

PRISON & JAIL ACCOUNTABILITY PROJECT

2006-2007 PRISONER RESOURCE GUIDE

TABLE OF CONTENTS

Introduction	3
SOME BASIC ADVICE	5
SUMMARIES OF THE LAW ON COMMON PRISONER PROBLEMS	7
PRISON LITIGATION REFORM ACT	7
Medical Care	12
LEGAL RIGHTS OF DISABLED PRISONERS	13
LIFE ENDANGERMENT & USE OF FORCE	19
RELIGIOUS RIGHTS OF PRISONERS	22
EXCESSIVE HEAT/COLD	25
EXPOSURE TO ENVIRONMENTAL HAZARDS OR TOXIC MATERIALS	27
DISCIPLINARY SANCTIONS	29
NAMES & ADDRESSES FOR ADVOCACY GROUPS, GOVERNMENT OFFICES, AND OTHER POTENTIAL RESOURCES	36



INTRODUCTION

The American Civil Liberties Union is a private, non-profit, non-governmental organization that seeks to preserve and extend constitutional rights and principles found mainly in the Bill of Rights. The Prison and Jail Accountability Project is a project of the ACLU of Texas. We are dedicated to making Texas prisons and jails safe and humane places to live and work.

We do not want to discourage anyone from pursuing a complaint, but you should know that we can accept very few cases for direct litigation. Our limited financial and staff resources usually keep us from providing assistance to individual prisoners. We generally accept only cases with significant civil liberties issues where our participation will benefit a large class of people, or will lead to a change in the law concerning the issue.

The Prison and Jail Accountability Project may not be able to find you an attorney to pursue your complaint, but we are monitoring Texas prison and jail complaints in order to advocate effectively for reform.

We have listed a number of organizations that provide services and information that prisoners may find of interest. Most of these organizations also struggle with limited resources, and they may also be unable to help you directly or find you a lawyer. They may, however, help you become a better advocate for yourself.

The information in this packet is regularly updated. Please send your additions, corrections, and suggestions to the Austin office of the ACLU.

Some of the information in this resource guide contains information regarding other possible resources for you. This information is provided as citations and aids to help you identify and locate other resources that may be of interest, and are not intended to state or imply that the American Civil Liberties Union or the Prison and Jail Accountability Project sponsors, is affiliated or associated with, or is legally authorized to use any trade name, registered trademark, logo, legal or official seal, or copyrighted symbol that may be reflected in these resources. While there are references appearing in this resource guide to some specific matters, you should recognize that every case is different, and similar results may not necessarily be obtained in your case.

The Project hopes that this packet contains information that may be helpful. We are not acting as your attorney, however. Therefore, you must continue to take whatever steps are necessary to protect your interests.

The materials in this resource guide are provided for informational purposes only and do not constitute legal advice of the American Civil Liberties Union or the Prison and Jail Accountability Project, or any of its attorneys, and are not guaranteed to be correct, complete, or up-to-date.



This resource guide is not intended to create an attorney-client relationship between you and the American Civil Liberties Union or the Prison and Jail Accountability Project, and you should not act or rely on any information in this guide without seeking the advice of an attorney of your choice.

If you communicate with us by mail or otherwise regarding a matter in which we do not already represent you, your communication may not be treated as privileged or confidential.

In some jurisdictions this resource guide may be considered advertising, though that is not our intent. The hiring of a lawyer is an important decision that should not be based solely upon advertisements or written information about our qualifications and experience.

The American Civil Liberties Union and the Prison and Jail Accountability Project have endeavored to comply with all known legal and ethical requirements in compiling this resource guide.

SOME BASIC ADVICE

If you have a problem while incarcerated by the Texas Department of Criminal Justice (TDCJ), or a county or city jail in Texas, you should first pursue the avenues for help available to you within TDCJ or the city or county jail you are in. It is the individual jail, and the organizations that oversee those jails (such as TDCJ or TCJS) that control your living conditions. For example, you should first talk to an officer or supervisor you think might listen; send I-60s or letters to officials if you are in TDCJ; and perhaps most importantly, write grievances.

Each TDCJ unit and city/county jail implements a grievance process that enables prisoners and jail detainees to submit a formal complaint. It is important for prisoners and detainees to exhaust every step in the grievance process in order to pursue litigation at a later date, because you must show that you exhausted your administrative remedies (and you **must** appeal it to Step 2).

Reasons to File a Grievance:

- Life Endangerment;
- Abuse (sexual or physical);
- Violations of TDCJ and/or jail policies and procedures;
- Actions of an employee or another prisoner;
- Harassment and/or retaliation for use of the grievance procedure;
- Access to courts;
- Loss or damage of personal property by the unit or jail; and
- Neglect of basic care (i.e. sanitation, heat/cold)

How to file a grievance:

Some prisoners think that there is a special way to write grievances. This is not true. You do not need to be a writ writer to write a grievance. The best thing to do is use plain English (or whatever language you can write in) to say what your problem is and what you want.



- **TDCJ Units:** In TDCJ units, grievance forms can be found in the unit law library, housing areas, or with the unit shift supervisor. You can also use I-60s and letters to the warden or other unit officials.
- **Jail Grievances:** Each county and city jail has a formal grievance process. In many cases you or a family member may have to ask jail staff for a grievance form. If you or a family member were detained in city or county jail and were not told that you have the right file a grievance, submit your complaint NOW to the Texas Commission on Jail Standards:

Texas Commission on Jail Standards P.O. Box 12985 Austin, Texas 78711-2985

Outside of Prison and Jail Complaints

• TDCJ: If a family member or loved one is incarcerated in a TDCJ facility you have the right to file a formal complaint with the TDCJ Ombudsperson office:

TDCJ Ombudsperson Correctional Institutions Division P.O. Box 99 Huntsville, TX 77342-0099

Phone: 936.437.6791 Fax: 936.437.6668

Email: ci.div@tdcj.state.tx.us

• If a family member or loved one is being detained in a county or city jail you have the right to contact the Texas Commission on Jail Standards (address above).

What to do if your problem is not resolved in TDCJ:

When you cannot solve your problem at the unit level, certain TDCJ offices handle certain kinds of complaints by prisoners and/or their friends and families.

• For serious **medical and mental health care problems**, send I-60s or letters to the Patient Liaison:

Patient Liaison Office Office of Professional Standards 3009-A Hwy 30 West Huntsville, TX 77340

Phone: (936) 436-1265

• For **unnecessary or excessive force**, or other staff misconduct or criminal activity within TDCJ, send I-60s or to the Office of the Inspector General (also known as "OIG;" this is the new name for Internal Affairs or "IAD."):



Office of the Inspector General P. O. Box 4003 Huntsville, TX 77342-4003

• For problems with TDCJ's **calculation of your time or release date**, problems with INS/immigration matters, or representation on non-death penalty habeas corpus writ applications, send I-60s or letters to the State Counsel for Offenders:

State Counsel for Offenders P.O. Box 4005 Huntsville, TX 77342-4005

• Family members, friends, and outsiders (but not prisoners) may send letters to the Ombudsman. (Family members, friends and other outsiders also can telephone or write other offices, including unit wardens' offices and the offices named in this memorandum; many prisoners feel it helps them if someone on the outside contacts TDCJ about them.)

TDCJ-ID Ombudsman P.O. Box 99 Huntsville, TX 77342 (936) 294-6791 (ph); (936) 294-6325 (fax)

You can use truck mail for all TDCJ offices that investigate complaints or problems including Patient Liaison, IAD (Internal Affairs Division)—now OIG (Office of the Inspector General)—and State Counsel for Offenders.

Individual Litigation

If you cannot get the help you need from a TDCJ office or official, your other option is to pursue individual legal action. Under the Prison Litigation Reform Act (PLRA), you must exhaust all of your administrative remedies before you can file a lawsuit. If you think you might ever want to file a lawsuit, you must go through the entire grievance process, and you must ask for everything you believe the prison or jail should do to make up for what happened to you, even if the process is not set up to give you what you ask for. This process is outlined in your Offender Manual.

Obviously, it is not easy to pursue a lawsuit, and it is very hard to win a lawsuit. The PLRA has made it even harder than it was before. Also, many problems are too small to be worth a lawsuit, even when they involve something very important to you, which is one reason why it is hard for prisoners to get lawyers to fix wrongs that they suffer. For all of these reasons, it is important to try to use all of the avenues that exist within TDCJ to try to solve your problems.



SUMMARIES OF THE LAW ON COMMON PRISONER PROBLEMS¹

These summaries contain citations of legal cases that you can read if you want more information. The citations look like this: *Women Prisoners of the District of Columbia Department of Corrections v. the District of Columbia*, 93 F.3d 910 (D.C. Cir. 1996). If you do not want to read the cases, you can skip over the case cites and still read and understand the summaries. If you want to look at the cases, you can look them up in the law library. The first number (93 in this example) is the number of the volume of the case reporter in which the case is published. The second set of letters and numbers (F.3d) is an abbreviation for the book in which the case is published. The last number (910) is the page on which the case is published. The information in parentheses (D.C. Cir. 1996) tells you the court and the year that the case was decided. (Texas is in the Fifth Circuit.) Ask a law clerk or a friend for help figuring out the abbreviations.

If you are thinking about filing a lawsuit, you should know about a 1996 law entitled the Prison Litigation Reform Act (PLRA), which makes it harder for prisoners to file lawsuits in federal court. The PLRA contains many parts, but the following parts are the most important.

PRISON LITIGATION REFORM ACT

Exhaustion of administrative remedies (42 U.S.C. § 1997e(a))

The **first essential point to remember about the PLRA** is that before you file a lawsuit, you must try to resolve your complaint through the prison's grievance procedure. This usually requires that you give a written description of your complaint – a "grievance" – to a prison official. If your Step 1 grievance is denied, you **must** file a Step 2 grievance. If you file a lawsuit in federal court before taking your complaints through every step of your prison's grievance procedure, it will almost certainly be dismissed.

A. What is exhaustion?

Exhausting your remedies requires filing a grievance and pursuing all available administrative appeals.² In addition, **every claim** you raise in your lawsuit must be

¹ The Prison & Jail Accountability Project is indebted to the National Prison Project of the ACLU and to Yolanda Torres, Esq. for preparing these summaries.



