

# Your Constitutional Right to Adequate Mental Health Care in Jails or Prisons<sup>1</sup>

## 1. What is the difference between jail and prison?

In general: Jails are operated by a local agency and hold individuals not yet convicted of a crime, or who have been sentenced to less than a year to the jail. Prisons are state operated and hold individuals who have been convicted of a crime and sentenced there for more than one year.

Because of prison realignment (AB 109) in California, a jail may now also hold some individuals who have already been convicted and are serving their sentences.

## 2. Do adult prisoners in California jails or prisons have a right to adequate mental health care?

Yes. You have a right to adequate mental health care in jail and prison under the U.S. Constitution.

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<sup>1</sup>This document talks about the rights of adult prisoners with mental health needs in California jails and prisons under the 14<sup>th</sup> and 8<sup>th</sup> Amendments of the United States Constitution. You may have more rights under other laws. The information in this document cannot replace doing your own legal research or talking to a lawyer about your legal issues.

The 14<sup>th</sup> Amendment Due Process Clause applies to individuals who have not yet been convicted of a crime. It protects them against conditions that amount to “punishment.”

The 8<sup>th</sup> Amendment applies to individuals who have already been convicted of a crime. It protects them against “cruel and unusual punishment.”

For the most part, the rights of individuals in jail and prison work the same. In California, individuals who have not yet been convicted in some circumstances may have more rights than people have who have already been convicted.

### 3. What is “adequate mental health care?”

You do not necessarily have the right to a particular medication or a particular mental health treatment.

A mental health care system that meets the serious mental health needs of individuals in jail or prison has many parts, including:

- a. A system to screen and evaluate prisoners to identify mental health needs;
- b. Treatment that has to be more than separation or isolation;
- c. Treatment that has to be more than close supervision;
- d. Trained professionals who must participate in treatment;
- e. Accurate, complete and confidential mental health records;
- f. Medication that must not be prescribed or given in dangerous amounts or ways, or without appropriate supervision and periodic evaluation;
- g. A basic program to identify, treat and supervise prisoners who may harm themselves.

#### 4. When does a jail or prison official violate my right to adequate mental health care?

Jail or prison officials violate an individual's constitutional rights when they are "deliberately indifferent" to their "serious mental health needs."

Mental health care may be "inadequate" if the jail or prison:

- a. Does not do mental health care screening at intake;
- b. Does not follow-up with individuals who have known or suspected mental health conditions;
- c. Does not provide enough qualified mental health staff;
- d. Houses individuals with mental health conditions in segregated or "supermax" units;
- e. Fails to transfer individuals with serious mental health conditions to more appropriate facilities;
- f. Improperly uses restraints;
- g. Uses excessive force against prisoners with mental health conditions;
- h. Does not have training for custody staff on how to respond to mental health issues;
- i. Does not have adequate crisis intervention.

#### 5. What is "deliberate indifference?"

A jail or prison official is "deliberately indifferent" when there is "reckless disregard of a substantial risk of harm to a person." This means that the jail or prison official knows that there is a significant risk of harm to you and fails to take reasonable steps to reduce or eliminate that risk.

"Deliberate indifference" is not "negligence." Deliberate indifference implies that the official intended to ignore a prisoner's mental health need(s) while "negligence" could be a mistake.

“Deliberate indifference” is also not just a difference of opinion on mental health treatment between mental health professionals, or between you and prison mental health staff. You must show that the actions of the mental health staff could not be supported by legitimate professional judgment.

There is also no “deliberate indifference” if jail or prison officials took reasonable steps in response to the risk, even if the harm ultimately happens. This does not mean that any action by jail or prison officials is enough to prove that they were not “deliberately indifferent.” Taking steps that are clearly ineffective, for example, can actually help prove that jail or prison officials were “deliberately indifferent.”

## 6. How do I prove that a jail or prison official was “deliberately indifferent?”

You can prove that jail or prison officials knew of a substantial risk of harm to you through **direct** or **indirect** evidence.

Direct evidence may include the following: Sick call requests, medical records, complaints, grievances, or other records that show the nature of the complaint, the date of the complaint, the individual who received the complaint, the treatment provided, the adequacy of treatment, the date of treatment, the mental health staff seen, the nature of follow-up care ordered, whether follow-up care happened, the effects of any delay in not getting treatment, and any additional information that might be relevant to the complaint.

Indirect evidence is proof that the risk of harm to the person was obvious, for example, if an individual’s mental health became worse in a way that others could observe.

## 7. What is a “serious mental health need?”

Examples of a “serious mental health need” may include:

- a. Treatment required for your mental health condition(s);
- b. Mental health condition(s) that significantly interfere with your everyday activities and negatively affect you or others.

8. Can jail or prison officials refuse to give me mental health care because I can't pay?

No. Jail officials cannot deny you mental health treatment because you cannot pay. But jail officials may charge you for mental health treatment, if you are able to pay.

9. What can I do if I believe that I am not receiving adequate mental health care?

You should first follow the steps in your jail or prison's administrative process, such as talking to officials and filing a grievance. You can also take legal action such as filing a complaint in court. You should talk to a lawyer if you choose to take legal action.

Loved ones are encouraged to look on your jail or prison's website for procedures to request or complain about mental health care. They can also look for downloadable forms they can fill out and provide to staff.

10. Where can I call for further information on my rights to adequate mental health care?

You can contact Disability Rights California at: 1-800-776-5746.

We want to hear from you! After reading this fact sheet please take this short survey and give us your feedback.

English version: <http://fs12.formsite.com/disabilityrightsca/form54/index.html>

Spanish version: <http://fs12.formsite.com/disabilityrightsca/form55/index.html>

**The California Mental Health Services Authority (CaMHSA)** is an organization of county governments working to improve mental health outcomes for individuals, families and communities. Prevention and Early Intervention programs implemented by CaMHSA are funded by counties through the voter-approved Mental Health Services Act (Prop 63). Prop. 63 provides the funding and framework needed to expand mental health services to previously underserved populations and all of California's diverse communities.



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