

# POSITIVE IN PRISON

**A little legal guide**



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## | Foreword

Prison is a little separate world with its own laws and rules. You need time to find your way here – especially if you are “behind bars” for the first time. To no longer be free and to be separated from friends and relatives can be quite hard. This is especially true if you are HIV-positive and may perhaps have first found out about this due to an HIV test at the prison intake exam. In addition to all of the other problems, you now must also deal with this test result. You probably have many questions in this situation: Are there special rules for HIV-positive prisoners? Will I receive good medical care in prison? Will I get HIV medications when I need them? How often are my relatives and friends permitted to visit me? Am I allowed to receive mail and talk on the telephone? Will I be given permission to leave if I must take care of something “on the outside”? Is it possible to be released early from prison?

You will find the answers to these and other questions in this little guide. But it can only give you the most important information. If you have personal questions and problems, you should get advice from the penitentiary employees or counsellors from the non-profit organisations that support prisoners. For example, this includes the *Aidshilfe* organisations (see pg. 35).

## Which laws regulate the penal system?

A uniform federal penal law in Germany existed until 2007. Since then, the 16 federal states have been allowed to pass their own penal laws. Baden-Württemberg, Bavaria, Hamburg, Hesse and Lower Saxony have already done this and the remaining eleven federal states plan to do so in the near future. Wherever a state law has not yet been passed, the “old” penal law continues to be in effect. The following information is based on the federal law, unless noted otherwise.

The penal law does not apply to pre-trial detention, juvenile detention and the hospital order treatment (psychiatry and treatment of addiction). There are different laws related to these cases. If you have questions about this, please address them to the *Sozialer Dienst* (social services) of your penitentiary or the prisoners’ aid.

## Does the law treat all prisoners equally?

Yes. The penal law of the federal government and the state laws do not differentiate between Germans and non-Germans and also not between men and women – the same laws apply to everyone. There are a few exceptions only for prisoners with an unclarified resident status (see pg. 25).



## Are there special rules for HIV-positives?

There are also no special rules for HIV-positives. They must be treated exactly like all of the other prisoners. HIV infection is not a reason to exclude HIV-positives from kitchen duty, work at the workbench or from joint leisure activities. This is also not necessary because HIV cannot be transmitted through everyday contacts; and where there are risks of infection, you can protect yourself and others.

If you are treated differently than the rest of the prisoners despite this, you can get support (see Advice, pg. 35).

## Remember:

- Use condoms during sex (vaginal and anal). Do not allow blood and sperm to enter your mouth, eyes, other body openings or fresh wounds. Do not swallow sperm.
- Always just use your own needles and paraphernalia during drug use. Do not give your needles and paraphernalia to others.



## Who is responsible for my medical care?

The prisons are responsible for the medical care of the inmates and employ resident doctors for this purpose. They examine the prisoners, diagnose, carry out the treatment and prescribe the medication. You cannot choose the doctor on your own. However, the resident doctor can order for you to be examined by an HIV specialist or go to a hospital.

If you require a special diet or aids such as glasses or a hearing aid, you must also apply for it from the resident doctor. You can also consult him or her for a treatment with heroin-substitution substances: Perhaps the substitution is offered at your penitentiary (you can get additional information in the brochure called „Substitution in Haft“).

The resident doctor is subject to doctor-patient confidentiality: No one is permitted to know what is written in your patient record and what you discuss with him or her without your approval. However, the resident doctor must inform the prison management if he or she believes that you are endangering yourself or others.



## Will I receive medical treatment if I request it?

You are entitled to appropriate medical treatment in prison. However, you will not receive every treatment that you desire. If the resident doctor rejects something like an HIV therapy for you, first ask him or her for the reason: Perhaps your blood values are so good that you do not yet require any HIV medication (see below). But the resident doctor is not permitted to deny you a necessary – which is called an “indicated” – treatment. If he or she does this anyway, then you can take action against this decision (see pg. 28).