7

exhausted.³ However, if a prisoner does not file a grievance because he/she is unable to obtain grievance forms, no administrative remedy is "available," and the prisoner may file in court.⁴ In a multi-step grievance system, if staff fail to respond within the time limits established in the grievance system's rules, the prisoner must appeal to the next stage.⁵ If the prisoner does not receive a response at the final appeal level, and the time for response has passed, the prisoner has exhausted available remedies.⁶

An exception to the above requirement that all appeals be accepted occurs if the prisoner cannot appeal without a decision from the lower level of the grievance system, and the lower level did not respond to the grievance.⁷

Courts have differed widely on when failure to exhaust might be excused.⁸ The safest course is always to file a grievance and appeal that grievance through all available levels of appeal with respect to each claim you want to raise and each defendant you want to name in your eventual lawsuit. You should get a copy of your prison or jail's grievance policy and follow it as closely as you can.

B. What happens if you don't exhaust the grievance process?

⁸ See, e.g., Miller v. Tanner, 196 F.3d 1190 (11th Cir. 1999) (prisoner who failed to sign and date grievance form did not fail to exhaust administrative remedies; inmate did not fail to exhaust remedies by failing to appeal institutional-level denial of his grievance after being told unequivocally that no such appeal was possible); Nyhuis v. Reno, 204 F.3d 65 (3d Cir. 2000) (substantial compliance with grievance procedure will satisfy exhaustion requirement); cf. Camp v. Brennan, 219 F.3d 279 (3d Cir. 2000) (holding that investigation of complaint by Secretary of Corrections rather than regular grievance system satisfied exhaustion requirement); but see Freeman v. Francis, 196 F.3d 641 (6th Cir. 1999) (investigations by use of force committee and state police are not exhaustion).



² White v. McGinnis, 131 F.3d 593 (6th Cir. 1997).

³ See, e.g., Bey v. Pennsylvania Dept. of Corrections, 98 F. Supp. 2d 650 (E.D. Pa. 2000); Cooper v. Garcia, 55 F. Supp. 2d 1090 (S.D. Cal. 1999).

⁴ *Miller v. Norris*, 247 F.3d 736 (8th Cir. 2001).

⁵ White v. McGinnis, 131 F.3d 593 (6th Cir. 1997).

⁶ Powe v. Ennis, 177 F.3d 393 (5th Cir. 1999). *Cf. Lewis v. Washington*, 300 F.3d 829 (7th Cir. 2002) (when prison officials do not respond to a prisoner's initial grievance, administrative remedies are exhausted).

⁷ Taylor v. Barrett, 105 F. Supp. 2d 483 (E.D. Va. 2000); see also Miller v. Tanner, 196 F.3d 1190 (11th Cir. 1999) (prisoner had exhausted when told by staff no appeal possible); *Pearson v. Vaughn*, 102 F. Supp. 2d 282 (E.D. Pa. 2000) (same).

Most courts have held that failure to exhaust is an affirmative defense that must be raised by the defendants. Then, if the court finds that the prisoner has not exhausted, the case is dismissed without prejudice, meaning that the lawsuit may be filed again once the prisoner has exhausted, as long as the statute of limitations has not run.

There is not a lot of case law yet addressing whether a prisoner who misses a deadline in the grievance process forever loses his/her constitutional or statutory claim. If you are in this situation, you should appeal through all the levels of the grievance system and explain in the grievance the reasons for the failure to file on time.¹¹

Finally, the statute of limitations is tolled while a prisoner is in the process of exhausting available remedies. ¹²

C. There are very few exceptions to the exhaustion requirement.

Prisoners seeking to bring a damages action must exhaust available administrative remedies even if the administrative remedy does not provide money damages.¹³

Other means of notifying prison officials of your complaint, such as speaking to staff, putting in a kite, or writing to the warden do **not** constitute exhaustion. You **must** use the grievance system.

¹³ Booth v. Churner, 121 S. Ct. 1819 (2001).



⁹ Some of the cases holding that failure to exhaust is an affirmative defense are *Ray v. Kertes*, 285 F.3d 287 (3d Cir. 2002); *Wyatt v. Terhune*, No. 00-16568, 2003 WL 18500 (9th Cir. Jan. 2, 2003); *Foulk v. Charrier*, 262 F.3d 687 (8th Cir. 2001) (treating failure to exhaust as affirmative defense but allowing amendment to raise defense); *see also Jackson v. District of Columbia*, 254 F. 3d 262 (D.C. Cir. 2001); *Massey v. Helman*, 196 F.3d 727 (7th Cir. 1999); *Jenkins v. Haubert*, 179 F.3d 19 (2d Cir. 1999); *Underwood v. Wilson*, 151 F.3d 292 (5th Cir. 1998) (exhaustion requirement may be subject to waiver). The Sixth Circuit alone requires dismissal on the court's own initiative if the prisoner does not demonstrate exhaustion in the complaint. *Brown v. Toombs*, 139 F.3d 1102 (6th Cir. 1998).

¹⁰ Perez v. Wisconsin Dept. of Correction, 182 F.3d 532 (7th Cir. 1999); Wendell v. Asher, 162 F.3d 887 (5th Cir. 1998); Wright v. Morris, 111 F.3d 414 (6th Cir. 1997); but see Williams v. Norris, 176 F.3d 1089 (8th Cir. 1999) (per curiam) (no dismissal if prisoner exhausts prior to court ordering dismissal).

Harper v. Jenkins, 179 F.3d 1311 (11th Cir. 1999) (holding that prisoner who filed an untimely grievance was obliged to seek a waiver of the time limits in the grievance system); see also Pozo v. McCaughtry, 286 F.3d 1022 (7th Cir. 2002) (prisoner who missed deadline on one of the levels of appeals of the grievance system barred from filing lawsuit).

¹² Johnson v. Rivera, 272 F.3d 519 (7th Cir. 2001); Brown v. Morgan, 209 F.3d 593 (6th Cir. 2000); Harris v. Hegmann, 198 F.3d 153 (5th Cir. 1999).

In the only decision to address this issue, the District of Columbia Circuit Court of Appeals said that under the PLRA, courts may still issue injunctions to prevent irreparable injury pending exhaustion of administrative remedies.¹⁴

The exhaustion requirement does not apply to detainees in INS facilities.¹⁵ Also, the exhaustion requirement does not apply to cases filed before the effective date of the PLRA, which is April 26, 1996.¹⁶

Filing fees (28 U.S.C. § 1915(b))

The **second critical point to remember about the PLRA** is that all prisoners must pay court filing fees **in full**. If you do not have the money up front, you can pay the filing fee over time through monthly installments from your prison commissary account, but the filing fee will not be waived. A complex statutory formula requires the indigent prisoner to pay an initial fee of 20% of the greater of the prisoner's average balance or the average deposits to the account for the preceding six months. After the initial payment, the prisoner is to pay monthly installments of 20% of the income credited to the account in the previous month until the fee has been paid.

A major complication of this procedure is that it requires the prison or other facility holding the prisoner to cooperate administratively in the process of assessing the court's statutory fee. The courts can require the prison administration to provide the necessary information.¹⁷

Three strikes provision (28 U.S.C. § 1915(g))

The **third point to remember about the PLRA** is that each lawsuit or appeal you file that is dismissed because a judge decides it is frivolous, malicious, or does not state a proper claim counts as a "strike." After you get three strikes, you cannot file another lawsuit *in forma pauperis* – that is, you cannot file unless you pay the entire court filing fee **up-front**. The only exception to this rule is if you are at risk of suffering serious physical injury in the immediate future.

¹⁷ *Hall v. Stone*, 170 F.3d 706 (7th Cir. 1999) (holding warden in contempt for failure to forward fees from the prisoner's account).



¹⁴ Jackson v. District of Columbia, 254 F.3d 262 (D.C. Cir. 2001).

¹⁵ Edwards v. Johnson, 209 F.3d 772 (5th Cir. 2000).

¹⁶ See, e.g., Salahuddin v. Mead, 174 F.3d 271 (2d Cir. 1999); Bishop v. Lewis, 155 F.3d 1094 (9th Cir. 1998); Brown v. Toombs, 139 F.3d 1102 (6th Cir. 1996).

An appeal of a dismissed action that is later dismissed is a separate strike.¹⁸ Even dismissals that occurred prior to the effective date of PLRA count as strikes.¹⁹ An exception to the "three strikes" rule may be invoked if a prisoner is in imminent danger of serious physical injury.²⁰ A court will evaluate the "imminent danger" exception at the time the prisoner attempts to file the new lawsuit, not at the time that the incident that gave rise to the lawsuit occurred.²¹

Physical injury requirement (42 U.S.C. § 1997e(e))

The **fourth point to remember about the PLRA** is that you cannot file a lawsuit for mental or emotional injury unless you can also show physical injury.

The requirement of physical injury only applies to money damages, it does not apply to claims for injunctive and declaratory relief.²² Some courts have suggested the possible availability of nominal and punitive damages even when compensatory damages are barred by the requirement of physical injury.²³ The courts are split on whether a claim for violation of constitutional rights is intrinsically a claim for mental or emotional injury in the absence of an allegation of a resulting physical injury (or injury to property).²⁴ Not surprisingly, the courts differ in their evaluation of what constitutes sufficient harm to qualify as a physical injury.²⁵

²⁴ See Rowe v. Shake, 196 F.3d 778 (7th Cir. 1999) (First Amendment claim not barred by physical injury requirement); Canell v. Lightner, 143 F.3d 1210 (9th Cir. 1998) (claim for violation of First Amendment is not a claim for mental or emotional injury); cases going the other way include Thompson v. Carter, 284 F.3d 411 (2d Cir. 2002); Searles v. Van Bebber, 251 F.3d 869 (10th Cir. 2001); Allah v. Al-Hafeez, 226 F.3d 247 (3d Cir. 2000) (First Amendment claims involve mental or emotional injuries);



¹⁸ Jennings v. Natrona Co. Detention Center, 175 F.3d 775 (10th Cir. 1999); Patterson v. Jefferson Corrections Center, 136 F.3d 626 (5th Cir. 1998).

¹⁹ See e.g., Ibrahim v. District of Columbia, 208 F.3d 1032 (D.C. Cir. 2000); Welch v. Galie, 207 F.3d 130 (2d Cir. 2000).

²⁰ See Gibbs v. Cross, 160 F.3d 962 (3d Cir. 1998) (plaintiff alleged an imminent danger of serious physical injury where dust, lint and shower odor came from his cell vent, causing him to suffer "severe headaches, changes in voice, mucus that is full of dust and lint, and watery eyes."). See also Ashley v. Dilworth, 147 F.3d 715 (8th Cir. 1998) (allegations that staff placed plaintiff in proximity to known enemies satisfied imminent danger requirement).

