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Disability Discrimination in Correctional Facilities: Common Complaint Procedures and Deadlines

Introduction

Detailed below is information about possible agencies, complaint procedures and deadlines that often apply when a person with a disability has a complaint against a prison, jail, or Juvenile Justice facility. It is not meant to give you specific advice about your situation, and you should not rely on it as legal advice. Your issues may not fit within the kinds of cases these other organizations can investigate or can help you with. We are giving this to you only because it may be helpful for you to have. Remember, too, that other rules and laws may apply to complaints that are not about disability discrimination.

Other deadlines may apply, so if you want to file a claim, it is very important to talk to other agencies or lawyers so that you know which deadlines and procedures you need to follow. If you want to file a lawsuit about your issues, you should contact other attorneys now because they would need time to research and prepare your case. Do not wait until the end of any deadlines before looking for an attorney.

To find a lawyer, you might try contacting the ACLU of Texas at P.O. Box 8306, Houston, TX 77288, phone: (713) 942-8146. You may also want to contact the Texas Civil Rights Project to see if they can help you. Their address is 1405 Montopolis Drive, Austin, TX 78741-3436, and their main phone number is (512) 474-5073.

Federal Prisons

Federal prisoners with disabilities who have problems with disability discrimination, access issues, or architectural or communications barriers may have a remedy under § 504 of the Rehabilitation Act of 1972, 29 U.S.C. § 794, as amended. Some kinds of discrimination may also violate the U.S. Constitution. The deadline to file a lawsuit on these kinds of claims can vary from state to state, but for those people incarcerated in Texas, **any lawsuit must be filed within two years** of when you first encountered the problem.

Before a lawsuit can be filed, though, you must first complete the prison's administrative complaint process. In most prisons, "exhausting administrative remedies" requires filing a grievance and an appeal. Inmates in a federal prison should talk to their Correctional Counselor about how to file a grievance, and how to file any appeal. Doing so may require that you complete the BP-8½, BP-9, BP-10 and BP-11 forms, which you can get through your Correctional Counselor. You may need to start with an informal grievance. Be sure to use the

right forms, and file each within the required time periods. It is best to include supporting materials, use a respectful tone, and file a separate grievance for each separate issue.

Also, some courts require that before you can file a lawsuit, you also have to file an administrative complaint with the U.S. Department of Justice. See the section below on “DOJ Complaints” for more information on how to do that.

State Prisons (including privately-run prisons under contract with TDCJ)

State prisoners with disabilities who have problems with disability discrimination, access issues, or architectural or communications barriers may have a remedy under various laws. These kinds of claims may be brought under various federal laws, including: § 504 of the Rehabilitation Act of 1972 (29 U.S.C. § 794, as amended); Title II of the Americans with Disabilities Act (42 U.S.C. § 12132); or in some cases under the U.S. Constitution (by filing a claim under 42 U.S.C. § 1983). Similar claims can sometimes be brought under Texas state law, including Chapter 121 of the Texas Human Resources Code or the Texas Constitution. Certain claims allow for the recovery of money damages, and others allow for non-monetary relief by court order.

The deadline to file a lawsuit on these kinds of claims can vary from state to state, but for those people incarcerated in Texas, **any lawsuit must be filed within two years** of when you first encountered the problem.

Before a lawsuit can be filed under *federal* law, you must first complete the prison’s administrative complaint process. This usually requires filing a grievance *and* filing an appeal if the grievance is unsuccessful. For inmates in the Texas Department of Criminal Justice (TDCJ), be careful to follow TDCJ’s grievance rules. You might also look at the handout entitled “Filing a Grievance in a Texas Prison or Jail,” by the Texas Civil Rights Project, which is available online at http://www.texascivilrightsproject.org/docs/prisonjail_grievance.pdf.

You might also look at the handout entitled “Know Your Rights: The Prison Litigation Reform Act (PLRA),” by the American Civil Liberties Union (ACLU), which is available online at http://www.aclu.org/images/asset_upload_file79_25805.pdf.

Also, some courts require that before you can file a lawsuit, you also have to file an administrative complaint with the U.S. Department of Justice. See the section below on “DOJ Complaints” for more information on how to do that.

Before a lawsuit can be filed under *state* law, *and* if you will be filing an affidavit of inability to pay the court costs (also known as a “pauper’s oath”), you must also file an Affidavit Relating to Previous Filings. For more information on Affidavits Relating to Previous Filings, see Chapter 14 of the Texas Civil Practice & Remedies Code.

Juvenile Justice Facilities

Youth in Juvenile Justice facilities who have problems with disability discrimination, access issues, or architectural or communications barriers may have a remedy under various laws. These claims may be brought under various federal laws, including: § 504 of the Rehabilitation Act of 1972 (29 U.S.C. § 794, as amended); Title II of the Americans with Disabilities Act (42 U.S.C. §

12132); or in some cases under the U.S. Constitution (by filing a claim under 42 U.S.C. § 1983). Similar claims can sometimes be brought under Texas state law, including Chapter 121 of the Texas Human Resources Code or the Texas Constitution. Certain claims allow for the recovery of money damages, and others allow for non-monetary relief by court order.