## Which examinations are necessary for HIV-positives?

If you are not yet in HIV therapy, the doctor must examine the state of your immune system at least twice per year. This requires taking blood from you and then having it examined in the lab. This measures the number of helper cells and other immune cells. In addition, the viral load (= the number of HIV viruses in the blood) must be monitored two to four times a year. On the basis of these blood values, the doctor can recognize when it is best to start an HIV therapy.

Before the beginning of an HIV therapy, it is important to do a resistance test: This blood test determines which medications are effective for you. A resistance test is also necessary when the medications are no longer effective and the therapy must be modified. In case of HIV therapy, the resident doctor must examine you every three to four months to see whether it is still effective. The number of helper cells and the viral load in the blood also provides information on this.

## What am I allowed to own in prison?

Prisoners are allowed to furnish their prison cell with personal objects. It must not become cluttered – so you should not pack too much into it.

The laws do not stipulate precisely what and how much may be possessed by a prisoner. You will find more about this topic in the *Hausordnung* (house rules) of your penitentiary: They list which items of daily use – such as household and hygiene articles or clothing – are permitted. If you want something that is not mentioned in the house rules, you can apply for it. Then the penitentiary will decide whether or not you can have the object. The decision depends upon what object you would like, what you need it for and, above all, the security standard of the institution.



## Which information media am I allowed to use?

The basic right of freedom of information also applies to prisoners. As a result, radio and television are allowed so that you can be informed about current events. Books, newspapers and magazines are also allowed. If you come from a different country, you are also permitted to have reading material sent to you in your native language. You must generally purchase books and magazines, radio and television at your own cost. However, you can also borrow books from the prison library. Unfortunately, it is often difficult for non-German-speaking prisoners to find something there in their own language.

Whether you are permitted to use electronic devices, game consoles or computers depends on the individual penitentiary. The new laws are not uniform in this regard. By the way: In some of the German states, prisoners must pay a contribution to the electricity costs if they have electrical devices in their cells.





## Am I permitted to have visitors?

Prisoners have the right to see visitors on a regular basis. How often, how long and how many people are allowed to visit is determined by the penitentiary. The house rules usually have information on this topic. The law only stipulates that it must be possible to have visitors for at least one hour per month.

Visits are only approved by the penitentiary in response to a request. If you would like to have someone visit you (group visits are also possible), you must fill out a form in due time. The penitentiary then reviews whether it can allow the visit. It can also reject visitors if it fears that they will endanger the security or order or are harmful for you.

Supervision of visits is only permitted when this is required by the conduct of the prisoner or the security of the penitentiary.

## Are letters and telephone calls allowed?

You are allowed to send and receive letters; their number is not restricted. Paper and pens are generally provided by the prison, but you must pay the postage on your own. In exceptional cases, the head of the institution can read your letters, “hold” them (they will not be delivered and sent back) or “put with the belongings” (they are stored with the personal things that are given back to you when you are released). It must give concrete reasons for these actions. The exchange of letters with attorneys or advocates must not be monitored by the institution management.

Prisoners are also allowed to make telephone calls and be called. However, they do not have a right to do this. In addition, the prison is permitted to monitor telephone calls. When this occurs, you must be informed about it.

In many penitentiaries, you must go to the prison staff or social services when you want to make a telephone call. Private mobile phones are prohibited for inmates. In most of the German states, you must pay for your own telephone calls.

## Can I have packages sent to me?

Your relatives or friends can send you packages three times a year. Examples of occasions can be your birthday, Easter and Christmas or also the holidays of other religions. However, you can only receive more than three packages if you are authorised for them. You generally only receive packages when you apply for them. The prison hands out “package stamps” for them.

You can find information about what is permitted in a package and what is not and how the package transit occurs in a hand-out at your penitentiary. All of the state laws prohibit the reception of packages with food, stimulants, drinks and tobacco.

## Can I live according to my religion in prison?

Prisoners also have the right to adhere to the regulations of their own religion. The penitentiaries support this by offering worship services and enabling contact with the pastors of the various faith communities. You are also allowed to have the things that you need for your religious practice such as rosaries, prayer beads, symbols or important writings of your faith. If you want to follow the food regulations of your religion, you can obtain the respective provisions from the merchant – but

you must pay for them yourself. There are now foods for Muslim prisoners at all penitentiaries that correspond with their regulations. Vegetarian meals are also offered almost everywhere.