²¹ *Abdul-Akbar v. McKelvie*, 239 F.3d 307 (3d Cir. 2001)(en banc).

²² See Harper v. Showers, 174 F.3d 716 (5th Cir. 1999); Perkins v. Kansas Dept. of Corrections, 165 F.3d 803 (10th Cir. 1999); Davis v. District of Columbia, 158 F.3d 1342 (D.C. Cir. 1998).

²³ See Allah v. Al-Hafeez, 226 F.3d 247 (3d Cir. 2000) (claims for nominal and punitive damages can go forward); Searles v. Van Bebber, 251 F.3d 869 (10th Cir. 2001) (PLRA does not bar punitive and nominal damages for violation of prisoner's rights); Davis v. District of Columbia, 158 F.3d 1342 (D.C. Cir. 1998) (noting possibility that nominal damages would survive).

MEDICAL CARE

The Eighth Amendment requires prison officials to provide prisoners with adequate medical care, which includes mental health and dental care. This principle applies regardless of whether the medical care is provided by governmental employees or by private medical staff under contract with the government. "Deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' proscribed by the Eighth Amendment."

To win on a constitutional claim of inadequate medical care, you must show that prison officials were "deliberate[ly] indifferen[t]" to their serious medical needs, i.e., that officials knew of and disregarded a substantial risk of serious harm to the plaintiff's health. ²⁹ A medical need is considered "serious" if it "causes pain, discomfort, or threat to good health. "³⁰ Lack of money may not be used to justify the creation or perpetuation of constitutional violations. ³¹

You can establish proof of deliberate indifference by direct or by circumstantial evidence. Direct evidence includes sick call requests for medical attention, records reflecting the date(s) medical attention was requested, to whom the request(s) were submitted, the medical conditions complained of, the effects of any delay in obtaining access to medical staff, the date(s) access was provided, specific medical staff seen, treatment provided by particular staff, the follow-up care ordered and whether it was carried out, additional information to indicate the adequacy of treatment, and complaints

Davis v. District of Columbia, 158 F.3d 1342 (D.C. 1998) (claim for violation of privacy is claim for mental or emotional injuries).

³¹ Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 392-93 (1992); Harris v. Thigpen, 941 F.2d 1495, 1509 (11th Cir. 1991).



²⁵ See Gomez v. Chandler, 163 F.3d 921 (5th Cir. 1999) (allegations of cuts and abrasions satisfy physical injury requirement); *Liner v. Goord*, 196 F.3d 132 (2d Cir. 1999) (intrusive body searches qualify as physical injury); *compare with Herman v. Holiday*, 238 F.3d 660 (5th Cir. 2001) (claim of "physical health problems" by prisoner exposed to asbestos does not specify a physical injury which would permit recovery for emotional or mental damages due to fear caused by increased risk of developing asbestos-related disease); *Harper v. Showers*, 174 F.3d 716 (5th Cir. 1999) (confinement in filthy cell where exposed to mentally ill patients not physical injury); *Sigler v. Hightower*, 112 F.3d 191 (5th Cir. 1997) (bruised ear does not qualify as physical injury).

²⁶ Estelle v. Gamble, 429 U.S. 97, 103 (1976); Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982).

²⁷ West v. Atkins, 487 U.S. 42, 57-58 (1988); Richardson v. McKnight, 521 U.S. 399, 117 S.Ct. 2100 (1997).

²⁸ Estelle v. Gamble, 429 U.S. at 104.

²⁹ Farmer v. Brennan, 511 U.S. 825 (1994).

³⁰ Dean v. Coughlin, 623 F.Supp. 392, 404 (S.D.N.Y. 1985).

and formal grievances filed regarding the inadequate care. You should also try to obtain copies of medical records to see whether medications were properly prescribed and administered and whether overall treatment was appropriate and/or carried out properly.

Prison officials' knowledge of a substantial risk to a prisoner's health can also be inferred from "the very fact that the risk was obvious." This circumstantial proof of deterioration in a prisoner's health can be shown through obvious conditions like sharp weight loss. A prison official cannot "escape liability if the evidence showed that he merely refused to verify underlying facts that he strongly suspected to be true, or declined to confirm inferences of risk that he strongly suspected to exist."

LEGAL RIGHTS OF DISABLED PRISONERS

Congress defined the legal rights of disabled people by enacting §504 of the Rehabilitation Act in 1973³⁴ and the Americans with Disabilities Act (ADA) in 1990.³⁵ The Rehabilitation Act applies to federal executive agencies, including the Bureau of Prisons, and to any program that receives federal funding.³⁶ In contrast, the ADA does not apply to federal agencies. In most jurisdictions, the ADA goes beyond the Rehabilitation Act to affect **all** state and local government programs, even those that do not receive federal funding.³⁷ (See "State and Federal Prisoners," below, for exceptions to this guideline.) The laws of some states may also provide different or greater legal rights than the federal laws discussed in this fact sheet. Disabled prisoners should investigate this possibility before bringing suit.

Courts analyze the ADA and Rehabilitation Act in basically the same way and must interpret the ADA to give disabled people at least as many rights as the earlier Rehabilitation Act.³⁸ Thus, disabled prisoners may use cases about the Rehabilitation Act to bring lawsuits against officials under the ADA.

³⁸ Bragdon v. Abbott, 524 U.S. 624, 632, 118 S.Ct. 2196, 2202 (1998).



³² Farmer, 511 U.S. at 842.

³³ Farmer, 511 U.S. at 843 n.8.

³⁴ 29 U.S.C. § 794(a).

³⁵ 42 U.S.C. § 12101 et seq.

³⁶ Supra, note 1.

³⁷ 42 U.S.C. § 12131.

Definition of a Disability

The ADA defines "disability" as:

- (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment.³⁹

A "physical or mental impairment" could include hearing and vision problems, mental illness, physical disabilities, certain diseases, or many other conditions. "Major life activities" may include many private or public activities, such as seeing, hearing, reproduction, working, walking or movement. "Substantially limited" means that the person's participation in the activity is significantly restricted. It does not mean merely that the person participates in a different manner, but it also need not reach the point where the disabled person cannot participate in the activity at all. Furthermore, if a disability is corrected to the point that it does not substantially limit a major life activity, it no longer counts as a disability under the ADA.

Courts usually look at the facts of each lawsuit to decide if a person is disabled according to the ADA and Rehabilitation Act. For example, the Supreme Court has said that a person infected with HIV (human immunodeficiency virus), the virus that causes AIDS, may be disabled even if that person does not have any symptoms of the disease. On the other hand, a person with impaired vision in one eye is disabled only if his vision substantially limits participation in a major life activity.

Enforcing Disabled Prisoners' Legal Rights



³⁹ 42 U.S.C. § 12102(2).

⁴⁰ See, e.g., Bragdon, supra note 5, at 639, 2205 (finding no basis for "confining major life activities to those with a public, economic, or daily aspect").

⁴¹ Albertson's, Inc. v. Kirkingburg, 527 U.S. 555, 563, 119 S.Ct. 2162, 2168 (1999).

⁴² *Id*.

⁴³ *Bragdon, supra* note 5, at 641, 2206.

⁴⁴ Sutton v. United Air Lines, Inc., 527 U.S. 471, 482, 119 S.Ct. 2139, 2146 (1999). See also Murphy v. United Parcel Service, 527 U.S. 516, 119 S.Ct. 2133 (1999).

⁴⁵ *Kirkingburg, supra* note 8, at 566, 2169 (impaired vision in one eye is not always a disability under the ADA; rather, courts must usually determine on a case-by-case basis whether the plaintiff's major life activity is substantially limited).

⁴⁶ Bragdon, supra note 5.

⁴⁷ *Kirkingburg*, *supra* note 8.

Title II of the ADA says that:

[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.⁴⁸

To bring a lawsuit under the ADA and/or § 504, disabled prisoners must show: (1) they are disabled within the meaning of the statutes, (2) they are "qualified" to participate in the program, and (3) they are excluded from, are not allowed to benefit from, or have been subjected to discrimination in the program because of their disability. ⁴⁹ Under § 504, prisoners must also show that the prison officials or the governmental agency named as defendants receive federal funding. ⁵⁰

Courts generally require factual evidence that shows prisoners are qualified for programs, sought participation, and were denied entry based upon their disabilities.⁵¹ Disabled prisoners are "qualified" to participate in a program under the ADA and § 504 if they meet the program requirements.⁵²

What Rights Can Be Enforced?

Disabled prisoners have sued to get *equal access to facilities*, *programs and services*. For example, inmates and arrestees have sued to be able to use prison showers and toilets and to be protected from injury or the risk of injury.⁵³ Deaf and hearing-impaired prisoners have won cases to get sign language interpreters for disciplinary

⁵³ Gorman v. Easley, 257 F.3d 738 (8th Cir. 2001), cert. granted sub nom. Barnes v. Gorman, 122 S.Ct. 865 (2002) (No. 01-682) (action brought under ADA and Rehabilitation Act by paraplegic arrestee injured during transportation by police in vehicle without wheelchair restraints); *Kaufman v. Carter*, 952 F. Supp. 520, 523-24 (W.D. Mich. 1996) (denying defendants' summary judgment motion in suit challenging failure to provide access to bathrooms and showers).



⁴⁸ 42 U.S.C. § 12132.

⁴⁹ 42 U.S.C.§ 12132; 29 U.S.C. § 794(a).

⁵⁰ 29 U.S.C. § 794(a).

⁵¹ See, e.g., Lue v. Moore, 43 F.3d 1203, 1205, 1206 (8th Cir. 1994) (blind inmate denied access to vocational training programs may bring claim for damages and affirmative relief under Rehabilitation Act, but denying relief because inmate failed to prove he had applied to programs or requested accommodations).

