

ADVOCACY FOR THOSE IN CARCERAL FACILITIES

A TOOLKIT FOR PHYSICIANS

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A collaboration between:



Chicago Peoples Rights Collaborative

The Medical State of Those Incarcerated



People incarcerated in America ¹

People who are incarcerated have a higher incidence of chronic health problems ² and life expectancy drops by 2 years on average for every 1 year someone is incarcerated ³



On any given day, nearly 60,000 youth under age 18 are incarcerated in juvenile jails and prisons. ⁴

The 8th amendment of the US Constitution

- Affords equitable right to care
- Prohibits cruel and unusual punishment



Medical treatment for the person incarcerated must be based on medically acceptable decisions

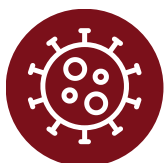
The Right To Care Requires ⁵

Medical Privacy

Informed Consent

Habitable Conditions

Reproductive Rights



Staffing, delays in treatment, difficulty gaining specialty care has increased the **burden of disease** to \$7.7B, ⁶ driven by the cost of off-site medical care like securing an appointment, transportation, medication, and procedures.

1. Kang-Brown J, Montagnet C, Heiss J (2021) People in Jail and Prison in Spring 2021. Vera Institute of Justice.

2. Massoglia M, Pridemore WA. (2015). Incarceration and Health. Annu Rev Sociol. 2015

3. Evelyn J. Patterson. (2013). The Dose-Response of Time Served in Prison on Mortality: New York State, 1989-2003"

4. America's addiction to juvenile incarceration: State by State (no date) American Civil Liberties Union. Available at: <https://www.aclu.org/issues/juvenile-justice/youth-incarceration/americas-addiction-juvenile-incarceration-state-state> (Accessed: December 10, 2022).

5. Cariappa P, LaFarge E, Threatte, et al. (2017). A Jailhouse Lawyer's Manual: Your Right to Adequate Medical Care. jlm.law.columbia.edu/files/2017/05/35.-Ch.-23.pdf

6. Bureau of Justice Statistics. (2001). State Prison Expenditures 2001. bjs.ojp.gov/library/publications/state-prison-expenditures-2001

Caring for your patients in custody

Interacting with officers



Protect patient privacy - Officers can typically step outside of the doorway while maintaining line of sight with an incarcerated patient. This avoids accidental disclosure of sensitive or incriminating information, such as drug use.



Ensure a quality exam - If shackles or other restraints are interfering with an exam, correctional officers can generally move restraints to accommodate you.

Setting your patients up for success at discharge



Explain info to patients - Patients incarcerated do not have easy access to their medical records. *Share directly with patients* about evaluation, findings, next steps, and return precautions.

Medical record privacy - Print visit notes and discharge summary for continuity of care at the facility. If possible, *seal these in an envelope* so correctional officers or other non-medical staff won't review them.



Put specific recommendations in writing - If patients should have a specialty appointment, medical equipment, or follow-up, delineate these in your note along with *specific deadlines* to ensure follow-up.

Provide written prescriptions for any meds - *including over-the-counter*, otherwise patients may be forced to buy them at the commissary where they can be very expensive or unavailable.



Ask for support from your organization's legal team - If something feels amiss, your legal department can help you navigate the encounter.

Advocacy for those in carceral facilities

Expert testimony



Provide expert testimony for medical compassionate release



Provide expert testimony for improved care in a facility



Many states allow for early release of individuals who are incarcerated and experiencing illnesses that are terminal, severe, incapacitating, or related to aging

Physicians may partner with lawyers, advocates, and legislators to improve care at individual, community, and systemic levels.



Where to start

The Medical Justice Alliance is a nonprofit organization that trains volunteer physicians to write expert testimony to support improved medical care for those incarcerated. They refer cases to volunteers and provide mentorship along the way.

Affidavits for Asylum Seekers



Provide medical or psychiatric evaluation



Provide written or direct expert testimony



It's effective!!

42.4% - National asylum grant rate^{7,8}

81.6% - Asylum grant rate for cases with PHR physician⁹

Where to start

Many organizations provide virtual and in-person trainings, resources, and mentorship for physicians who wish to perform asylum evaluations:

Connecting: Join the Physicians for Human Rights (PHR) asylum network:



Developing: Professional development of physicians in the specialty of correctional medicine:



Training: Learn to conduct asylum evaluations:

Empowering: Share resources to help those incarcerated advocate for themselves:



TO DO



Advocating: support and improve the quality of health care in jails:

7. Scruggs E, Guetterman TC, Meyer AC, VanArtsdalen J, Heisler M (2016). An absolutely necessary piece: A qualitative study of legal perspectives on medical affidavits in the asylum process.

8. Haas BM (2021). Asylum is the Most Powerful Medicine: Navigating Therapeutic Interventions in Limbo.

9. Ferdowsian H, McKenzie K, Zeidan A (2019) Asylum medicine: Standard and best practices. Health and human rights.

Advocacy for systemic change

Action steps you can take:

- Write op-eds
- Speak with elected officials
- Connect with advocacy organizations
- Incorporate this work in medical education
- Support voting for those in custody

Example legislative efforts

- Elimination of for-profit prisons
- Shackling bans during pregnancy
- Ensure equitable vaccine access
- Access to treatment for opioid use
- Higher nutrition food options
- More use of compassionate release

Talking points for communicating with politicians or media



Withholding appropriate medical care from those who are incarcerated violates their constitutional right: this amounts to “cruel and unusual punishment.”



