People with epilepsy may face incarceration due to situations unrelated to epilepsy. If you or your family member with epilepsy have been arrested or convicted of a crime and sentenced to serve time in a federal or state correctional facility, it is important that you understand the legal right to adequate medical care under federal law.

Inmates’ Rights to Medical Care In Correctional Facilities

Inmates with seizures may experience challenges receiving good medical care, including medications or reasonable accommodations for epilepsy. Some inmates experience abrupt changes to their medications or discontinuation of medications upon entering correctional facilities. Such actions can result in an increase of seizure activity. Additionally, inmates with epilepsy are sometimes placed in the “hole” (i.e., seclusion or solitary confinement) after seizures.

In many cases, correctional facilities contract with private medical physicians to provide health care examinations and emergency assistance to inmates. Even if a correctional facility contracts with a third party to provide health care services, the correctional facility itself can still be held accountable for inadequate medical care.

Eighth Amendment: Inmates have the right to humane treatment compatible with “contemporary standards of decency”. This is a right granted by the 8th amendment of the United States Constitution, which prohibits cruel and unusual punishment by correctional facilities. Federal and state correctional officials violate the 8th amendment when the staff acts with deliberate indifference to an inmate’s medical needs that jeopardizes safety, causing a negative outcome to occur.¹

Generally, deliberate indifference to a serious medical need may include correctional staff who knew or should have known that an inmate required immediate treatment during a seizure, but failed to call for assistance. The failure of either the prison official or medical doctor to perform a medical examination after a seizure may also be considered deliberate indifference. The action taken or not taken by the prison official(s) must result in a sufficiently serious condition that significantly changes the inmate’s life.

ADA and Rehabilitation Act: Inmates are also protected by Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504). Title II of the ADA covers activities of state and local government despite the government entity’s size or receipt of federal funding. Title II requires state and local government entities to give individuals with disabilities, including inmates, equal opportunity to benefit from programs and services. Title II applies to law enforcement agencies, jails and correctional facilities, courts, community corrections, and healthcare providers operated by state and local governments (including contractors for correctional organizations). 28 C.F.R. § 35.152. Section 504 applies to federal agencies, including the Bureau of Prisons, and programs that receive federal funding.

Under the ADA, a person is considered disabled if he/she: (1) has a physical or mental impairment that substantially limits one or more major life activities, (2) has a record of an impairment, and (3) is regarded or perceived as having an impairment. “Major life activity” includes bodily functions that are affected by

¹ According to Estelle v. Gamble, 429 US 97, 103, (1976) two conditions must be met to determine whether this right has been violated: (1) proof that the inmate has a serious medical need; and (2) proof that the prison official acted with deliberate indifference to the inmate’s safety and negligently caused a negative event to occur to the inmate.
neurological issues or the brain. The ADA requires covered entities to provide “reasonable accommodations or modifications to its policies, practices and procedures when an agency employee knows or reasonably should know that the person has a disability and needs a modification, even if the individual did not request a modification, such as during a crisis, when a disability may interfere with a person’s ability to articulate a request”. An agency must take affirmative steps to provide reasonable accommodations.² Reasonable accommodations should not be viewed as a special privilege to an inmate, but rather a requirement of the ADA.

To bring legal action under the ADA or Section 504, inmates must show that: (1) they meet the definition of being disabled under the law, (2) they are eligible to participate in the program, and (3) they are being excluded from or not allowed to benefit from a program or service because of a disability. Under Section 504, an inmate must show that the facility or program receives federal funding.

ADA Coordinators: Correctional facilities should have an ADA Coordinator on staff who: (1) understands the requirements of the ADA, (2) conducts initial and on-going needs assessments to ensure that inmates’ disability needs are being met, (3) communicates ADA requirements to other correctional staff who are not knowledgeable about the requirements of the law, and (4) oversees grievance procedures for the facility. The ADA Coordinator’s identity should be available to inmates and the public.

Hazards of Seclusion and Conduct Penalties: Seclusion has been a method implemented by correctional staff to prevent an inmate from harming himself or others. Inmates are put on “lock down” for a short-time period.³ The ADA requires correctional facilities to place inmates in the most integrated setting for their needs and prohibits inmates from being placed in inappropriate security classifications simply because of a disability.⁴ Placing inmates with epilepsy in seclusion, isolation or solitary confinement after a seizure can be dangerous to the inmate, and can appear as a punitive measure for having a seizure. Experiencing a seizure while in seclusion or confinement puts an unobserved inmate with epilepsy at greater risk of injury and death. An inmate may experience a fall from a seizure or have a seizure while sleeping and suffocate, especially if the inmate is not adequately monitored. If an inmate with epilepsy is placed in seclusion for a reason other than having a seizure, the inmate must be closely monitored. Furthermore, the prison cell or infirmary room in which seclusion occurs should be free of hazards that could cause injury if a seizure were to occur.

Conduct penalties may also be imposed upon inmates for eccentric behaviors that accompany seizure activity, as well as the inability to respond to commands due to the post-ictal confusion or lack of full consciousness. Careful consideration should be given to inmates with seizures before they are penalized.

Steps to Ensure Adequate Medical Care

1. If an inmate has epilepsy, it is important that the ADA Coordinator and correctional staff, including correctional officers, are aware of the condition and are trained to understand the signs and symptoms of a seizure.

2. Careful consideration should be given to abrupt changes of an inmate’s anti-seizure medication, as this can cause an increase in seizure activity or psychosis after a prolonged or series of seizures. Weaning from a current medication while gradually introducing a new medication is medically safer and a more effective way of making medication changes.

