Joint Meeting of the Courts, Corrections, and Justice Committee and the Legislative Health and Human Services Committee

Albuquerque
August 7, 2014

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The Right to Health Care in Prison

Health Care for Prisoners

Some Sources of the Requirement

Historical Precedent	Constitutional Provisions	Case Law	Statutes
RULES AND ORDERS. ESTABLISHED BY THE DIRECTORS OF THE STATE PRISON. CHARLESTOWN, (MASSACHUSETTS.) BOSTON, PRINTED BY J. BELCHER. August 7, 1811. ARTICLE IV. *Of the Physician.* SECTION 1. The Physician shall visit the Prison at least twice a week, and as much oftener as the exigencies of the sick may require. He shall prescribe the regimen proper for each patient, and whenever he may deem it necessary, he shall report to the Director of the week, in writing, any temporary change of diet, dress or employment which the convicts' health may require to be adopted, consistent with the principles and objects of the institution. First prison hospital established at Newgate Prison, New York City, 1797 	U.S. Constitution Amendments 8, 14 ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.") New Mexico Constitution Article 2, § 13 ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.")	*Estelle v. Gamble* (1976) and progeny (prohibiting deliberate indifference to serious medical needs)	Americans with Disabilities Act N.M. Stat. Ann. § 33-2-29 ("In case of any pestilence or contagious sickness breaking out among the convicts, the corrections division [corrections department] may cause the convicts confined therein or any of them to be removed to some suitable place of security where such of them as may be sick shall receive necessary medical attention and such convicts must be returned as soon as may be to the penitentiary to be confined according to their respective sentences, if the same be unexpired.")

429 U.S. 97, 50 L.Ed.2d 251

W. J. ESTELLE, Jr., Director, Texas Department of Corrections, et al., Petitioners,

v.

J. W. GAMBLE.

No. 75-929.

Argued Oct. 5, 1976.

Decided Nov. 30, 1976.

Rehearing Denied Jan. 17, 1977.
See 429 U.S. 1066, 97 S.Ct. 798.

"An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In the worst cases, such a failure may actually produce physical 'torture or a lingering death…' In less serious cases, denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose."

Estelle v. Gamble, 429 U.S. 97, 103 (1976) (internal citation omitted).

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See 429 U.S. 1066, 97 S.Ct. 798.

"We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' proscribed by the Eighth Amendment."

Estelle v. Gamble, 429 U.S. 97, 104 (1976) (internal citation omitted).

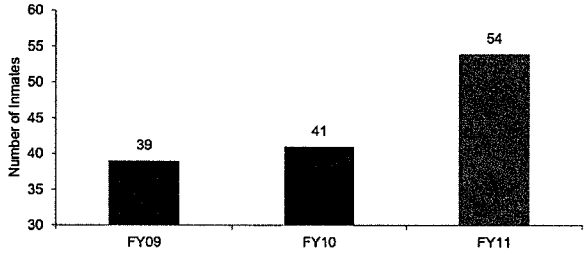
Correctional Health Care/ Health in Prisons: A Complex System

The Aging of the Prison Population

Older Prisoners, Special Needs

The average daily population in the CMU Special Needs unit at the Central New Mexico Correctional facility unit has risen from 39 to 54 over the last three fiscal years and the unit is now at capacity.

Graph 12. CMU Special Needs Average Daily Population



Source: NMCD

"The qualifications in the NMCD internal policy for an inmate to be admitted into special needs housing closely aligns with qualifications for the medical and geriatric parole program in statute."

NMCD, *Reducing Recidivism, Cutting Costs and Improving Public Safety in the Incarceration and Supervision of Adult Offenders*, June 14, 2012, at 31.