⁵² Southeastern Community College v. Davis, 442 U.S. 397, 406, 99 S.Ct. 2361, 2367 (1979) ("An otherwise qualified person is one who is able to meet all of a program's requirements in spite of his handicap").

hearings, classification decisions, HIV-AIDS counseling, and educational and vocational programs.⁵⁴

Disabled prisoners have challenged *inadequate medical care* and prison officials' failure to provide them with medical supplies or devices such as wheelchairs or canes.⁵⁵ These cases may combine ADA claims with arguments that prison officials have violated the Eighth Amendment of the U.S. Constitution by being deliberately indifferent to prisoners' serious medical needs.⁵⁶

Disabled prisoners have challenged their *confinement in isolation and segregation units* under the ADA and § 504.⁵⁷ For example, the Seventh Circuit ruled that prison officials discriminated against a quadriplegic prisoner in Indiana who was housed in an infirmary unit for over one year and was thereby denied access to the dining hall, recreation area, visiting, church, work, transitional programs and the library.⁵⁸ However, some courts have upheld policies segregating HIV-positive prisoners because of the risk or perceived risk of transmission.⁵⁹

_

⁵⁹ Harris v. Thigpen, 941 F.3d 1489 (11th Cir. 1991), appeal after remand, Onishea v. Hopper, 126 F.3d 1323 (11th Cir. 1997), rev'd, 171 F.3d 1289 (11th Cir. 1999) (en banc) (upholding policy of segregation and exclusion from programs of HIV-positive prisoners in Alabama under §504), cert. denied, 528 U.S. 1114, 120 S. Ct. 931 (2000); Gates v. Rowland, 39 F.3d 1439 (9th Cir.1994) (upholding discriminatory policy on security grounds based on unsubstantiated fears of other prisoners).



⁵⁴ Bonner v. Lewis, 857 F.2d 559 (9th Cir. 1988) (reversing grant of summary judgment for defendants on deaf inmate's Rehabilitation Act claims that prison officials' failure to provide skilled interpreters foreclosed participation in programs for which he was otherwise qualified); *Duffy v. Riveland*, 98 F.3d 447 (9th Cir. 1996) (same, for combination of Rehabilitation Act and ADA claims); *Clarkson v. Coughlin*, 898 F. Supp. 1019, 1027-32 (S.D.N.Y. 1995) (granting summary judgment to deaf plaintiffs claiming that prison officials violated ADA and Rehabilitation Act by failing to provide accommodations for participation in classification hearings, HIV-AIDS counseling, educational and vocational programs).

⁵⁵ Saunders v. Horn, 960 F. Supp. 893 (E.D. Pa. 1997) (denying defendants' motion to dismiss in case involving prisoner's need for orthopedic shoes and a cane); *Herndon v. Johnson*, 970 F. Supp. 703 (E.D. Ark. 1997).

⁵⁶ See, e.g., Kaufman v. Carter, 952 F. Supp. 520, 523-24 (W.D. Mich. 1996) (denying defendants' summary judgment motion for their failure to provide access to bathrooms and showers).

⁵⁷ Carty v. Farrelly, 957 F. Supp. 727, 741 (D.V.I. 1997) (prison officials violated ADA by housing inmate not suffering from mental illness with mentally ill prisoners because his cane was considered security threat).

⁵⁸ Love v. Westville Correctional Center, 103 F.3d 558 (7th Cir. 1996).

Limitations on Rights

Prison officials are not required to provide accommodations that impose "undue financial and administrative burdens" or require "a fundamental alteration in the nature of [the] program." Prison officials are also allowed to discriminate if the disabled inmates' participation would pose "significant health and safety risks" or a "direct threat" to others. Finally, some courts have ruled that prison officials can discriminate against disabled prisoners as long as the discriminatory policies serve "legitimate penological interests."

State and Federal Prisoners

The area of law governing how disability rights can be enforced against states is changing very quickly, and state prisoners should review legal developments in their jurisdictions before bringing suit. In 1998, the Supreme Court ruled in *Pennsylvania Department of Corrections v. Yeskey* that Congress intended for Title II of the ADA to protect state prisoners. ⁶³ At the time, the Court declined to consider whether the ADA was a permissible exercise of congressional power. ⁶⁴

The *Yeskey* decision that Title II of the ADA applies to state prisons was called into question in 2001 by a later Supreme Court ruling.⁶⁵ Several federal courts of appeals now hold that Congress did not have the power to enact Title II of the ADA. In these jurisdictions, disabled prisoners cannot bring ADA claims against states,⁶⁶ including prisons and prison officials, or they can bring ADA claims only under limited

⁶⁵ Board of Trustees of University of Alabama v. Garrett, 531 U.S. 356, 367, 121 S.Ct. 955, 964 (2001) (Congress did not validly abrogate state sovereign immunity when it enacted Title I of the ADA).

⁶⁶ See, e.g., Garcia v. S.U.N.Y. Health Sciences Center of Brooklyn, 280 F.3d 98 (2^d Cir. 2001) (as a whole, Title II of the ADA exceeded Congress's Fourteenth Amendment enforcement authority); Reickenbacker v. Foster, 274 F.3d 974 (5th Cir. 2001) (Rehabilitation Act and Title II of the ADA both exceeded congressional power to limit state immunity under section 5 of the Fourteenth Amendment). But see Hason v. Medical Bd. of California, 279 F.3d 1167 (9th Cir. 2002) (Title II of the ADA was a permissible exercise of Congress's Fourteenth Amendment powers).



⁶⁰ Southeastern Community College, supra note 19, at 406, 2367.

⁶¹ School Board of Nassau County v. Arline, 480 U.S. 273, 287, 107 S.Ct. 1123, 1131 (1987) (holding that a person who poses a significant risk to others is not "otherwise qualified" for the activity, establishing a four-part test for determining whether contagious disease constitutes such a risk); 42 U.S.C. § 12182(b)(3).

⁶² Gates v. Rowland, 39 F.3d 1439 (9th Cir.1994) (upholding discriminatory policy on security grounds based on unsubstantiated fears of other prisoners).

⁶³ Pennsylvania Department of Corrections v. Yeskey, 524 U.S. 206, 118 S.Ct. 1952 (1998).

⁶⁴ *Id.*, at 212, 1956.

circumstances.⁶⁷ At least one court has said that Congress also did not have the power to apply the Rehabilitation Act to states or state officials.⁶⁸ Some jurisdictions may allow Rehabilitation Act claims only if the plaintiff can show that the state knowingly waived its immunity to suit in federal court.⁶⁹ Many but not all courts have found that states waive this immunity under the Rehabilitation Act by accepting federal funding.⁷⁰

In contrast to the situation of state prisoners, current law seems to indicate that disabled prisoners in federal custody are entitled to the full protection of the Rehabilitation Act. Prior to *Yeskey*, several federal appellate courts expressed doubt about whether laws about discrimination against disabled people applied in the prison context.⁷¹ These decisions were arguably overruled by *Yeskey*, in which the Court's ruling was partly based on the fact that prisons provide programs within the meaning of

_

Williams v. Meese, 926 F.2d 994 (10th Cir. 1991) (holding that the Rehabilitation Act does not apply to the Bureau of Prisons because incarceration does not constitute a program or activity within the Act's meaning); Torcasio v. Murray, 57 F.3d 1340, 1347 (4th Cir. 1995) ("the terms of the ADA and Rehabilitation Act are ill-fitting, at best, in the context of correctional facilities"), cert. denied, 516 U.S. 1071, 116 S.Ct. 772 (1996); Gates v. Rowland, 39 F.3d 1439, 1447 (9th Cir.1994) ("[t]here is no indication that Congress intended the [Rehabilitation] Act to apply to prison facilities irrespective of the considerations of the reasonable requirements of effective prison administration", applying the Turner v. Safley constitutional standard); Bryant v. Madigan, 84 F.3d 246, 249 (7th Cir. 1996) ("incarceration, which requires the provision of a place to sleep, is not a 'program' or 'activity'", holding that disabled prisoner alleging failure to provide adequate medical treatment had no claim under ADA or Rehabilitation Act).



⁶⁷ See Klinger v. Director, Department of Revenue, 281 F.3d 776 (8th Cir. 2002) (disabled plaintiffs may seek declaratory and injunctive relief under Title II of the ADA under the doctrine of Ex parte Young; claims for monetary damages are barred by the Eleventh Amendment); Popovich v. Cuyahoga County Court of Common Pleas, Domestic Relations Div., 276 F.3d 808 (6th Cir. 2002) (holding Title II of the ADA is a permissible exercise of congressional power to the extent that it enforces due process rights; state must accommodate hearing-disabled father's needs in child custody proceeding), cert. pet. filed, 70 USLW 3656 (Apr 10, 2002) (NO. 01-1517); Erickson v. Board of Governors of State Colleges and Universities for Northeastern Illinois University, 207 F.3d 945 (7th Cir. 2000) (ADA claims brought by private actors must proceed in state court), cert. denied, 531 U.S. 1190, 121 S.Ct. 1187 (2001).

⁶⁸ Reickenbacker v. Foster, 274 F.3d 974 (5th Cir. 2001) (Rehabilitation Act and Title II of the ADA both exceeded congressional power to limit state immunity under section 5 of the Fourteenth Amendment).

⁶⁹ See, e.g., Randolph v. Rodgers, 253 F.3d 342 (8th Cir. 2001) (state inmate cannot bring Rehabilitation Act claim without showing that state waived immunity by accepting federal funds).

⁷⁰ See, e.g., Vinson v. Thomas, 288 F.3d 1145 (9th Cir. 2002) (states waive immunity from federal suits under Rehabilitation Act by accepting federal funding); Stanley v. Litscher, 213 F.3d 340, 344 (7th Cir. 2000) ("[w]e therefore agree . . . that the Rehabilitation Act is enforceable in federal court against recipients of federal largess.") But also see Garcia v. S.U.N.Y. Health Sciences Center of Brooklyn, 280 F.3d 98 (2^d Cir. 2001) (state did not knowingly waive its sovereign immunity against suit under remedies provision of Rehabilitation Act when it accepted federal funds for state university).

the statute and "[t]he text of the ADA provides no basis for distinguishing these programs, services and activities from those provided by public entities that are not prisons."⁷²

Alternatives to the ADA and Rehabilitation Act

Disabled prisoners may make claims for relief based on the U.S. Constitution either in addition to or instead of ADA/Rehabilitation Act claims. The Eighth Amendment of the U.S. Constitution prohibits any form of cruel or unusual punishment. For example, federal or state prison officials violate the Eighth Amendment when staff members are deliberately indifferent to the serious medical needs of prisoners, including the special requirements of disabled inmates.⁷³

The U.S. Constitution also says that government officials cannot deprive citizens of life, liberty or property without "due process of law" and that all citizens must receive the equal protection of the laws.⁷⁴ The Fourteenth Amendment governs action by state government and the Fifth Amendment governs action by the federal government. Thus, prison officials may violate the Constitution if they discriminate against disabled inmates on the basis of their disabilities.⁷⁵ However, to win an equal protection claim, disabled persons must prove there is no legitimate government reason for the discriminatory policy.⁷⁶ This is a very difficult standard for prisoners to meet because courts generally give prison officials wide discretion in administering confinement facilities.

