (323) 822-3838
www.healthjustice.net

Provides HIV and hepatitis C treatment and prevention education programs and services to both men and women in correctional facilities, primarily in Los Angeles County. Operates a free national prisoner HIV prevention and treatment hotline, which accepts collect calls Monday-Friday from 8 a.m.-5 p.m. PST. Also Publishes HIV Inside: Everything You MUST Know To Stay Healthy While You’re Down (versión española: El VIH Desde Adentro) and HepC Inside: The Silent Killer (versión española: Dentro HepC: El asesino silencioso).

Centers for Disease Control and Prevention (CDC)

1600 Clifton Road

Atlanta, GA 30333

Hotline: (800) CDC-INFO (232-4636)

TTY: (888) 232-6348

www.cdc.gov

The CDC's information hotline is available in English and Spanish 24 hours a day, 7 days a week, to answer questions about a variety of health topics, including HIV/AIDS testing and treatment. This is a toll-free call. Note that the operators can provide health information, but do not diagnose any health conditions.

Hay House

501 Santa Monica Blvd., #602

Santa Monica, CA 90401

Provides pen pals for prisoners living with HIV/AIDS.

Just Detention International (formerly Stop Prisoner Rape)

3325 Wilshire Boulevard, Suite 340

Los Angeles, CA 90010

Telephone: (213) 384-1400

www.justdetention.org

Just Detention International is a human rights organization that seeks to end sexual abuse in all forms of detention; the HIV and Prisoner Rape program specifically seeks to address the devastating link between HIV and prisoner rape by advocating for incarcerated sexual abuse survivors to have access to condoms, testing and counseling, and treatment. Incarcerated people can communicate with JDI via legal mail; address correspondence to Ms. Melissa Rothstein, Esq.

National Minority AIDS Council (NMAC) – Prison Initiative

1931 13th Street, NW

Washington, DC 20009

Telephone: (202) 483-6622, ext. 333

www.nmac.org/index/prison-initiative

Helps community and faith-based organizations, correctional facilities, and health departments evaluate, improve, and implement effective discharge planning for HIV-positive inmates and former inmates. Publishes several publications focusing on HIV and AIDS in prison, which can be obtained free of charge.

Philadelphia FIGHT

1233 Locust Street, 5th Floor

Philadelphia, PA 19107

Telephone: (215) 985-4448 (no collect calls)

www.fight.org

Publishes Prison Health News, a quarterly newsletter for prisoners, family members, and medical staff focusing on HIV, hepatitis, and other major illnesses in prison. Subscriptions are free; send request to Prison Health News at the above address.

Project Inform
1375 Mission Street
San Francisco, CA 94103
Telephone: (415) 558-8669
Hotline: (800) 822-7422
www.projectinform.org

Provides free information in English and Spanish about HIV and AIDS treatment, including personal health-care tracking charts; discussion papers on nutrition supplements, food safety, adherence to drug regimens, drug side effects, drug interactions, and HIV-related conditions and infections; and information geared specifically for women. Publishes PI Perspective, a treatment journal that provides information from the most recent studies as well as analysis on current AIDS treatment and research. The toll-free hotline operates Monday-Friday 10 a.m-4 p.m. PST.

Test Positive Aware Network (TPAN)
5537 North Broadway Street
Chicago, IL 60640
Telephone: (773) 989-9400
www.tpan.com

TPAN is a not-for-profit organization dedicated to empowering people living with HIV through peer-led programming, support services, information dissemination, and advocacy. It also provides services to the broader community to increase HIV knowledge and sensitivity, and to reduce the risk of infection. It publishes two national treatment journals: Positively Aware and Positively Aware en Español. An annual subscription (6 issues) is available for a \$30 donation, or at no charge to those who are unable to contribute or are HIV-positive.

Women Alive
1566 Burnside Avenue
Los Angeles, CA 90019
Telephone: (323) 965-1564
Hotline: (800) 554-4876
www.women-alive.org

Publishes a quarterly newsletter (\$15 for a one-year subscription; free to those who cannot afford to pay), and is active in policy and treatment issues affecting women living with HIV. The hotline is available in English and Spanish, Monday-Friday 11 a.m.-5 p.m. PST.

The Women's Project
P.O. Box 164320
Little Rock, AR 72216
Telephone: (501) 372-5113

Publishes HIV, AIDS and Reproductive Health: A Peer Trainer's Manual, available free to prisoners.

WORLD (Women Organized to Respond to Life-threatening Disease)

414 13th Street, 2nd Floor

Oakland, CA 94612

Telephone: (510) 986-0340

www.womenhiv.org

WORLD offers a number of programs and services designed to support and empower women living with HIV. These include a free AIDS Resources Library, advocacy for HIV-positive women in prison, and a 12-week HIV treatment education and community outreach program called "HIV University." It also publishes a newsletter for women living with HIV; it is available at no cost to HIV-positive women, and the mailing list is kept confidential.

Hepatitis C

ALERT Health

660 NE 125 Street

North Miami, FL 33161

Telephone: (305) 893-7992

Hotlines: (877) HELP4HEP (435-7443); (866) 4HEPHIV (443-7448)

www.hep-c-alert.org

National hepatitis C and HCV/HIV health education and referral hotlines are toll-free and operate Monday-Thursday 12 p.m.-8 p.m., Friday 9 a.m.-5 p.m., and Saturday 10 a.m.-4 p.m. (all times EST).

American Liver Foundation

75 Maiden Lane, Suite 603

New York, NY 10038

Telephone: (212) 668-1000

www.liverfoundation.org

Hep C Connection

1325 South Colorado Boulevard

Building B, Suite 302

Denver, CO 80222

Helpline: (800) 522-HEPC (4372)

www.hepc-connection.org

Publishes [Living with Hepatitis C: A Survivor's Guide](#) (4th ed. 2006), which is available for \$10 including shipping and handling. Contact Amy Burkholder.

Hepatitis C Support Project

P.O. Box 427037

San Francisco, CA 94142

www.hcvadvocate.org

Hepatitis Foundation International

504 Blick Drive

Silver Spring, MD 20904

Telephone: (301) 622-4200 or (800) 891-0707 (toll free)

www.hepfi.org

National Hepatitis C Prison Coalition – Hepatitis C Awareness Project

P.O. Box 41803

Eugene, OR 97404-0520

Telephone: (541) 607-5725

Hotline: (866) HEPINFO (437-4636)

www.hcvinprison.org

The Coalition brings together organizations and individuals to raise awareness and provide support to prisoners with HCV and HIV/HCV co-infection; help educate prisoners; and advocate for better testing, treatment, and prevention. It offers seminars and support groups both inside and outside of correctional facilities, distributes a newsletter to anyone who is interested, and operates a toll-free hotline for released HCV-positive prisoners.