Older Prisoners, Special Needs

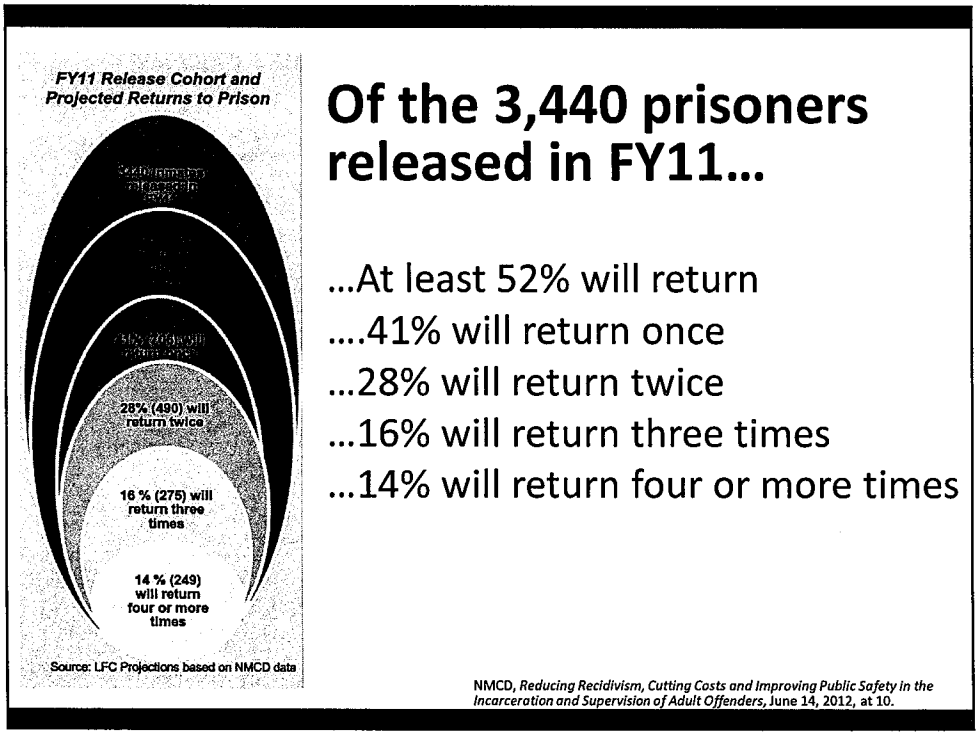
- Functional and cognitive impairment
- Multiple, complex chronic medical conditions
  - Case management
  - Medication management
- Facilities often ill-equipped and inaccessible, creating risk of injury
- Multiple levels of care and housing needed

Older Prisoners, Special Needs

- Care for dementia and related conditions
- Curative care →Palliative care →Hospice care
- Access to geriatric specialists
- Sensible geriatric and medical parole

Prison Health is Public Health

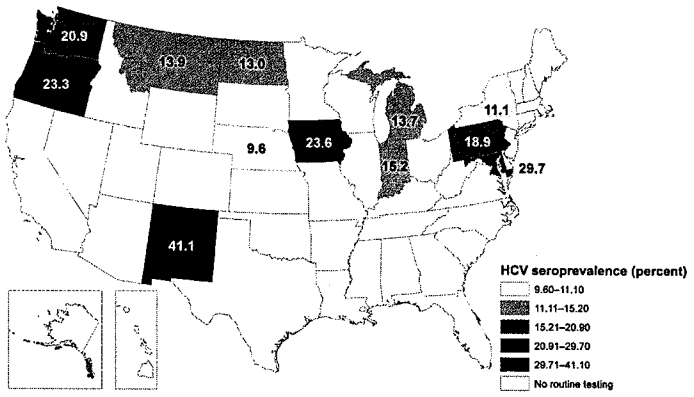

The Community
Prison
Jail
Average length of stay = 1.82 years[1]
[1]NMCD, Reducing Recidivism, Cutting Costs and Improving Public Safety in the Incarceration and Supervision of Adult Offenders, June 14, 2012, at 12


FY11 Release Cohort and Projected Returns to Prison
28% (490) will return twice
16 % (275) will return three times
14 % (249) will return four or more times
Source: LFC Projections based on NMCD data
Of the 3,440 prisoners released in FY11…
…At least 52% will return
….41% will return once
…28% will return twice
…16% will return three times
…14% will return four or more times
NMCD, Reducing Recidivism, Cutting Costs and Improving Public Safety in the Incarceration and Supervision of Adult Offenders, June 14, 2012, at 10.

Treating Patients with Hepatitis C

HCV Seroprevalance in New Mexico Prisons

Figure 1. HCV seroprevalence among inmates in selected U.S. state prisons, 2001–2012[a]



The New Mexico seroprevalence reflects a 2010 estimate

[a]Where multiple seroprevalence estimates were available since 2001, we used the observation closest in date to 2006 (preferentially selecting earlier observations).

HCV = hepatitis C

Varan AK, Mercer DW, Stein MS, Spaulding AC. Hepatitis C seroprevalence among prison inmates since 2001: Still high but declining. *Public Health Rep.* 2014; 129(2):187-195.

