

KNOW YOUR RIGHTS

Prisoners' Rights

Learn more here about your right to be protected against discrimination and abuse in prison and what to do if your rights are violated. The law is always evolving. If you have access to a prison law library, it is a good idea to research new developments.



I experienced assault or excessive force in prison

Your rights

- Prison officials have a legal duty under the Eighth Amendment of the Constitution to refrain from using excessive force and to protect prisoners from assault by other prisoners.
- Officers may not use force maliciously or sadistically with intent to cause harm, but they may use force in good faith efforts to keep order.
- Prison officials may be violating the Eighth Amendment if they knew about a risk of assault by other prisoners but failed to respond, or if prison conditions or practices create an unreasonable risk of assault (for example, not having enough officers on the unit, not having cell doors that lock properly, etc.).

What to do if you believe that your rights have been violated

- If you have been assaulted by an officer or fellow prisoner, you should file a grievance, and appeal it through all available levels of appeal. Note that there are usually strict time limits for filing a grievance, so you should do so as soon as possible.
- If you believe you are in immediate danger of assault, you should tell a staff member you trust (mental health worker, teacher, etc.).

Additional resources

- Prison Legal News: <https://www.prisonlegalnews.org/>
- Jailhouse Lawyer's Manual:
<http://jlm.law.columbia.edu/files/2017/05/36.-Ch.-24.pdf>

I'm facing religious discrimination in prison

Your rights

- Federal law provides special protections for prisoners' religious exercise. If a prison policy, rule, or practice significantly impedes your ability to practice your sincerely held religious

beliefs, prison officials must show that applying the rule to you furthers an extremely important (in legal terms, “compelling”) governmental interest (e.g., prisoners’ safety or health) and that there is no other reasonable way to go about protecting that interest. If prison officials cannot show this, they must provide a religious accommodation to enable you to practice your faith.

- Depending on your particular circumstances, prison officials may be required to provide you with a religious diet (e.g., halal or kosher meals), worship services, and access to clergy. They also may be required to allow you to have religious texts, wear certain religious clothing, headwear, and jewelry, and maintain religious grooming practices (e.g., wearing a beard or long hair).
- Prison officials cannot impose religious beliefs or practices on you. They cannot punish you for declining to take part in religious activities or events that include religious elements. Prison officials cannot give special preference to members of one faith, or treat prisoners of some religions less favorably than those of others.

What to do if your rights are violated

- You can file a complaint with the U.S. [Department of Justice’s Special Litigation Division](#).
- You can contact the [ACLU in your state](#) for more information.

Additional resources

- [ACLU – Religious Freedom in Prison](#)
- [Department of Justice – Religious Land Use and Institutionalized Persons Act \(RLUIPA\)](#)
- Prison Legal News: www.prisonlegalnews.org
- Jailhouse Lawyer’s Manual:
<http://jlm.law.columbia.edu/files/2017/05/39.-Ch.-27.pdf>

I'm experiencing discrimination or abuse in prison because I'm transgender

Your rights

- If you notify prison officials that you are transgender, and/or have been threatened, officials are legally required to act to protect you. When you enter prison, inform staff you are transgender or believe you are at risk – both verbally and in writing.
- The federal Prison Rape Elimination Act (PREA) requires prisons and jails to make individualized housing placements for all transgender and intersex prisoners, including when assigning them to male or female facilities. A transgender or intersex prisoner's own views with respect to their own safety must be given serious consideration when making these determinations.
- Many correctional facilities house transgender prisoners in solitary confinement to protect them from violence. PREA says you cannot be segregated against your will for more than 30 days and if you are in protective custody you must have access to programs, privileges, education and work opportunities to the extent possible.
- Prison and jail staff must evaluate you for gender dysphoria within a reasonable time if you request it. Medical treatment for prisoners diagnosed with gender dysphoria should be delivered according to accepted medical standards.
- Blanket bans on specific types of treatments, such as a ban on hormone therapy or gender confirmation surgery, are unconstitutional.
- Staff should generally allow you gender-appropriate clothing and grooming supplies, and allow you to present yourself consistent with your gender identity, or they may be in violation of the Eighth Amendment.
- Strip searches must be conducted professionally and respectfully. A strip search conducted in full view of other prisoners and staff may violate your privacy rights. If there is

no emergency, male staff should not strip-search women (including transgender women) and vice versa. Some jails have policies allowing transgender prisoners to choose the gender of the staff to search them.

- Staff cannot conduct strip and pat-down searches solely to assess your genitals. Staff must be trained to conduct searches of transgender and intersex prisoners in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.
- If you request a private shower, PREA requires that officials grant you access.