The deadline to file a lawsuit on these kinds of claims can vary from state to state, but for youths in Juvenile Justice facilities, **any lawsuit must be filed within two years** of when you first encountered the problem.

Before a lawsuit can be filed under *federal* law, you must first complete the prison's administrative complaint process. This usually requires filing a grievance *and* filing an appeal if the grievance is unsuccessful. For youths in the Texas Youth Commission, be careful to follow Juvenile Justice's grievance rules. You might also look at the handout entitled "Filing a Grievance in a Texas Prison or Jail," by the Texas Civil Rights Project, online at http://www.texascivilrightsproject.org/docs/prisonjail_grievance.pdf.

Also, some courts require that before you can file a lawsuit, you also have to file an administrative complaint with the U.S. Department of Justice. See the section below on "DOJ Complaints" for more information on how to do that.

You might also look at the handout entitled "Know Your Rights: The Prison Litigation Reform Act (PLRA)," by the American Civil Liberties Union (ACLU), which is available online at http://www.aclu.org/images/asset_upload_file79_25805.pdf.

Although there appears to be no similar exhaustion requirement applicable to those in Juvenile Justice facilities who are bringing these types of disability discrimination claims under *state* laws, it may be a good idea to file a grievance with the facility.

County and City Jails

Jail prisoners and detainees with disabilities who have problems with disability discrimination, access issues, or architectural or communications barriers may have a remedy under various laws. These claims may be brought under various federal laws, including: § 504 of the Rehabilitation Act of 1972 (29 U.S.C. § 794, as amended); Title II of the Americans with Disabilities Act (42 U.S.C. § 12132); or in some cases under the U.S. Constitution (by filing a claim under 42 U.S.C. § 1983). Similar claims can sometimes be brought under Texas state law, including Chapter 121 of the Texas Human Resources Code or the Texas Constitution. Certain claims allow for the recovery of money damages, and others allow for non-monetary relief by court order.

The deadline to file a lawsuit on these kinds of claims can vary from state to state, but for those people incarcerated or detained in Texas, **any lawsuit must be filed within two years** of when you first encountered the problem.

Before a lawsuit can be filed under *federal* law, you must first complete the jail's administrative complaint process. This usually requires filing a grievance *and* filing an appeal if the grievance is unsuccessful. Be careful to follow the jail's grievance rules, as they may vary from place to

place. You might also look at the handout entitled “Filing a Grievance in a Texas Prison or Jail,” by the Texas Civil Rights Project, online at http://www.texascivilrightsproject.org/docs/prisonjail_grievance.pdf.

You might also look at the handout entitled “Know Your Rights: The Prison Litigation Reform Act (PLRA),” by the American Civil Liberties Union (ACLU), which is available online at http://www.aclu.org/images/asset_upload_file79_25805.pdf.

Also, some courts require that before you can file a lawsuit, you also have to file an administrative complaint with the U.S. Department of Justice. See the section below on “DOJ Complaints” for more information on how to do that.

Before a lawsuit can be filed under *state* law, *and* if you will be filing an affidavit of inability to pay the court costs (also known as a “pauper’s oath”), you must also file an Affidavit Relating to Previous Filings. For more information on Affidavits Relating to Previous Filings, see Chapter 14 of the Texas Civil Practice & Remedies Code.

DOJ Complaints

In addition to administrative complaints with the prisons and jail themselves, an inmate, youth or other detainee may also consider filing an ADA or § 504 complaint with the U.S. Department of Justice (DOJ). Some courts require you to file such a complaint before you can file a lawsuit. Whether it is required or not, this is one more way you can try to have the situation investigated and resolved.

These complaints are filed with the Disability Rights Section of the DOJ. We have enclosed a 4-page handout from the DOJ, which answers common questions about filing disability-discrimination complaints with their agency. This handout is available online at http://www.ada.gov/fact_on_complaint.htm.

If you want to file a DOJ complaint, you should follow the steps outlined in that handout. Complaints can be made by mail or email, or if you are unable to prepare your own complaint because of a disability, you may have your complaint taken by telephone (see answers to questions 3, 4, and 5 on the handout). If you do want to file a complaint with them, DOJ states that you have **180 days** from the date of the disputed discrimination to file the complaint.

Disability Rights Texas’ goal is to make each handout understandable by and useful to the general public. If you have suggestions on how this handout can be improved, please contact the agency at the address and telephone number shown on our website home page, www.DisabilityRightsTx.org, or email us at info@DisabilityRightsTx.org. Thank you for your assistance. This handout is available in Braille and/or on audio tape upon request. Disability Rights Texas strives to update its materials on an annual basis, and this handout is based upon the law at the time it was written. The law changes frequently and is subject to various interpretations by different courts. Future changes in the law may make some information in this handout inaccurate. The handout is not intended to and does not replace an attorney’s advice or assistance based on your particular situation.