HCV Seroprevalance in New Mexico Prisons

Table 1. U.S. state prisons performing routine screening for HCV, 2001–2012

State correctional department	Estimated 2006 inmate average daily population N	Year for seroprevalence estimate	Population tested	HCV antibody positive Percent	Estimated HCV cases in 2006[a] N
Indiana	25,504	2003	Entrants	15.2	3,877
Iowa	8,695	2001	Entrants	23.6	2,052
Maryland[b,c]	23,084	2002	Entrants	29.7	6,856
Michigan[d]	50,766	2004	Entrants	13.7	6,955
Montana[e]	3,596	2012	Entrants	13.9	500
Nebraska	4,507	2011	Entrants	9.6	433
New Mexico	6,383	2010	Entrants	21.1	1,726
New York[c]	63,295	2005	Entrants	11.1	7,026
North Dakota	1,401	2008	Entrants	13.0	182
Oregon	13,645	2005	Stock	23.3	3,179
Pennsylvania	43,087	2006	Entrants	18.9	8,143
Washington	16,633	2008	Entrants	20.9	3,476

[a]Calculated as the product of the percentage HCV positive and the 2006 average daily population for a given state correctional department

Varan AK, Mercer DW, Stein MS, Spaulding AC. Hepatitis C seroprevalence among prison inmates since 2001: Still high but declining. *Public Health Rep*. 2014; 129(2):187-195.

New HCV Medications

- Much more effective than older drugs - very high rates of sustained virologic response (cure rates)
- Fewer side effects, easier for health care staff to monitor and manage
- Shorter treatment times
- Considerably more expensive –
  - $84,000 for sofosbuvir alone, multi-drug regimens cost more

American Bar Association Resolution 104b (2008)

New HCV Medications

- More patients eligible for treatment
- Elimination of traditionally-cited barriers to treatment in correctional environments
- HCV treatment as a public health imperative – treatment will be prevention
- States revising their policies and clinical guidelines
- Treatment as *medically necessary care*...[1]
  ...not "Cadillac care"

[1]*See, e.g.*, Washington DOC Offender Health Plan, effective 6/27/2014 (treatment of HCV per DOC protocol is categorized as medically necessary)

Treating HCV: Prison Health is Public Health

"If we are serious about addressing the HCV epidemic, we believe the correctional health care infrastructure must play a major role, and a new approach that focuses on aggressive and comprehensive early diagnosis, evaluation, and treatment is a critical next step."

Rich JD, Allen SA, Williams BA. Responding to hepatitis C through the criminal justice system. *New Eng J Med*. 2014; 370(20):1871-1874.

Treating HCV: Prison Health is Public Health

"Early detection and treatment in correctional settings has the potential to prevent future need for treatment, which, along with its attendant costs, would occur predominantly in the community; it could also prevent ongoing viral spread."

Rich JD, Allen SA, Williams BA. Responding to hepatitis C through the criminal justice system. *New Eng J Med*. 2014; 370(20):1871-1874.

Independent Monitoring of Health Care in Prisons

StarTribune | health

Legislative auditor's report calls for stronger oversight in state prison medical care[1]

Article by: PAUL MCENROE , Star Tribune | Updated: February 20, 2014 - 10:32 PM

Tired of prisoner deaths, Onondaga County legislators want to create jail oversight board[2]