Medical care provided to those who are incarcerated is often very poor: prisons are often understaffed and have budget limitations that severely limit services. For-profit prisons also have financial incentives to provide less care.



Incarceration and child wellbeing: more than five million¹⁰ U.S. children have had a parent in prison, which increases the risk of incarceration for these children.



Prisons are ill-equipped to provide advanced care for elders in prison: since 1993, the percentage of people over the age of 55 who are incarcerated has grown from 3% to over 10%, expected to reach around 30% by 2030.¹¹ Facilities often lack the medical capabilities to provide adequate care for older people.



Few individuals are granted release on medical grounds despite qualifying under the law: most states have “compassionate release” laws to release those with severe illness who pose a low risk to society but these are rarely granted.



Individuals released on medical grounds rarely commit another crime: only 3.5% of individuals with medical release and 6.5% of individuals over age of 65 who are released are ever imprisoned again.¹² For both groups, most cases of reimprisonment are due to parole violations (e.g. failing to call a parole officer).

10. America's addiction to juvenile incarceration: State by State (no date) American Civil Liberties Union. Available at: <https://www.aclu.org/issues/juvenile-justice/youth-incarceration/americas-addiction-juvenile-incarceration-state-state> (Accessed: December 10, 2022).

11. Carson EA (2016). Aging of the State Prison Population, 1993-2013. Bureau of Justice Statistics. bjs.ojp.gov/library/publications/aging-state-prison-population-1993-2013.

12. US Department of Justice (2016). The Impact of an Aging Inmate Population on the Federal Bureau of Prisons. oig.justice.gov/reports/2015/e1505.pdf

Glossary and Resources

Referring to individuals who are incarcerated

"Each of us is more than the worst thing we've ever done." - Bryan Stevenson

We strive to use people-first language when referring to those who are incarcerated or justice involved. This means focusing on people as complex human beings rather than labeling them based on an act such as “criminal,” “felon,” “offender,” etc. Our aim is to center the lived experiences of these people without denying their humanity. We acknowledge those who have suffered from crimes committed against them and stand with them in their pain and desire for justice. We also acknowledge a history of incarceration in the US being leveraged disproportionately against marginalized groups and seek to ensure a just “justice system”.

Glossary

Asylum evaluation - a clinical evaluation whose purpose is to obtain facts pertinent to the asylum seeker’s history of persecution; perform an exam assessing signs physical and psychological trauma; and establish the level of consistency between the examination and the asylum seeker’s history

Asylum seeker - an individual seeking safety from persecution or harm in a country other than their own who is awaiting the outcome of their application for refugee status

Compassionate release - early release from incarceration for individuals who are elderly, terminally-ill, or incapacitated

Deliberate indifference - the act of a prison official recklessly disregarding a substantial risk of harm to the person imprisoned;¹³ this requires that the prison official knows of and disregards an excessive risk of harm to the prison

Displaced person - an individual who flees their community of origin due to fears or dangers other than that which would qualify them for refugee status

Medical declaration - written expert testimony of physicians as a substitute for live testimony in court. Can also be known as “affidavit” or “written testimony”

Medical furlough - temporary leave of absence from a prison facility due to medical reasons

Refugee - a person living in another country due to a well-founded fear of persecution based on group membership (e.g. class, religion) in their country of origin

Serious medical condition - an illness, injury, impairment, or physical or mental condition which requires overnight hospitalization or continuing treatment. Examples include Alzheimer's disease, cancer, diabetes, severe depression, pregnancy, and treatment for substance abuse¹⁴

Additional Resources

Compassionate release state laws: famm.org/our-work/compassionate-release/everywhere-and-nowhere/#memos

US asylum law and the asylum process: uscis.gov/humanitarian/refugees-and-asylum/asylum

13. ACLU National Prison Project (2005). Know Your Rights: Medical, Dental, and Mental Health Care. aclu.org/sites/default/files/images/asset_upload_file690_25743.pdf

14. US Office of Human Resource Management (2021). Serious Health Condition. commerce.gov/hr/employees/leave/fmla/serious-health-condition

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3. Evelyn J. Patterson. (2013). The Dose–Response of Time Served in Prison on Mortality: New York State, 1989–2003”
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5. Cariappa P, LaFarge E, Threatte, et al. (2017). A Jailhouse Lawyer's Manual: Your Right to Adequate Medical Care. jlm.law.columbia.edu/files/2017/05/35.-Ch.-23.pdf
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13. ACLU National Prison Project (2005). Know Your Rights: Medical, Dental, and Mental Health Care.
14. US Office of Human Resource Management (2021). Serious Health Condition. commerce.gov/hr/employees/leave/fmla/serious-health-condition

Contributing Organizations