LIFE ENDANGERMENT & USE OF FORCE

Prison officials have a legal duty to protect prisoners from assault by other inmates and to refrain from using excessive force themselves. However, prison officials are not

⁷⁶ Contractors Ass'n of E. Pa., Inc. v. City of Philadelphia, 6 F.3d 990, 1001 (3^d Cir.1993).



⁷² Yeskey, <u>supra</u> note 30, at 210, 1955.

⁷³ Estelle v. Gamble, 429 U.S. 97, 97 S.Ct. 285 (1976) (deliberate indifference to prisoners' serious medical needs constitutes cruel and unusual punishment); *LaFaut v. Smith*, 834 F.2d 389 (4th Cir. 1987) (prison officials violated Eighth Amendment by failing to provide disabled inmate with needed physical therapy and adequate access to facilities).

⁷⁴ U.S. Const. amend. V; XIV.

⁷⁵ See, e.g., Williams v. Meese, 926 F.2d 994, 998 (10th Cir. 1991) (federal inmate could not bring employment discrimination claim under Rehabilitation Act but could do so under Fifth Amendment).

automatically responsible for all inmate assaults that occur, and a prison official's use of force does not automatically violate the Constitution. Various courts apply differing rules to decide whether the Eighth Amendment has been violated after an inmate assault or use of force by prison staff.

Protection from Prisoner Assault

Prison officials may be held liable under the Eighth Amendment only if they act with "deliberate indifference" or "reckless disregard" for a prisoner's safety.⁷⁷ In other words, prison officials may be liable if they knew that a prisoner was at substantial risk of serious harm, but ignored that risk and failed to take reasonable steps in light of that risk.⁷⁸ Generally, courts have distinguished between a substantial risk of serious harm (or strong likelihood of injury) and the everyday risk of harm that comes from being in prison (or mere possibility of injury).⁷⁹

In addition, even when a prisoner is harmed, if prison officials knew there was a risk and responded reasonably to that risk, they will not be held liable. Courts often dismiss isolated failures to protect as "mere negligence," even when prison officials had prior information about a threat to a prisoner, but failed to act on that information. There are two ways to try to show deliberate indifference if you have been assaulted. One involves prison officials' failure to respond or act reasonably in light of a particular threat of danger to an individual prisoner, and the other involves prison conditions or practices that create a dangerous situation for prisoners in general. Sometimes both approaches apply to the same fact situation.

You must **also** show a connection between what prison officials did or failed to do and the harm that occurred.⁸⁴ Thus, courts have imposed liability on line correctional officers who observed an assault or knew of a risk to a prisoner, but did nothing;⁸⁵ on higher-level supervisors who made or failed to make polices, or failed to act on risks they

⁸⁵ See, e.g., Ayala Serrano v. Lebron Gonzales, 909 F.2d 8, 14 (1st Cir. 1990).



⁷⁷ See Farmer v. Brennan, 511 U.S. 825, 836-37, 114 S. Ct. 1970, 1978-79 (1994).

⁷⁸ See id. at 847, 114 S. Ct. at 1984.

⁷⁹ See, e.g., Brown v. Hughes, 894 F.2d 1533, 1537 (11th Cir. 1990).

⁸⁰ Farmer, 511 U.S. at 844-45, 114 S. Ct. at 1982-83.

⁸¹ See Davidson v. Cannon, 474 U.S. 344, 347-48, 106 S. Ct. 668, 670 (1986).

⁸² See, e.g., Swofford v. Mandrell, 969 F.2d 547, 549 (7th Cir. 1992) (putting sex offender in unsupervised holding cell).

⁸³ See, e.g., Butler v. Dowd, 979 F.2d 661, 675 (8th Cir. 1992) (en banc) (random housing assignments of vulnerable prisoners and obstacles to admission to protective housing).

⁸⁴ See Best v. Essex County, 986 F.2d 54, 56-57 (3d Cir. 1993).

knew about;⁸⁶ and on city or county government when a prisoner's assault resulted from a governmental policy.⁸⁷ Courts will require you to show how individually-named defendants are responsible for causing the assault.⁸⁸

Use of Force by Prison Staff

With respect to convicted prisoners, prison staff violate the Eighth Amendment when they use force "maliciously and sadistically for the very purpose of causing harm," but they are permitted to use force "in a good faith effort to maintain or restore discipline." Courts apply different legal standards to arrestees, pre-trial detainees, and convicted prisoners; however, an inmate generally must show that the force used was not justified by any legitimate law enforcement or prison management need, or was completely out of proportion to that need. Whether a court will find force excessive depends heavily on the facts of the case. Generally, the force used by prison staff must be more than "de minimis" (very small or insignificant) to violate the Eighth Amendment. Courts disagree on how much force is de minimis.

If there is a legitimate need to use force and no intent to cause unnecessary harm, prison staff can use serious and even deadly force without violating the Constitution. However, you do not need to show a serious or permanent injury to establish an Eighth Amendment violation. The extent of the injury is just one factor to consider when deciding whether staff acted maliciously and sadistically or in good faith. Establishing malice does not require direct proof of the officer's intention. Prison staff's actions alone, in light of the circumstances, may be sufficient to show malice.

⁹⁵ See Thomas v. Stalter, 20 F.3d 298, 302 (7th Cir. 1994).



⁸⁶ See, e.g. Redman v. County of San Diego, 942 F.2d 1435, 1447-48 (9th Cir. 1991).

⁸⁷ See, e.g., Berry v. City of Muskogee, 900 F.2d 1489, 1497-99 (10th Cir. 1990).

⁸⁸ Morales v. New York State Dep't of Corrections, 842 F.2d 27, 29-30 (2d Cir. 1988) (explaining how several defendants were liable in the same incident).

⁸⁹ Hudson v. McMillian, 503 U.S. 1, 6, 112 S. Ct. 995, 999 (1992), quoting Whitley v. Albers, 475 U.S. 312, 320-21, 106 S. Ct. 1078, 1085 (1986).

⁹⁰ See Graham v. Connor, 490 U.S. 386, 397, 109 S. Ct. 1865, 1872 (1989) (arrestees); *Hudson*, 503 U.S. at 5-6, 112 S. Ct. at 998-99 (convicted prisoners).

⁹¹ See Hudson, 503 U.S. at 9-10, 112 S. Ct. at 1000.

⁹² Compare Hudson, 503 U.S. at 10, 109 S. Ct. at 997, 1000 (kicks and punches resulting in bruises, swelling, loosened teeth, and a cracked dental plate not *de minimis*) and Riley v. Dorton, 115 F.3d 1159, 1168 (4th Cir. 1997) (sticking pen a quarter of an inch into a detainee's nose, threatening to rip it open and using medium force to slap his face is *de minimis*).

⁹³ See, e.g., Whitley v. Albers, 475 U.S. 312, 322-26, 106 S. Ct. 1078, 1085 (1986) (use of shotgun in riot/hostage situation).

⁹⁴ See Hudson, 503 Ú.S. at 7-9, 112 S. Ct. at 999-1000.

RELIGIOUS RIGHTS OF PRISONERS

Only beliefs that are "religious" and "sincerely held" are protected by the Free Exercise Clause of the First Amendment, and courts often disagree about what qualifies as a religion and a religious belief. So-called "mainstream" belief systems, such as Christianity, Islam, and Judaism, are universally understood to be religions. Less wellknown or non-traditional faiths, however, have had less success. Rastafari, Native American religions, and various Eastern religions have generally been protected. Belief systems such as the Church of the New Song, Satanism, the Aryan Nations, and the Five Percenters have had less success. While the Supreme Court has never defined the term "religion," lower courts have asked whether a belief system addresses "fundamental and ultimate questions," is "comprehensive in nature," and presents "certain formal and external signs."96 If you are trying to get a non-traditional belief recognized as a religion, you may have better luck if you can show how it is similar to other, better known, religions. Some questions you may want to consider include the following: Does your religion have many members? Any leaders? A holy book? Other artifacts or symbols? Does it believe in a God or gods? Does it believe that life has a purpose? Does it have a story about the origin of people?

In addition to proving that something is a religion, you must also convince prison administrators or a court that your belief is sincerely held. In deciding whether a belief is sincere, courts sometimes look to how long a person has believed something and how consistently he or she has followed those beliefs. Just because you haven't believed something your whole life, or because you have violated your beliefs in the past doesn't automatically mean that a court will find you are insincere. However, if you have recently converted or if you have repeatedly acted in a manner inconsistent with your beliefs, you will probably have a harder time convincing a court that you are sincere. It is also likely that the more "outlandish" your requests are seen to be, the more likely it is that your beliefs will be found to be insincere.

⁹⁸ See Reed v. Faulkner, 842 F.2d 960, 963 (7th Cir. 1988); Weir v. Nix, 890 F. Supp. 769, 775-76 (S. D. Iowa 1995).



⁹⁶ Africa v. Commonwealth of Pennsylvania, 662 F.2d 1025, 1032 (3d Cir. 1981); see also Dettmer v. Landon, 799 F.2d 929, 931-32 (4th Cir. 1986).

⁹⁷ See Sourbeer v. Robinson, 791 F.2d 1094, 1102 (3d Cir. 1986); Vaughn v. Garrison, 534 F. Supp. 90, 92 (E.D.N.C. 1981).

You have an absolute right to believe anything you want. You do not, however, always have a constitutional right to do things (or not do things) just because of your religious beliefs. Under current law, the right of free exercise does not excuse anyone, including prisoners, from complying with a "neutral" rule (one not intended to restrict religion) of "general applicability" (one that applies to everyone in the same way) simply because it requires them to act in a manner inconsistent with their religious beliefs. Just because a rule applies only to prisoners does not mean that it is not generally applicable. A rule that applies only to a religious group, however, is not generally applicable. Further, prison officials may restrict inmates' religious practices so long as they can persuade a court that the restrictions are "reasonably related to legitimate penological objectives." This standard is very deferential to prison authorities, but you may have greater success if you can show that some religions are treated more favorably than others. 102

You should keep in mind that the *Smith* rule is a change from the law of a few years ago. In 1993, Congress passed the Religious Freedom Restoration Act (RFRA) in an attempt to provide more protection for religious rights. Under RFRA, a substantial burden on a sincerely held religious belief exists where the government imposes punishment or denies a benefit because of conduct that is mandated by religious belief, thereby putting substantial pressure on an adherent of the religion to modify his behavior and violate his beliefs. The Supreme Court, however, ruled that the RFRA was unconstitutional as applied to the states. Therefore, you can probably no longer rely on the RFRA, unless you are a federal inmate or an inmate of the District of Columbia.