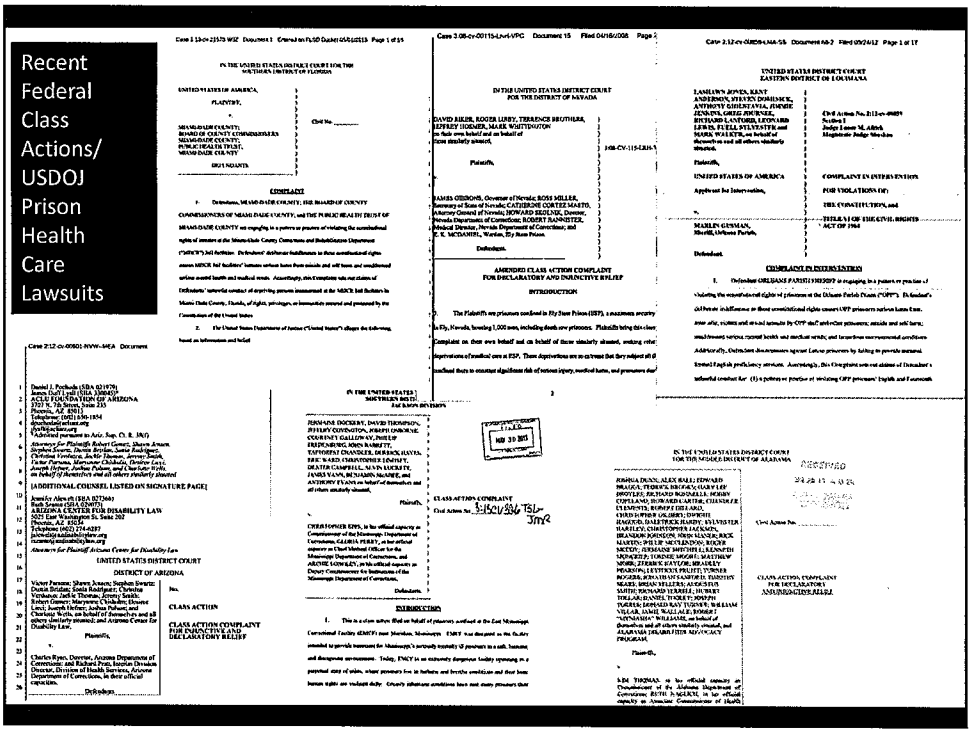
Jail health provider a no-show at oversight meeting[3]

Lawmaker Pushing For More Oversight Of Health Care For Prison Inmates[4]

April 4, 2013 2:29 PM

[1] *Minneapolis StarTribune*, February 20, 2014, http://www.startribune.com/lifestyle/health/246348821.html (accessed 8/6/14)
[2] Syr.com (Syracuse, NY), May 30, 2014, http://www.syracuse.com/news/index.ssf/2013/05/onondaga_county_legislature_pl.html (accessed 8/6/14)
[3] TribLive.com (Allegheny County, PA) , Feb. 6, 2014, http://triblive.com/news/adminpage/5549755-74/corizon-county-care (accessed 8/6/14)
[4] CBS News (Chicago), April 4, 2013, http://chicago.cbslocal.com/2013/04/04/lawmaker-pushing-for-more-oversight-of-health-care-for-prison-inmates/ (accessed 8/6/14)

Recent Federal Class Actions/ USDOJ Prison Health Care Lawsuits



Independent Monitoring of Correctional Health Care is *not*...

- ...accreditation by third-party organizations (e.g., American Correctional Association, National Commission on Correctional Health care)
- ...Limited measurement of process indicators (e.g., timeliness of response to sick call requests)
- ...Limited measure measurement of *outcome* indicators (e.g., average HbA1c of diabetic patients)

Independent Monitoring of Correctional Health Care is *not*...

- ...limited to the review of prisoner grievances or complaints by the public
- ...conducted by the agency or its vendors
- ...an internal audits of compliance with policies and procedures
- ...limited to an analysis of staffing vacancies
- ...limited to an assessment of compliance with contractual terms

Key Characteristics of an Effective Correctional Monitoring Body

- Independent of correctional agency being reviewed
- Mandate to conduct regular, routine inspections, including unannounced visits
  - Not only in response to crises
- Unfettered, "golden key" access to facilities, prisoners, staff and records

Michele Deitch, *The Need for Independent Prison Oversight in a Post-PLRA World*, 24 FED SENT'G REP 236, 241 (2012)

Key Characteristics of an Effective Correctional Monitoring Body

- Must use a variety of methods of gathering, interpreting, and evaluating information directly related to the treatment of prisoners
- Agency fully cooperates with process and responds timely and publicly to any recommendations made

Michele Deitch, *The Need for Independent Prison Oversight in a Post-PLRA World*, 24 FED SENT'G REP 236, 241 (2012)

Key Characteristics of an Effective Correctional Monitoring Body

- Duty to report findings and recommendations to the public, subject to reasonable privacy and security requirements as determined by the monitoring body
- Agency is given the opportunity to provide feedback prior to release of report, but decision to release the report rests solely with the monitoring body
- Identified systemic problems, proposes solutions, and follows up on efforts of the agency to remedy those problems

American Bar Association Resolution 104b (2008)

Key Characteristics of an Effective Correctional Monitoring Body

The monitoring body's mandate is to evaluate the treatment of prisoners – that is, access to timely and high quality health care.

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