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# The Failing Prison Health Care System: Texas Policy Decides that Chewing is Not a Medical Necessity

The United States has the highest number of incarcerated people in the world, accounting for roughly 25% of the world's total population.[1] Texas leads the country for total number of incarcerated individuals in a U.S. state, with 133,772 incarcerated individuals as of 2021.[2] The American prison system acts as a magnifying glass, highlighting how egregious the consequences of America's failing late-stage capitalist institutions can be.[3] Perhaps one of the more glaring examples of America's institutional failure is the prison healthcare system.[4] Every year that a person spends in prison cuts down their life expectancy by two years.[5] Hundreds of incarcerated people are killed per year due to medical neglect.[6] There are no federal standards governing state prison healthcare administration, and only seventeen percent of facilities are accredited by the National Commission on Correctional Health Care Standards.[7]

In 1976, the U.S. Supreme Court found that deliberate indifference to medical needs amounts to cruel and unusual punishment.[8] However, in order to prevail on an Eighth Amendment claim in the context of medical mistreatment, a prisoner must prove that their providers were deliberately indifferent to a serious medical need, resulting in unnecessary and wanton infliction of pain.[9] A serious medical need is one for which treatment has been recommended or for which the need is so apparent that even a layman would recognize care is required.[10] This incredibly high standard has allowed states to implement healthcare policies that prioritize cutting costs and maximizing efficiency with a general indifference to the inhumane consequences their prisoners face.[11]

Texas state prisons offer one of the more shocking examples of the inadequate medical standards that result in the absence of federal requirements; under Texas policy, chewing is not a medical necessity.[12] The Correctional Managed Care policy on the availability of dentures and partial dentures ("prosthodontics") requires that they only be provided when medically necessary, a standard determined by a patient's "general health" where the degree of discomfort that a patient may feel while chewing is not considered.[13] The policy, implemented in 2003, recommends that unless other serious medical needs are at play, patients that are unable to chew are given a blended diet instead of prosthodontics.[14] In order to determine whether other health concerns meet the "medically necessary" standard for prosthodontics, the policy suggests that dentists monitor the nutritional status by tracking the patient's weight, where inmates 10% below the recommended body mass index are recommended for review.[15]

The “medically necessary” standard has resulted in a significant decline in treatment.<sup>[16]</sup> In 2016, only 71 dentures were given out to a population of over 149,000 inmates.<sup>[17]</sup> This is a sharp decline, as before the policy Texas prisons had in house denture making programs and provided more than 1,000 prosthodontics per year.<sup>[18]</sup> Mr. William C. Steele, an inmate in Richmond, Texas, serves as just one example of the thousands who suffer each year as a result of the inadequate medical treatment.<sup>[19]</sup> Mr. Steele suffers from a lack of teeth, a severe heart condition, asthma, and obesity.<sup>[20]</sup> In 2003, Mr. Steele was denied a request for dentures; instead doctors removed two of his four remaining teeth.<sup>[21]</sup> In 2008, Mr. Steele attempted once again to obtain dentures, reporting difficulty eating and bruised and bleeding gums.<sup>[22]</sup> Under Texas policy, Mr. Steele was denied dentures once again and put on a blended diet, which usually consists of the same meals served to the general prison population only blended into a paste.<sup>[23]</sup> Mr. Steele discontinued the diet because the “food paste would stick in his throat and the experience took all the pleasure out of eating.”<sup>[24]</sup> Mr. Steele filed a pro se motion alleging that his Eighth Amendment rights were violated by the inadequate medical treatment.<sup>[25]</sup> Mr. Steele's motion was denied, as was his request for dentures, which doctors deemed medically unnecessary based on his obesity.<sup>[26]</sup>

Unfortunately, many incarcerated people in Texas face the same inadequate treatment as Mr. Steele. Other Texas inmates who have been denied denture requests report attempting to swallow their food whole to avoid the blended diet.<sup>[27]</sup> A death row inmate, Paul Devoe, soaks his crackers and cookies in coffee before attempting to eat with his three remaining teeth.<sup>[28]</sup> As of now, Texas has no plans to amend its policy.

The current penal health care system allows for inadequately low standards, resulting in medical mistreatment of inmates. Unless the Supreme Court sets a higher standard than the one created in *Estelle*, policies such as UTMB's dental standards refusing inmates the right to chew will continue to exist, and the all-too-large American prison population will continue to face inhumane treatment.

[1] *Incarcerated Rates by Country*, World Population Rev. (last visited Mar. 21, 2023) <https://worldpopulationreview.com/country-rankings/incarceration-rates-by-country>.

[2] *Number of prisoners under federal or state jurisdiction in the United States 2021, by state*, STATISTA (last visited March 21, 2030), <https://www.statista.com/statistics/203757/number-of-prisoners-in-the-us-by-states/#:~:text=As%20of%20December%202021%2C%20there,prisoners%20in%20the%20United%20States>.

[3] Andrew Cohen, *A Fundamental Failure of American Prisons*, BRENNAN CTR. FOR JUST. (June 5, 2014) <https://www.brennancenter.org/our-work/analysis-opinion/fundamental-failure-american-prisons>.

[4] Sam McCann, *Health Care Behind Bars: Missed Appointments, No Standards, and High Costs*, VERA (Jun. 29, 2022) <https://www.vera.org/news/health-care-behind-bars-missed-appointments-no-standards-and-high-costs#:~:text=The%20abysmal%20state%20of%20health,to%20cruel%20and%20unusual%20punishment>.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Estelle v. Gamble*, 429 U.S. 97, (1976).

[9] *Id.*

[10] *Gobert v. Caldwell*, 463 F.3d 339, (5th Cir. 2006).

[11] Russell W. Gray, *Note, Wilson v. Seiter: Defining the Components of and Proposing a Direction for Eighth Amendment Prison Condition Law.*, 41 AM. U.L. REV. 1339, 1340 (1992).

[12] Keri Blakinger, *Toothless Texas inmates denied dentures in state prison*, HOUSTON CHRONICAL (Sep. 20, 2018)

<https://www.chron.com/news/houston-texas/houston/article/Toothless-Texas-inmates-denied-dentures-in-state-13245169.php>.

[13] Steele v. Thaler, No. CIV.A. H-09-4076, 2011 WL 739524, at \*4 (S.D. Tex. Feb. 22, 2011).

[14] Blakinger, *supra* note 9.

[15] UTMB's Dental Prosthodontic Services, Number E-36.4 of the Correctional managed Health Care Policy manual. [https://www.tdcj.texas.gov/divisions/cmhc/docs/cmhc\\_policy\\_manual/E-36.04.pdf](https://www.tdcj.texas.gov/divisions/cmhc/docs/cmhc_policy_manual/E-36.04.pdf)

[16] Blakinger, *supra* note 9.

[17] *Id.*

[18] *Id.*

[19] Steele v. Thaler, No. CIV.A. H-09-4076, 2011 WL 739524, at \*1 (S.D. Tex. Feb. 22, 2011).

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*, Blakinger, *supra* note 9.

[24] Steele, 2011 WL 739524, at \*1.

[25] *Id.*

[26] *Id.* at \*4.

[27] Blakinger, *supra* note 9.

[28] *Id.*