What to do if you believe your rights might be violated

- Report your concerns or any specific threats to your safety to staff in writing, and also send a copy to the inspector general, the PREA coordinator for the agency with custody over you, and someone outside whom you trust.
- If you are assaulted, file a grievance as soon as possible, though cases of sexual assault may have more flexible time limits on reporting or may have special reporting processes.
- Prisoners who want to file a federal lawsuit about events in jail or prison must first complete the internal appeals process. This means that you need to know the rules of any appeals (or “grievance”) process in your facility, including time limits on filing an appeal after something happens. In most prisons or jails, you will have to file a written complaint on a form that is provided.
- If staff refuse to evaluate you for gender dysphoria or fail to provide you with care, file a grievance and appeal through all levels.
- If you were receiving hormones from a doctor prior to incarceration, have your medical records sent to the medical or health director at your facility.
- If you are placed in protective segregation and do not want to be there, file a grievance and all appeals about your placement. You should also appeal anything that seems unfair about your placement, such as not being able to participate in a hearing, not being told why you were moved to segregation,

not being able to participate in programming or obtain a job, or not being told when you can get out.

- If your placement is based on so-called safety concerns and you would feel safer in a women's facility (as a transgender woman), request such a transfer and file appeals if you do not get one.
- If you are asked to strip down in front of other prisoners and you do not feel comfortable, politely ask to be moved to a separate area.
- If you cannot use a private shower, ask to shower at a different time from other prisoners or in a private area (as the PREA standards require).
- If you do not want to be searched by a staff member of a particular sex, politely ask for a different staff member to search you. In some prisons or jails, you may also be able to get a general order that says you should only be searched by women (if you are a transgender woman).
- Ask for your facility's official policies related to your circumstances. Sometimes you can find these policies in the prison library.

Additional resources

Black and Pink

614 Columbia Rd.

Dorchester, MA 02125

(617) 519-4387

www.blackandpink.org

Just Detention International

3325 Wilshire Blvd., Suite 340

Los Angeles, CA 90010

(213) 384-1400

1900 L St. NW, Suite 601

Washington, DC 20036

(202) 506-3333

www.justdetention.org

National Center for Lesbian Rights

870 Market St., Suite 370

San Francisco, CA 94102

1-800-528-6257

www.nclrights.org

National Center for Transgender Equality

1325 Massachusetts Ave. NW, Suite 700

Washington, DC 20005

(202) 903-0112

www.transequality.org

I'm pregnant and in prison

Your rights

- You have the right to an abortion if you want one, and to refuse an abortion if you do not want one.
- You have the right to prenatal and other medical care for your pregnancy and postpartum care.
- You cannot be forced to pay before you can get the medical care you need.
- You may have the right not to be shackled: many states have laws or policies that prohibit or limit the use of shackles on prisoners who are pregnant, are in labor, or have recently given birth. Some courts have also said that shackling is unconstitutional. The ACLU's [anti-shackling briefing paper](#) provides more detailed information.
- You have the right to refuse sterilization or other unwanted birth control after your pregnancy.

What to do if you think your rights have been violated

- If you are not getting the medical care you need, ask other medical or other staff to help you.
- Document everything that happens. Put your request for an abortion or other medical care in writing and keep a copy. Also, keep a list of the people who you've spoken to or

contacted and write down what they say and the dates and times you spoke to them.

- In addition to your request for medical care, you should also file a grievance (an official complaint) if your medical needs are not met. If your grievance is denied or rejected, file an appeal and pay attention to all the rules and deadlines of the grievance system, which are usually written in the inmate handbook.

Additional resources

- If the prison isn't providing you the medical care you need, contact your own lawyer, a prisoner legal services organization (if one exists in your state), NARAL, Planned Parenthood, your local ACLU affiliate, or the National Prison Project of the ACLU.

I'm in prison and have a disability

Examples of discrimination against people in prison with disabilities

- Exclusion from facilities, programs, and services that are accessible to other prisoners.
- Not providing sign language interpreters for a deaf prisoner at disciplinary hearings, classification decisions, medical appointments,, and educational and vocational programs.
- Failure to provide medical devices such as wheelchairs and canes to disabled prisoners.
- Placement in segregation or solitary confinement due to perceived vulnerability or the unavailability of accessible cells in general population.

Your rights

- Prisoners with disabilities are protected under sections of the Americans with Disabilities Act and the Rehabilitation Act of 1973. In the prison and jail context, the Rehabilitation Act applies to facilities run by federal agencies (such as the Bureau of Prisons) and to any state or local agency that receives federal funding. The ADA regulates facilities run by state and local agencies, regardless of whether they receive federal funding.
- You are entitled to an equal opportunity to participate in programs and services for which you are qualified.
- You are entitled to be housed at your correct security level, and in a cell with the accessible elements necessary for safe, appropriate housing.
- You are entitled to reasonable modifications to policies and procedures.
- You are entitled to equally effective communication including any necessary auxiliary aids and services such as sign language interpreters, captioning, videophones, readers, Braille, and audio recordings.
- Prison officials are not required to provide accommodations that impose undue financial and administrative burdens or require a fundamental alteration in the nature of the program.
- Prison officials are also allowed to discriminate if the disabled prisoner's participation would pose significant safety risks or a direct threat to the health or safety of others that cannot be mitigated through reasonable modifications.