If you belong to a lesser-known religion, you should inform the social services or a pastor about your commandments and prohibitions so that it may also be possible to respond to your religious needs.

## The most important information on requests

When you need something (such as books or a radio), desire a visit or would like to go to an appointment outside of the prison (such as an information centre), you must request this in writing. The management of the institution then decides on it. This always depends on the individual case. That is to say that the institution management must precisely examine whether it can approve or must reject your request. Then it must inform you of its decision and give the precise reason why it has made it instead of deciding otherwise. This often occurs verbally. However, you can also ask for written notification so that you can read everything once again in peace or have it explained to you.

## Will I get work in prison?

Just like outside of prison, there is also no basic right of work in prison. Because of this, prisoners do not have any entitlement to a certain activity. However, there is an obligation to work in prison. When work is assigned to you that is appropriate for you, then you must accept it. You will then also receive money for this work (see below). The obligation to work does not apply for people 65 and over, for prisoners who are incapable of working due to illness and for women under maternity protection.

Vocational training, retraining or instruction is also considered to be work. Even for prisoners who must return to their home country after prison, training can make sense: It can help make it easier for them to get a new start there.



## Is the work in prison paid?

Anyone who works in prison receives a salary. It consists of about 9% of the average earnings of all employed people in Germany who contribute to the pension fund. So this is a relatively small amount. In addition, there are five pay levels. Which level is paid for a job depends on the skills and abilities that it requires.

The salary is not at your disposal; instead, the prison allocates it as follows:

- ➔ Three-sevenths (3/7) of the salary constitutes the *Hausgeld* (personal allowance) which you can use for purchasing items from merchant. The personal allowance cannot be garnished.
- ➔ You must save *Überbrückungsgeld* (transitional allowance) from your salary. This money is put into an account for you by the penitentiary. It is intended to help you secure your subsistence during the first four weeks after your release. The transitional allowance also cannot be garnished. However, it reduces your claim to welfare benefits or unemployment benefits II (Hartz IV) when you leave the prison.
- ➔ The *Eigengeld* (inmate's money) consists of the remaining salary and other deposits (see below). You have free disposal over inmate's money. If you want to just use it

later, the prison must put it into an account. The inmate's money can be garnished if you have debts or must pay support to your family.

If you do not work through no fault of your own (because you are ill, for example), you will receive a monthly *Taschengeld* (allowance) of approx. € 30. The allowance cannot be garnished.

## Can I get financial support in prison?

Relatives, as well as other people, are allowed to pay money for you at any time, which will then be credited to your inmate's money. If you would like to use the money for something in particular (such as a television), a *zweckgebundene Einzahlung* is recommended: In this case, the payee indicates the purpose for which the money is to be used. The possession of cash is prohibited in almost all of the prisons.

You can claim *Sozialhilfe* (welfare benefits) if you are in need and require something that the prison does not pay for. For example, if private clothing is allowed at your penitentiary but you cannot afford it, the social welfare office will assume the costs. It will also cover the costs for dental restorations if you cannot pay your own share of the costs. The payment of welfare benefits also depends on the individual case.

# What does Lockerungen des Vollzugs mean?

„Lockerungen des Vollzugs“ means that prisoners are allowed to leave the penitentiary for certain time period. Examples of this easing of prison restrictions include:

- ➔ **Außenbeschäftigung:** Prisoners work outside of the penitentiary under the supervision of the prison personnel.
- ➔ **Ausführung:** Prisoners are allowed to leave the penitentiary for a short time to go to consultation appointments, for example. They are accompanied by prison personnel for this purpose.
- ➔ **Ausgang:** Prisoners are allowed to leave the penitentiary for a short time without accompaniment.
- ➔ **Freigang:** Prisoners work outside of the penitentiary during the day and return in the evening. There is no supervision during this day release.
- ➔ **Hafturlaub:** Prisoners are allowed to spend entire days outside of the penitentiary without supervision.