Responding to the Court's holding in *City of Boerne v. Flores*, Congress passed The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). RLUIPA provides that no government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution even if the burden results

⁹⁹ See Employment Division v. Smith, 494 U.S. 872, 879, 110 S. Ct. 1595, 1600 (1990).

¹⁰⁵ See Gartrell v. Ashcroft, 191 F. Supp. 2d 23 (D.D.C. 2002) (RFRA violated where Rastafarian and Muslim inmates' sincerely held religious beliefs forbidding shaving beards and cutting hair substantially burdened by prison grooming policy prohibiting long hair and beards).

¹⁰⁶ 42 U.S.C.S. § 2000cc et seq.



¹⁰⁰ See Church of the Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520, 543, 113 S. Ct. 2217 (1993).

¹⁰¹ O'Lone v. Estate of Shabazz, 482 U.S. 342, 349, 107 S. Ct. 2400, 2404 (1987). But see Mayweathers v. Newland, 258 F.3d 930, 938 (9th Cir. 2001) (upholding injunction forbidding prison administrators from disciplining Muslim inmates for missing work to attend hour-long Friday Sabbath services).

¹⁰² See Freeman v. Arpaio, 125 F.3d 732, 734, 738-39 (9th Cir. 1997).

¹⁰³ 42 U.S.C.A. § 2000bb-1(b)(1,2).

¹⁰⁴ See City of Boerne v. Flores, 521 U.S. 507, 117 S. Ct. 2157 (1997).

from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest. RLUIPA is to be construed to favor protection of religious exercise broadly. The statute defines religious exercise as any exercise of religion, whether or not compelled by, or central to, a system of religious belief. This reflects an extension of the definition provided for in RFRA, which defined exercise of religion as the exercise of religion under the First Amendment to the Constitution. Under RLUIPA, once a plaintiff produces prima facie evidence to support a free exercise violation, the plaintiff bears the burden of persuasion on whether the regulation substantially burdens the plaintiff's exercise of religion and the state bears the burden of persuasion on all other elements.

Specific Religious Practices

Religious Dress, Hair, and Beards: Prisoners are rarely successful in challenging grooming and dress regulations. A rule requiring all inmates to have short haircuts would probably be considered neutral and generally applicable. Courts have generally upheld restrictions on haircuts. This has also been true with regard to headgear and other religious attire. Even though prison officials are given a great deal of leeway, they are still required to have some factual justification for their rules, 114 and they may be held to a higher standard if it can be shown that restrictions are not enforced against all religions or if some inmates are exempted from them. 115

Religious Foods: Prisoners have enjoyed a fair amount of success with these types of claims. Courts often find that inmates have a right to avoid eating foods that are

¹¹⁵ See McKinney v. Maynard, 952 F.2d 350, 352-53 (10th Cir. 1991).



¹⁰⁷ 42 U.S.C.S. § 2000cc-1(a).

¹⁰⁸ 42 U.S.C.S. § 2000cc-3(g).

¹⁰⁹ 42 U.S.C.S. § 2000cc-5(7)(A).

¹¹⁰ 42 U.S.C.S. § 2000bb-2(4).

¹¹¹ 42 U.S.C.S. § 2000cc-2(b). *See also Kikumura v. Hurley*, 242 F.3d 950 (10th Cir. 2001) (discussing RLUIPA in the context of an inmate's challenge to a regulation limiting pastoral visits); *Marria v. Broaddus*, 2002 WL 472014, at *9 (S.D.N.Y., March 27, 2002) (denying defendants summary judgment where question existed as to the reasonableness of an absolute ban on Five Percenter literature and assembly).

¹¹² See Hines v. South Carolina Dep't of Corrections, 148 F.3d 353, 356 (4th Cir. 1998); Sours v. Long, 978 F.2d 1086, 1087 (8th Cir. 1992).

¹¹³ See Muhammad v. Lynaugh, 966 F.2d 901, 902-03 (5th Cir. 1992); Sutton v. Stewart, 22 F. Supp. 2d 1097, 1106 (D. Ariz, 1998).

¹¹⁴ See Burgin v. Henderson, 536 F.2d 501, 504 (2d Cir. 1976).

forbidden by their religious beliefs.¹¹⁶ Where reasonable accommodations by the prison can be made to provide religious meals, courts have ordered such diets be made available to inmates.¹¹⁷ Courts have also required accommodations for special religious observances related to meals.¹¹⁸ However, prisoners requesting highly individualized diets have rarely been successful.¹¹⁹ Some courts have rejected efforts by prison officials to charge inmates for religious diets.¹²⁰

Religious Objects: Prison officials may generally ban religious objects if they can make a plausible claim that the objects could pose security problems. However, prison officials cannot ban some religious objects and not others without any justification. Further, prison officials are not required to provide religious objects as long as inmates are free to purchase or obtain the objects themselves. 123

EXCESSIVE HEAT/COLD

What rights do prisoners have to be free of excessive heat?

Excessive heat may violate the Eighth Amendment, which prohibits cruel and unusual punishment. (Note that it is best to frame your argument in terms of "excessive heat" rather than a lack of air conditioning.) However, prison officials do not violate the Eighth Amendment unless they act with deliberate indifference, meaning they

¹²⁴ See Rhem v. Malcolm, 371 F. Supp. 594, 627 (S.D.N.Y. 1974) (holding excessive heat states an Eighth Amendment claim).



¹¹⁶ See Moorish Science Temple of America, Inc. v. Smith, 693 F.2d 987, 990 (2d Cir. 1982).

¹¹⁷ See Ashelman v. Wawrzaszek, 111 F.3d 674, 678 (9th Cir. 1997).

¹¹⁸See Makin v. Colorado Department of Corrections, 183 F.3d 1204 (10th Cir. 1999) (failure to accommodate Muslim fasting requirements during Ramadan infringed on inmate's First Amendment rights).

¹¹⁹ See DeHart v. Lehman, 9 F. Supp. 2d 539, 543 (E.D. Pa. 1998) (courts generally reject requests for highly specialized diets).

¹²⁰ See Beerheide v. Suthers, 286 F.3d 1179, 1192 (10th Cir. 2002) (finding no rational relationship between penological concerns and a proposed co-payment requirement for inmates requiring kosher diet).

¹²¹ See Spies v. Voinovich, 173 F.3d 398, 406 (6th Cir. 1999); Mark v. Nix, 983 F.2d 138, 139 (8th Cir. 1993).

¹²² See Sasnett v. Litscher, 197 F.3d 290, 292 (7th Cir. 1999) (Free Exercise Clause violated where prison regulation banned the wearing of Protestant crosses, but allowed Catholic rosaries without any reasonable justification for distinction).

¹²³ See Frank v. Terrell, 858 F.2d 1090, 1091 (5th Cir. 1988).

are aware of and disregard a substantial risk of serious harm to a prisoner's health. Deliberate indifference is more difficult to prove than negligence or carelessness.

When have courts found excessive heat violates the Eighth Amendment?

Few cases have dealt with excessive heat. One court has held that "inadequate ventilation and air flow violates the Eighth Amendment if it undermines the health of the inmates and the sanitation of the penitentiary." However a complaint that the temperature was "well above" or "well below" room temperature did not establish an Eighth Amendment violation. Another court held poor ventilation did not violate the Eighth Amendment where the prisoner had a fan, a window, and a chuckhole to provide cross-ventilation. However, an "entirely inadequate" ventilation system did constitute an Eighth Amendment violation. 129

Case law dealing with excessively cold conditions may be helpful in making an argument about excessive heat. Prisoners have a right to protection from extreme cold. A prison that did not provide blankets despite low temperatures would violate the Eighth Amendment. One court found a prisoner had an Eighth Amendment claim when he alleged exposure to below freezing temperatures, rodent infestation, and unsanitary conditions.

¹³³ Gaston v. Coughlin, 249 F.3d 156, 164-65 (2d Cir. 2001).



¹²⁵ Farmer v. Brennan, 511 U.S. 825 (1994).

¹²⁶ Keenan v. Hall, 83 F.3d 1083, 1090 (9th Cir. 1996); see also Ramos v. Lamm, 639 F.2d 559, 569-70 (10th Cir. 1980) ("inadequate ventilation ... results in excessive odors, heat, and humidity;" court affirms finding of Eighth Amendment violation).

¹²⁷ *Keenan*, 83 F.3d at 1090.

¹²⁸ Dixon v. Godinez, 114 F.3d 640, 645 (7th Cir. 1997).

¹²⁹ Hutchings v. Corum, 501 F. Supp. 1276, 1293 (W.D. Mo. 1989); see also French v. Owens, 777 F.2d 1250, 1252 (7th Cir. 1985) (finding an Eighth Amendment violation where poor ventilation resulted in overcrowded cells being inadequately heated in the winter and inadequately cooled in the summer).

See Beck v. Lynaugh, 842 F.2d 759, 761 (5th Cir. 1988) (finding prisoners stated an Eighth Amendment claim when they alleged missing window panes exposed them to winter weather); Corselli v. Coughlin, 842 F.2d 23, 27 (2d Cir. 1988) (finding a prisoner stated an Eighth Amendment claim when he alleged that because large window panes were left empty he was subjected to below freezing temperatures during the winter); Foulds v. Corley, 833 F.2d 52, 54 (5th Cir. 1987) (finding a prisoner stated an Eighth Amendment claim when he alleged he was forced to sleep on the floor of an extremely cold cell while rats crawled over him).

¹³¹ *Dixon*, 114 F.3d at 642.

¹³² Wilson v. Seiter, 501 U.S. 294 (1991).

EXPOSURE TO ENVIRONMENTAL HAZARDS OR TOXIC MATERIALS

What rights do prisoners have?

Exposing prisoners to dangerous conditions or toxic substances may violate the Eighth Amendment of the Constitution, which prohibits cruel and unusual punishment. Prison officials violate the Eighth Amendment if, with deliberate indifference, they expose a prisoner to a condition that poses an unreasonable risk of serious damage to that prisoner's future health. Deliberate indifference means that prison officials know of and disregard a substantial risk of serious harm to the prisoner's health. This violates the Eighth Amendment because it amounts to "unnecessary and wanton infliction of pain contrary to contemporary standards of decency." Deliberate indifference is more difficult to prove than negligence or carelessness.

What types of conditions violate the Eighth Amendment?