What to do if you believe your rights have been violated

- File a formal grievance through your facility's grievance process and appeal all levels available. If your facility has an ADA Coordinator you may also contact that person and ask him/her to help you with an accommodation for your disability.
- You or your attorney can file a lawsuit explaining how your rights have been violated under the ADA, the Rehabilitation Act, or both. You must complete any available grievance procedure and all appeals before filing a lawsuit in federal court.

- To bring a lawsuit under these laws, disabled prisoners must show: (1) that they are disabled within the meaning of the statutes, (2) that they are “qualified” to participate in the program, and (3) that they are excluded from, are not allowed to benefit from, or have been subjected to discrimination in the program because of their disability. Under the Rehabilitation Act, prisoners must also show that the prison officials or the governmental agency named as defendants receive federal funding.
- Depending on the situation, disabled prisoners may file claims for relief under the Eighth Amendment, which prohibits cruel or unusual punishment, in addition to or instead of the ADA or Rehabilitation Act.
- The laws of some states may provide different or greater legal rights than the federal laws. Disabled prisoners should investigate this possibility before bringing suit.

Additional resources

- Every state and U.S. territory has a federally mandated Protection and Advocacy (P&A) organization that works to provide assistance and legal services to individuals with disabilities. Some of these organizations also work with incarcerated individuals. For a complete listing of all these organizations by state click here: <https://www.ndrn.org/ndrn-member-agencies.html>

I want to receive publications in the mail in prison

Your rights

- Prisoners generally have the right to receive books, magazines, and newspapers by mail, subject to the restrictions described below.

- Prison authorities can generally decide to censor a publication for reasonable goals related to prison safety or security, but cannot reject publications because they disagree with their political viewpoint or for other arbitrary reasons.
- Prisons cannot discriminate against religious publications by arbitrarily subjecting them to rules that do not apply to non-religious publications.
- Prisons and jails may ban material that describes how to build weapons, instructs how to escape, or instructs how to break the law. They can ban magazines that contain nudity and pornography.
- Often prisoners have the right only to receive softcover books and bound periodicals sent directly from a publisher, bookstore, or other commercial source, but sometimes courts have allowed prisoners to receive clippings and copies of articles from friends, family, or other noncommercial sources.
- Prison officials cannot prevent your friends and relatives from buying you books and magazine subscriptions.
- Both you and the sender have the right to be notified if your incoming publication is being censored or rejected. Prison officials must give enough of a reason for their censorship decision to allow you to challenge that decision.

What to do if you think your rights have been violated

- When you learn that a publication has been rejected, you should always try to check your institution's publication policy. If you believe the policy has been violated, you should file a grievance, and appeal it through all available levels of appeal. Note that there are usually strict time limits for filing a grievance, so you should do so as soon as possible.

Additional resources

- [Prison Legal News](#)
- [Jailhouse Lawyer's Manual](#)

I want to send and receive mail in prison

Your rights

- The First Amendment of the Constitution entitles prisoners to send and receive mail, but the prison or jail may inspect and sometimes censor it to protect security, using appropriate procedures.
- Prison officials' ability to inspect and censor mail depends on whether the mail is privileged or not. Officials may open non-privileged mail, which includes letters from relatives, friends, and businesses, outside your presence. They can read this mail for security or other reasons without probable cause or a warrant.
- Incoming or outgoing non-privileged mail may be censored for legitimate security reasons. However, mail may not be censored simply because it is critical of prison officials or because prison officials disagree with its content.
- Prisons may not ban mail simply because it contains material downloaded from the Internet. You may not be punished for posting material on the Internet with the help of others outside of prison.
- Clearly marked privileged mail, which includes communications to and from attorneys and legal organizations like the ACLU, gets more protection. Officials may open incoming privileged mail to check it for contraband, but must do so in your presence. They are not allowed to open outgoing privileged mail. Privileged mail ordinarily cannot be read unless prison officials obtain a warrant allowing them to do so.
- If your incoming mail is censored, both you and the sender are entitled to notice. The notice must explain the reasons for the censorship in enough detail to allow you to challenge it.

What to do if you think your rights have been violated

- If you believe your rights with respect to mail have been violated, you should file a grievance, and appeal it through all available levels of appeal. Note that there are usually strict

time limits for filing a grievance, so you should do so as soon as possible. You should file a new grievance for each incident; you have a better chance of succeeding in a lawsuit if you can establish that the prison's violations of your rights are the result of an ongoing policy or practice, rather than isolated incidents.

Additional resources

- [Prison Legal News](#)
- [Jailhouse Lawyer's Manual](#)

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