The easing of restrictions is intended to make social contacts possible outside of the prison, facilitate the return to society after prison and counteract the negative effects of prison.

You must petition for the easing of restrictions because it is not a right. However, you can petition for the prison management to precisely examine your case and then decide whether this will be granted to you. According to the law, an easing of restrictions is only permissible when there is no danger that the prisoner will flee or commit new offences.

# Is the easing of restrictions also possible for non-Germans?

Even those who do not have a German passport can request for the easing of restrictions. However, whether the prison grants them depends on whether the prisoner is to be expelled from Germany and deported directly from the prison. When custody prior to deportation has been ordered, an easing of restrictions will not be permitted. If the deportation proceedings are still in progress, an easing of restrictions is not rejected in general: Here, the prison management has to examine and decide on each individual case.

The same applies to the *offener Vollzug* (this is where the prisoner works outside of the penitentiary during the day and returns again at night): Non-German prisoners can also be transferred here. However, this possibility is limited if the resident status is not clarified or a deportation is certain.

## Can I go to a different prison if I want?

You can be transferred to a different penitentiary if this promotes your reintegration. However, you must submit a petition and explain why the transfer is important for you. For example, one reason may be that you would like to be close to your family so that they can visit you more frequently. Another reason would be that you would like to get training or need substitution treatment that is not available at your current penitentiary.



## What types of punishment are allowed in prison?

The law expressly states what punishments or “disciplinary measures” are allowed for prisoners. The institution management is permitted to:

- ➔ Issue reprimands
- ➔ Restrict or revoke the personal allowance, reading material, television and radio reception, objects for leisure activities and participation in joint activities.
- ➔ Revoke the work.
- ➔ Restrict contacts with the outside.
- ➔ Order an arrest (in a specially secured cell).

However, such sanctions are only allowed when prisoners have violated the penal law or the house rules of the penitentiary and this has been verified. In this case, the institution management must clarify the circumstances and hear the prisoners. The principles of the constitutional state also apply here.

The institution management is not required to respond to every infringement with a disciplinary measure: It can decide whether



this is reasonable or not. However, a sanction must be appropriate in any case. For example, this means severe punishment is not permitted for small misdeeds.

## What can I do if I feel that I have been treated unjustly?

If you do not agree with a decision or measure by the penitentiary, you can take action as follows: with a complaint (to the prison director or another superior), an objection (only still possible in Bremen, Hamburg and Schleswig-Holstein) or filing an action (at the *Strafvollstreckungskammer am Landgericht*). Like every other citizen, prisoners also have the right to have authority decisions affecting them legally examined.

But before you file a complaint, you should first try a different path. Above all, this includes conversations with the prison staff, their superiors or the institution management, as well as the supervisory board or the representation for the prisoners. You can also ask for support from external employees or associations, groups for foreigners or counselling centres. Problems can often be solved quickly and simply with conversations and you avoid an elaborate and stressful legal dispute.

But sometimes a law suit does occur. In this case, there is no obligation for prisoners to be represented in court. This means that instead of being forced to have an attorney represent you, you can do this on your own. If you are in need and cannot pay for a law suit and the law suit has good prospects for success, then you can apply for *Prozesskostenhilfe* (legal aid).



## Can I be released early from prison?

Many prisoners are released even before they have fully served their prison sentence. The law has the following possibilities, which are valid for all (and this also means foreign) inmates:

- ➔ When two-thirds of the prison sentence has been served, the authority examines to see whether the prisoner can be released on parole (§ 57 Penal Code) – so it is not necessary to apply for this. In special cases, the imprisonment can already be ended after half of the prison sentence has been served; however, the review must be applied for. The enforcement authority will only decide for an early release when it can assume that the prisoner will not commit any further offences.
- ➔ Sick prisoners can petition to have their prison term interrupted for health reasons when their illness cannot (or no longer) be treated in prison or their health will further deteriorate due to the prison. This only still applies in some individual cases to the HIV infection because it can be treated with good results in most cases.

- ➔ Any prisoner can file a *Gnadenantrag* (clemency petition) at any time in order to be released from prison in this way. However, such a petition only makes sense when every other possibility of an early release has already been examined and rejected.



