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Overview of the Law: Failure to Protect (September 2025)

***This document contains general legal information and is not legal advice specific to your situation. You may want to do research or contact an attorney to get more specific advice.*

In prison, you have the right to be protected from harm. This right comes from the Eighth Amendment, which prohibits “cruel and unusual punishments.” The Constitution prohibits inhumane conditions, though it does not give you the right to be comfortable in prison. Prison officials violate the Eighth Amendment if they are **deliberately indifferent** to the **substantial risk** that a prisoner might be seriously harmed.¹ You must prove these two things to win a case for failure to protect.

Note: before you sue a prison, you must finish the entire grievance process. If you do not, the judge may dismiss your case. Contact UPLC for a copy of our grievance guide.

First: Substantial Risk of Serious Harm

You first need to prove that you are facing a **substantial risk of serious harm**. A substantial risk is a chance of danger that is likely to happen without someone stopping it. You do not necessarily need to be injured before you sue a prison official. Describe specific facts that show the risk that you may be injured or harmed.

Courts do not give a full definition of a substantial risk. Review the cases in this guide to see what kinds of risks courts think are substantial.

¹ *Farmer v. Brennan*, 511 U.S. 825, 832 (1994).

Prison officials must take reasonable steps to protect prisoners. This also includes dangers to yourself, like self-harm or suicide. You may be able to sue for failure to protect if you can show that a prison official was 1) aware of an imminent risk of self-harm or suicide and 2) did not take any action to stop it.² An imminent risk means that something is about to happen unless someone steps in immediately.

Second: Personal Knowledge

Next, you will need to prove that the prison officials that you are suing were **deliberately indifferent** to that risk. Deliberate indifference means that a prison official knew about the risk of harm and did not take the necessary steps to protect you. You do *not* need to show that prison officials intended or wanted the harm to happen to you (but if you have evidence of that, include it!).³

You can meet the knowledge requirement by showing either:

(1) **Actual knowledge**—the prison officials heard or read about the specific risk you were facing (for example, because you told them). You can notify prison officials by asking for protective custody or a different cell, writing a grievance, or writing a transfer request. You do not need to break prison rules (like refusing housing to avoid a cellmate you think is dangerous) to meet this requirement.⁴

OR

(2) **Circumstantial evidence**—the risk of harm was widespread and well-known by prison officials. Show that the official being sued “must have known” about the risk because it was so obvious. Prison officials may not purposely ignore clearly obvious risks while saying that they did not know better.⁵

² See *Collins v. Seeman*, 462 F.3d 757, 760 (7th Cir. 2006).

³ See *Mayoral v. Sheahan*, 245 F.3d 934, 938 (7th Cir. 2001).

⁴ See *Gevas v. McLaughlin*, 798 F.3d 475, 484 (7th Cir. 2015).

⁵ See *Mayoral v. Sheehan*, 245 F.3d 934, 945 (7th Cir. 2001).

The general risk of violence in prison is not enough to show knowledge. You need to prove that prison officials knew that you were *specifically* more at risk than other people or that a specific person was targeting people in your situation.⁶

Third: Failure to Act

Once you establish knowledge of the risk, the next step is proving that prison officials *did not take steps to protect you*.

There is one key limitation here. If prison officials responded “reasonably” to a known danger, they are not legally responsible if the harm occurs. The judge looks at any actions that the prison official took and asks whether those were reasonable.⁷ Your job is to show how any actions that were taken were *not* reasonable.

For example, in *Lewis v. Richards*, the prisoner lost his failure to protect claim. In that case, Mr. Lewis asked for protection and was transferred to protective custody for two years. He was attacked after he was released from protective custody two years later. He sued the prison officials for that attack. The judge then ruled that the prison officials acted reasonably to protect Mr. Lewis, and Mr. Lewis lost his case.⁸

Deliberate indifference is a high standard, and proving that prison officials had bad judgment (like transferring Lewis out of protective custody) may not always be enough to win a case. It may help to show that prison officials violated their own policies to show that their actions were not reasonable. It may also help to compare your situation to other cases, which are listed below.

⁶ See *e.g. Brown v. Budz*, 398 F.3d 904, 913 (7th Cir. 2005) (it was enough that prison officials were aware of the risk of violence against all prisoners of the same race).

⁷ See *Sinn v. Lemmon*, 911 F.3d 412, 423 (7th Cir. 2018).

⁸ *Lewis v. Richards*, 107 F.3d 549, 552 (7th Cir. 1997).

Other Failure to Protect Cases

Haley v. Gross, 86 F.3d 630 (7th Cir. 1996)

Luttrell v. Nickel, 129 F.3d 933 (7th Cir. 1997)

Soto v. Johansen, 137 F.3d 980 (7th Cir. 1998)

Peate v. McCann, 294 F.3d 879 (7th Cir. 2002)

Tidwell v. Hicks, 791 F.3d 704 (7th Cir. 2015)

Conclusion

We have listed several cases in this handout where people have sued prisons over a failure to protect. The most successful cases show that the official was clearly aware of the specific risk to you and took no action to ensure your safety.

Start by reading the cases that we listed in this handout. Compare the facts of those cases to your situation. If you file a lawsuit on your own, make sure you list all of the important facts about your situation. Try to show that you are facing the same types of problems that the people who won their lawsuits have faced. You do not need to cite to any cases in your complaint.

You may need a lawyer to help you with your lawsuit. After you file your complaint, you can file a “motion for appointment of counsel.” Ask the court for a copy of their form to do this. This motion asks the court to appoint a lawyer to represent you in your case. Write to UPLC for our self-help guide on how to file a civil rights complaint from prison. We wish you the best of luck!

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