Allegations of **polluted water**¹³⁷ and exposure to **toxic fumes**¹³⁸ have both been held to state an Eighth Amendment claim. Prison officials are required to provide protective clothing and masks to prisoners if they are cleaning **sewage**.¹³⁹ Conducting a skin test with a known **carcinogen** has also been held to violate the Eighth

¹³⁹ Burton v. Armontrout, 975 F.2d 543, 545 n. 2 (8th Cir. 1992) (ordering prison officials to provide inmates with protective clothing when cleaning sewage); Fruit v. Norris, 905 F.2d 1147, 1150-51 (8th Cir. 1990) (finding an Eighth Amendment violation where prisoners were ordered to clean raw sewage facility in 125 degree temperatures without the protective clothing or equipment called for by the operations manual); Despain v. Uphoff, 264 F.3d 965, 977 (10th Cir. 2001) (exposure to flooding and human waste violates Eighth Amendment).



¹³⁴ Helling v. McKinney, 113 S. Ct. 2475, 2481 (1993).

¹³⁵ Farmer v. Brennan, 511 U.S. 825 (1994).

¹³⁶ *Helling*, 113 S. Ct. at 2480.

¹³⁷ *Jackson v. Arizona*, 885 F.2d 639, 641 (9th Cir. 1989) (finding an allegation that drinking water was polluted was not a frivolous claim); *Jackson v. Duckworth*, 955 F.2d 21, 22 (7th Cir. 1992).

Johnson-El v. Schoemehl, 878 F.2d 1043, 1054-55 (8th Cir. 1989) (holding a prisoner had an Eighth Amendment claim when he alleged that pesticides were sprayed into housing units so that prisoners had to breathe the fumes); Cody v. Hillard, 599 F. Supp. 1025, 1032 (D.S.D. 1984) (finding inadequate ventilation of toxic fumes in inmate workplaces was unconstitutional), aff'd in part and rev'd in part on other grounds, 830 F.2d 912 (8th Cir. 1987) (en banc); Murphy v. Wheaton, 381 F. Supp. 1252, 1261 (N.D. Ill. 1974) (finding an Eighth Amendment claim where inmates were exposed to noxious smoke fumes created by other inmates burning blankets); but see Givens v. Jones, 900 F.2d 1229, 1234 (8th Cir. 1990) (holding no Eighth Amendment violation where inmate suffered migraine headaches as a result of noise and fumes during three week long housing unit renovation).

Amendment.¹⁴⁰ Exposure to **second-hand tobacco smoke** may violate the Eighth Amendment as well.¹⁴¹

Other conditions that can violate the Eighth Amendment include excessive noise; 142 lack of fire safety; 143 risk of injury or death in the event of an earthquake; 144 unsanitary food service; 145 inadequate lighting or constant lighting; 146 exposure to insects, rodents, and other vermin; 147 and defective plumbing. 148

Courts have held that exposure to **asbestos** during building renovations constitutes deliberate indifference to medical needs¹⁴⁹ and have required documentation that asbestos has been removed from housing units before permitting them to be renovated.¹⁵⁰ However, at least one court has held that exposure to "moderate levels of asbestos" did not violate the Eighth Amendment.¹⁵¹

What types of conditions have not been held to violate the Eighth Amendment?

Some courts have suggested that dangerous conditions do not violate the Constitution if workers in the surrounding community work in the same conditions. For example, an allegation that a prisoner was forced to work in heavy corn dust without a mask, causing nosebleeds, hair loss, and sores on his face, did not state an Eighth Amendment claim unless "the practice clearly differed from that of the surrounding agricultural community or violated a clearly established law." Similarly, exposure to a pesticide did not violate the Eighth Amendment when the exposure violated only a non-

¹⁵² Jackson v. Cain, 864 F.2d 1235, 1245 (5th Cir. 1989).



¹⁴⁰ Clark v. Moran, 710 F.2d 4, 9-11 (1st Cir. 1983).

¹⁴¹ *Helling v. McKinney*, 113 S.Ct. 2475, 2480 (1993) (finding inmate stated an Eighth Amendment claim where his cellmate smoked 5 packs of cigarettes a day).

¹⁴² Keenan v. Hall, 83 F.3d 1083, 1090 (9th Cir. 1996).

¹⁴³ *Hoptowit v. Spellman*, 753 F.2d 779, 784 (9th Cir. 1985).

¹⁴⁴ Jones v. City and County of San Francisco, 976 F.Supp. 896, 909-10 (N.D. Cal. 1997).

¹⁴⁵ Ramos v. Lamm, 639 F.2d 559, 570-71 (10th Cir. 1980).

¹⁴⁶ *Keenan*, 83 F.3d at 1090-91.

¹⁴⁷ Gaston v. Coughlin, 249 F.3d 156, 166 (2d Cir. 2001); Jackson v. Duckworth, 955 F.2d 21, 22 (7th Cir. 1992); Williams v. Griffin, 952 F.2d 820, 825 (4th Cir. 1991); Foulds v. Corley, 833 F.2d 52, 54 (5th Cir. 1987).

¹⁴⁸ Jackson, 955 F.2d at 22; Williams, 952 F.2d at 825; McCord v. Maggio, 927 F.2d 844, 847 (5th Cir. 1991).

¹⁴⁹ Powell v. Lennon, 914 F.2d 1459, 1463 (11th Cir. 1990).

¹⁵⁰ Inmates of Occoquan v. Barry, 717 F. Supp. 854, 866 (D.D.C. 1989).

¹⁵¹ McNeil v. Lane, 16 F.3d 123, 125 (7th Cir. 1994).

mandatory regulation and was not shown to be any different from practices in the surrounding agricultural community. 153

Are prisons required to comply with free-world environmental regulations?

The Constitution does not require prisons to comply with all civilian environmental regulations. However, these regulations may be enforced by various government agencies, and a prisoner may be able to use these regulations to argue that they are evidence of contemporary standards of decency.

If you have a case involving dangerous conditions or toxic substances, it may be helpful to complain to state or local health departments, the federal Occupational Safety and Health Administration (OSHA), or other relevant agencies. State or local regulations may be enforceable in state courts.

DISCIPLINARY SANCTIONS

Prisoners may challenge disciplinary sanctions imposed on them under the Due Process Clause of the Fourteenth Amendment.¹⁵⁵ The Fourteenth Amendment of the United States Constitution protects against deprivation of life, liberty, or property by the state "without due process of law."¹⁵⁶ Procedural due process is examined in two steps: (1) first you look at whether an existing liberty or property interest has been interfered with; and then (2) whether the procedures that interfered with your liberty or property interest were constitutionally sufficient.¹⁵⁷

¹⁵⁷ Kentucky Dep't of Corr. v. Thompson, 490 U.S. 454, 462 (1989).



¹⁵³ Sampson v. King, 693 F.2d 566, 569 (5th Cir. 1982).

¹⁵⁴ French v. Owens, 777 F.2d 1250, 1257 (7th Cir. 1985) (finding a prison does not need to comply with OSHA or state regulations).

¹⁵⁵Prisoners may choose to base their challenges on state law grounds, citing state prison regulations or statutes. State prisoners seeking to invalidate an unlawful criminal conviction or sentence must generally first exhaust their state court remedies, then seek federal court relief through a writ of habeas corpus. Only if the conviction or sentence is overturned may the prisoner-plaintiff then pursue a damages action for an unlawful conviction or sentence under 42 U.S.C. § 1983. *See Heck v. Humphrey*, 512 U.S. 477, 486, 114 S.Ct. 2364, 2372 (1994).

¹⁵⁶ Parratt v. Taylor, 451 U.S. 527, 537 (1981).

Do you have a liberty or property interest sufficient to require due process?

Under *Sandin v. Conner*,¹⁵⁸ prison regulations do not give rise to due process protected liberty interests unless they place "atypical and significant hardships" on a prisoner. After *Sandin*, prisoners must present factual evidence that the restraint at issue creates an "atypical and significant hardship" **and** that a state regulation or statute grants prisoners a protected liberty interest in remaining free from that confinement or restraint.¹⁵⁹ In order to meet the *Sandin* "atypical and significant hardship" standard, prisoners must present evidence of the actual conditions of the challenged punishment as compared to ordinary prison conditions.¹⁶⁰

In *Edwards v. Balisok*, ¹⁶¹ the Supreme Court made it even harder to successfully challenge prison disciplinary convictions. The Court held that prisoners cannot sue for monetary damages under 42 U.S.C. § 1983 for loss of good time until they get their disciplinary conviction set aside through the prison appeal system or in state court.

When considering whether you can make a legal challenge to a prison disciplinary case, it is important to know whether you are eligible for **mandatory** mandatory supervision or **discretionary** mandatory supervision. This is significant because "as a general rule, only sanctions which result in loss of good conduct time credits for inmates who are eligible for release on mandatory supervision, or which otherwise directly and adversely affect release on mandatory supervision will impose upon a liberty interest." The Texas statute governing good-time credits was revised in 1998 and the language of the new section is clearly designed to avoid creating a protected liberty interest. ¹⁶³

⁽a) Good conduct time applies only to eligibility for parole or mandatory supervision as provided by Section 508.145 or 508.147 and does not otherwise affect an inmate's term. **Good conduct time is a privilege and not a right**. Regardless of the classification of an inmate, the department may grant good conduct time to the inmate only if the department finds that the inmate is actively



¹⁵⁸515 U.S. 472 (1995).

¹⁵⁹See, e.g., Franklin v. District of Columbia, 163 F.3d 625 (D.C.Cir. 1999); Miller v. Selsky, 111 F.3d 7 (2d Cir. 1997); Brooks v. DiFasi, 112 F.3d 46 (2d Cir. 1997); Sweeney v. Parke, 113 F.3d 716 (7th Cir. 1997); Beverati v. Smith, 120 F.3d 500 (4th Cir. 1997); Driscoll v. Youngman, 105 F.3d 393 (8th Cir. 1997); Madison v. Parker, 104 F.3d 765 (5th Cir. 1997); Williams v. Fountain, 77 F.3d 372 (11th Cir. 1996); McGuinness v. DuBois, 75 F.3d 794 (1st Cir. 1996); Mitchell v. Dupnik, 75 F.3d 517 (9th Cir. 1995).

¹⁶⁰Ayers v. Ryan, 152 F.3d 77 (2d Cir. 1998); Kennedy v. Blankenship, 100 F.3d 640, 642-43 (8th Cir. 1996); Williams v. Fountain, 77 F.3d at 374 n.3.

¹⁶¹520 U.S. 641 (1997).

¹⁶² Spicer v. Collins, 9 F.Supp.2d 673, 685 (E.D. Tex. 1998) (citing Orellana v. Kyle, 65 F.3d 29, 31-33 (5th Cir. 1995), cert. denied, 516 U.S. 1059 (1996)).