## Can non-Germans also be released early from prison?

They can in principle because the law treats all prisoners equally. But if the resident status is not clarified, an early release on parole (§ 57 Penal Code) is rarely granted. However, you can still file a petition at any time for your case to be examined again if it is rejected.

Non-German prisoners in particular have the following possibilities for ending or interrupting their imprisonment early:

- ➔ The German government has an agreement with many countries that foreigners sentenced in Germany can be transferred to the country in which they are citizens. Then the sentence will be carried out there.
- ➔ When a deportation is definitive, it is possible to interrupt the prison sentence (§ 456a Strafprozessordnung). This occurs either automatically or when the prisoner files a petition. The prison sentence is usually interrupted before two-thirds of the sentence has been served. Afterwards, the prisoner is sent back to the home country. However, a prisoner who returns to Germany must go back to prison to serve the rest of the sentence. This also applies if the prisoner must just leave Germany for a certain amount of time and then is permitted to enter the country again.

A handout from the authorities provides information on the details of this procedure. Ask the social services about how you can receive it.

## Drug rehabilitation instead of prison: Is this possible?

If you have been sentenced because of drugs, you can have your prison sentence suspended so that you can undergo drug rehabilitation. However, *Therapie statt Strafe* (therapy instead of punishment) according to § 35 Betäubungsmittelgesetz is not automatically granted: You must petition for it yourself. In addition, it is expected that you find a space in a treatment programme on your own. External drug counsellors or the social services of the institution can help you in this process.

“Therapy instead of punishment” does not mean that the prison sentence will be remitted: For example, it can be carried out if you do not enter into the drug rehabilitation or if you prematurely discontinue it. However, the time that you spent at a treatment centre must be credited towards your prison sentence.

## Will my diplomatic mission find out that I am in prison?

If you would like this to be done, the prison must inform the diplomatic mission of your home country that you are in prison. However, the prison is not permitted to do this on its own or against your will.

## Who can I see in case of questions and problems?

For legal questions, you can go to the social services of the penitentiary. The penitentiary is obligated to give you information or must make sure that you receive the necessary information from somewhere else. In addition, legal questions are answered by the *Strafvollzugsarchiv, Fachbereich 6 Universität, 28353 Bremen* (Fax: 0421/218 9316, [info@strafvollzugsarchiv.de](mailto:info@strafvollzugsarchiv.de)).

You can also get counselling if you consume drugs, have debts, are HIV-positive or have questions about HIV/AIDS and other transmittable infections: Almost every penitentiary has employees from associations that advocate for prisoners and can even give you support after your release. Examples of these are prisoner assistance, drug counsellors or *Aidshilfe* organisations.

Advice is important when you are in HIV therapy and are to be deported from Germany: You can take legal action if you cannot continue the HIV therapy in your home country. The local *Aidshilfe* organisation and the refugee council can provide you with support in this process.

You can get the addresses for the *Aidshilfe* organisations and other non-profit organisations from the social services of the penitentiary or the *Deutsche AIDS-Hilfe (Wilhelmstr. 138, 10963 Berlin, Tel. 030 / 69 00 87-00, Fax 030 / 69 00 87-42)*.



# Information Sources

You can order free brochures on HIV, hepatitis and other infections that are transmitted during sex or drug consumption from the *Deutsche AIDS-Hilfe* or the local *Aidshilfe* organisations (see above for addresses, but the penitentiary must approve the mailing in advance).

Here is a small selection:

- ➔ Safer Use – Risiken minimieren beim Drogengebrauch (available in German)
- ➔ Don't panic! You can protect yourself! Information regarding HIV and hepatitis C for people in prison (also available in German, Turkish and Russian)
- ➔ Substitution in Haft (available in German)
- ➔ Tattoo und Piercing in Haft (available in German)
- ➔ Medizinische Versorgung in Haft (available in German)
- ➔ Gesundheitstipps für Männer in Haft (available in German)
- ➔ Gesundheitstipps für Frauen in Haft (available in German)
- ➔ Positiv in Haft (available in German)



## IMPRESSUM

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