3. Whenever possible, a safe clutter free environment should exist for the area surrounding the inmate. If a seizure should occur, one of the first line responses should be to maintain safety from injury. In the event of a seizure, the staff should be trained about how to place an inmate in side-lying position to prevent injury from aspiration of oral fluids or from suffocation. Training should include NEVER placing objects in the inmate’s mouth during the seizure event.

4. Medical alert measures should be put into place to identify inmates who are at risk for seizure activity. Efforts to maintain privacy and confidentiality should be maintained.

5. An inmate should be given his medication on a regular basis. There should be also be protocols in place that will allow inmates to receive their medications in an emergency.

6. An inmate should receive an examination by the medical provider (i.e., a contracted medical doctor, physician assistant, or nurse) when seizures or side-effects occur. During regularly scheduled examinations, the effectiveness and appropriateness of the seizure medication should be evaluated.

7. A normal EEG is common in seizure patients and does not mean that an inmate does not have epilepsy. Approximately one half of all EEGs done for patients with seizures are normal. Even someone who has seizures every week can have a normal EEG. An EEG only shows normal brain activity during the time of the test. If an inmate is not having a seizure during the test, then the EEG may not display the abnormal “brain waves” expected for people with epilepsy.5

8. Periodic testing of an inmate’s blood should be performed to monitor many anti-seizure medications and blood counts. Monitoring blood levels of anti-seizure drugs can help with seizure control, but it can also help identify the build-up of medication in the body, which can cause toxicity and side-effects.

Examples of Cases: Some inmates or their families have successful litigated cases against federal and state prisons.

5 “I Have Seizures, but My EEG is Normal”, Epilepsy Foundation, www.epilepsy.com
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- In Lopez, et al. v. Wasko et al. (D. Colo. 2014), a settlement was reached in a lawsuit filed by the family of a mentally ill inmate who died in a Colorado prison. Officers and nurses allegedly laughed and joked while watching him on camera shaking from seizures. He was diagnosed with bipolar schizoaffective disorder. The cause of death was severe hyponatremia (low sodium-blood levels), which is treatable if medical assistance is quickly provided. When Lopez was found lying face down on the floor, officers believed that he was intentionally refusing to respond. They dragged him out, took off his clothes, chained him to a chair, and placed a mask over his head. They watched the seizures, assuming that Lopez was faking. He ultimately died lying on the concrete floor of a cell in his underwear. Some employees were fired and others were disciplined after Lopez’s death.

- In Galindo, et al. v. Reeves County, et al. (W.D. Tex. Dec. 7, 2010), a settlement was reached where the family of Galindo sued because he had a seizure and died in solitary confinement. Galindo’s condition was known to prison officials and his anti-seizure medication was changed to a less effective medication upon his arrival in the facility. Galindo had been in solitary confinement for one month after repeatedly requests to adjust his medication and to be removed from solitary confinement.

Advocacy Tips: It is important to identify the ADA Coordinator for the facility and make accommodation requests to this person. If you believe that your rights or the rights of your family member have been violated, it is important to follow the facility’s procedure for filing a grievance. It is important to keep a written record of the actions or inactions of correctional officials regarding your health. You should also write down whether or not the requested medical treatments for your condition have been ignored or denied and the reasons given for the denial. It is important to document the negative effects that the lack of medical care is causing to your health and quality of life. Keeping a log of seizure activity, including details about how your seizures have increased or intensified can also be helpful. Family members can be helpful with recordkeeping.

Family members can be the best advocates for their incarcerated loved ones. A family member can request contact information for the correctional facility’s ADA Coordinator, a copy of the prison’s health care standards and emergency protocols, become familiar the doctor’s schedule, and learn the protocols for how the facility handles after-hour emergencies. A family advocate may get a signed release from an inmate authorizing the medical staff to discuss the inmate’s medical treatment with him or her. Family members may also contact the local Epilepsy Foundation affiliate to learn about epilepsy education for training that might be offered to correctional staff.

Filing Grievances and Complaints: Most federal and state prisons and local jails have some type of grievance policies to address a policy, procedure or issue of abuse or failure to accommodate. Under the Prison Litigation Reform Act⁶, lawsuits by inmates cannot be heard unless administrative remedies are exhausted. This means that inmates must follow the correctional facility’s policy for filing grievances and any required internal appeals before attempting to file a lawsuit. For this reason, it is important to ask about the grievance procedure and comply with any required filing deadlines. The procedure should detail how long the facility’s Grievance

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⁶ 42 USCA § 1997e - Suits by inmates.
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Officer has to resolve the issue and/or respond to your filing. There may also be an appeal process with strict deadlines that must be followed. If an issue remains unresolved in a state or local correctional facility, then it may be necessary to file an ADA Title II complaint with U.S. Department of Justice Civil Rights Division. Title II complaints can be filed by mail, fax or online. See, https://www.ada.gov/filing_complaint.htm for more information.

For federal correctional facilities, the Bureau of Prisons (BOP) is responsible for ensuring that federal inmates serve their sentences in facilities that are safe and humane. BOP accepts inmate concerns through their website: www.bop.gov. A complaint can be filed through the BOP regional office that oversees a facility in question. The Department of Justice’s Office of the Inspector General (800-869-4499), which oversees the BOP is another option.

You may also contact the Jeanne A. Carpenter Epilepsy Legal Defense Fund at 1-800-332-1000 (select #2) or send an email to legalrights@efa.org for a referral to an attorney or legal agency.

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