¹⁶³ Texas Government Code §498.003 (a) Accrual of Good Conduct Time

The Fifth Circuit has addressed the issue from a variety of angles, but no case directly addresses the issue of whether Texas prisoners have a constitutional interest in their accrued good-time credits under current Texas law.¹⁶⁴

engaged in an agricultural, vocational, or educational endeavor, in an industrial program or other work program, or in a treatment program, unless the department finds that the inmate is not capable of participating in such a program or endeavor.

TEX. GOVT. CODE ANN. §498.003 (a) (Vernon 2001) (emphasis added). "On the other hand, the causal relationship between a disciplinary infraction and loss of good-time credits appears to make Texas law indistinguishable from the law at issue in *Wolff,*" *see* TEX. GOVT CODE §498.004 ("If...the inmate commits an offense or violates a rule of the division, the department may forfeit all or any part of the inmate's accrued good conduct time.") *Hudson v. Johnson*, 242 F.3d 534, 536 n. 1 (5th Cir. 2001).

164 *Id.*; *Hallmark v. Johnson*, 118 F.3d 1073, 1079-80 (5th Cir. 1997) (holding that there is no protected liberty interest in the restoration of good-time credits forfeited for disciplinary infractions under an older statutory scheme); *Allison v. Kyle*, 66 F.3d 71, 74 (5th Cir. 1995) (holding that Texas parole statutes do not create a protected liberty interest under an older statutory scheme); *Madison v. Parker*, 104 F.3d 765, 768 (5th Cir. 1997) (noting the same but declining to decide whether there is a constitutional expectancy of early release under mandatory supervision when a prisoner has accrued good-time credits); *Malchi v. Thaler*, 211 F. 3d 953, 957-58 (5th Cir. 2000) (resolving the issue left open in *Madison* and holding that there is constitutional expectancy of early release created by the mandatory supervision provisions of an older statutory scheme). In *Malchi*, the court considered the mandatory supervision statute in effect in 1993, which provides, in part:

Except as otherwise provided by this subsection, a prisoner who is not on parole shall be released to mandatory supervision by order of a parole panel when the calendar time he has served plus any accrued good conduct time equal the maximum term to which he was sentenced. A prisoner released to mandatory supervision shall, upon release, be deemed as if released on parole. To the extent practicable, arrangements for the prisoner's proper employment, maintenance, and care shall be made prior to his release to mandatory supervision. The period of mandatory supervision shall be for a period equivalent to the maximum term for which the prisoner was sentenced less calendar time actually served on the sentence. The time served on mandatory supervision is calculated as calendar time. Every prisoner while on mandatory supervision shall remain in the legal custody of the state and shall be amenable to conditions of supervision ordered by the parole panel. A prisoner may not be released to mandatory supervision if the prisoner is serving a sentence for an offense and the judgment for the offense contains an affirmative finding under Subdivision (2), Subsection (a), Section 3g, Article 42.12, of this code or if the prisoner is serving a sentence for:

- (1) a first degree felony under Section 19.02, Penal Code (Murder);
- (2) a capital felony under Section 19.03, Penal Code (Capital Murder);
- (3) a first degree felony or a second degree felony under Section 20.04, Penal Code (Aggravated Kidnapping);
- (4) a second degree felony under Section 22.011, Penal Code (Sexual Assault);
- (5) a second degree or first degree felony under Section 22.02, Penal Code (Aggravated Assault);
- (6) a first degree felony under Section 22.021, Penal Code (Aggravated Sexual Assault);



If you are only eligible for **discretionary** mandatory supervision under the current statute, ¹⁶⁵ and are not eligible for **mandatory** mandatory supervision under the 1993

- (7) a first degree felony under Section 22.04, Penal Code (Injury to a Child or an Elderly Individual);
- (8) a first degree felony under Section 28.02, Penal Code (Arson);
- (9) a second degree felony under Section 29.02, Penal Code (Robbery);
- (10) a first degree felony under Section 29.03, Penal Code (Aggravated Robbery);
- (11) a first degree felony under Section 30.02, Penal Code (Burglary), if the offense is punished under Subsection (d)(2) or (d)(3) of that section; or
- (12) [Blank]
- (13) a felony for which the punishment is increased under Section 481.134, Health and Safety Code (Drug-Free Zones).

TEX. CODE CRIM. PROC. art. 42.18(c) (Vernon 1993).

- ¹⁶⁵ Texas Government Code § 508.147 (Release to Mandatory Supervision)
 - (14) Except as provided by Section 508.149, a parole panel shall order the release of an inmate who is not on parole to mandatory supervision when the actual calendar time the inmate has served plus any accrued good conduct time equals the term to which the inmate was sentenced.
 - (15) An inmate released to mandatory supervision is considered to be released on parole.
 - (16) To the extent practicable, arrangements for the inmate's proper employment, maintenance, and care must be made before the inmate's release to mandatory supervision.

Added by Acts 1997, 75th Leg., ch. 165, § 12.01, eff. Sept. 1, 1997.

Texas Government Code § 508.148 (Period of Mandatory Supervision)

- (1) The period of mandatory supervision is computed by subtracting from the term for which the inmate was sentenced the calendar time served on the sentence.
- (2) The time served on mandatory supervision is computed as calendar time.

Added by Acts 1997, 75th Leg., ch. 165, § 12.01, eff. Sept. 1, 1997.

Texas Government Code § 508.149 (Inmates Ineligible for Mandatory Supervision)

- (1) An inmate may not be released to mandatory supervision if the inmate is serving a sentence for or has been previously convicted of:
 - (1) an offense for which the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, Code of Criminal Procedure;
 - (2) a first degree felony or a second degree felony under Section 19.02, Penal Code;
 - (3) a capital felony under Section 19.03, Penal Code;
 - (4) a first degree felony or a second degree felony under Section 20.04, Penal Code;
 - (5) a second degree felony or a third degree felony under Section 21.11, Penal Code;
 - (6) a second degree felony under Section 22.011, Penal Code;
 - (7) a first degree felony or a second degree felony under Section 22.02, Penal Code;
 - (8) a first degree felony under Section 22.021, Penal Code;
 - (9) a first degree felony under Section 22.04, Penal Code;
 - (10) a first degree felony under Section 28.02, Penal Code;
 - (11) a second degree felony under Section 29.02, Penal Code;
 - (12) a first degree felony under Section 29.03, Penal Code;



statute, then a sanction of lost good time does not affect a vested liberty interest and you will not have a legal remedy.

When determining whether you fall under the old statute, or the current statute look to the date of the first element of your offense of conviction. That date is the governing date. If you committed the first element of your instant offense before September 1, 1996, you fall under the 1993 mandatory supervision statute (**mandatory** mandatory). If you committed the first element of your instant offense on or after September 1, 1996, you fall under the current mandatory supervision statute (**discretionary** mandatory).

If you fall under the 1993 statute, and are **mandatory** mandatory, then you have a constitutional expectancy of early release and a vested liberty interest in your mandatory date. This means that if you lost good time in a prison disciplinary hearing, and the loss adversely affected your mandatory supervision date, you can challenge the disciplinary case in federal court.

If you fall under the 1996 statute and are **discretionary** mandatory, then **you do not have a constitutional expectancy** of early release or a vested liberty interest in your mandatory date. This means that even if you lost good time in a prison disciplinary hearing, and the loss adversely affected your mandatory supervision date, **you cannot challenge the disciplinary case in federal court** because you do not have a constitutional expectancy of release under the current mandatory supervision statute.

Under the current state of the law, **prisoners do not have liberty interests** in a reduction in class status, or a direction that a prisoner remain at the same line class for a set period of time; ¹⁶⁶ custodial classification because it will not "inevitably affect the

- (13) a first degree felony under Section 30.02, Penal Code; or
- (14) a felony for which the punishment is increased under Section 481.134, Health and Safety Code.
- (2) An inmate may not be released to mandatory supervision if a parole panel determines that:
- (1) the inmate's accrued good conduct time is not an accurate reflection of the inmate's potential for rehabilitation; and
- (2) the inmate's release would endanger the public.
- (3) A parole panel that makes a determination under Subsection (b) shall specify in writing the reasons for the determination.
- (4) A determination under Subsection (b) is not subject to administrative or judicial review, except that the parole panel making the determination shall reconsider the inmate for release to mandatory supervision at least twice during the two years after the date of the determination.

Added by Acts 1997, 75th Leg., ch. 165, § 12.01, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, § 10.22, eff. Sept. 1, 1999.

¹⁶⁶ Luken v. Scott, 71 F.3d 192, 193 (5th Cir. 1995), cert. denied, 116 S.Ct. 1690 (1996).



duration of his sentence;"¹⁶⁷ placement in administrative; loss of commissary privileges; loss of recreation privileges; temporary cell restrictions; job assignments; or prison unit assignments. 173

Furthermore, there is no constitutional expectancy to parole in Texas, because whether a prisoner will be released on parole is entirely speculative. This means that if you lost good time during a prison disciplinary hearing, and the loss adversely affected your parole eligibility date, or your actual parole date, but not your **mandatory** mandatory date, you do not have a federal court remedy because there is no constitutional expectancy of release on parole.

Assuming you have a legal remedy, and you want to pursue it, you must do so through a writ of habeas corpus under 28 U.S.C. §2254. Texas courts do not hear cases challenging prison disciplinary cases. To maintain an action under §2254, you must first exhaust state habeas remedies. In this situation, prisoners' state remedies are exhausted when the prisoner pursues the TDCJ's internal grievance procedures. The deadline for filing a writ to challenge a prison disciplinary case is one year.

¹⁷⁶ See Gartrell v. Gaylor, 981 F.2d 254, 258 n.3 (5th Cir. 1993) (when challenging a prison disciplinary hearing in habeas corpus, "we have required prisoners to exhaust the TDCJ grievance procedures"); Spaulding v. Collins, 867 F. Supp. 499, 502 (S.D. Tex. 1993) ("Because this case involves a prison disciplinary action, it is not reviewable by state courts and is properly brought by federal habeas corpus



¹⁶⁷ Luken, 71 F.3d at 193.

¹⁶⁸ Broussard v. Johnson, 918 F.Supp. 1040, 1044, n.1 (E.D. Tex. 1996) citing Sandin v. Conner, 115 S.Ct. 2293, 2302 (1995).

¹⁶⁹ *Madison v. Parker*, 104 F.3d 765, 768 (5th Cir. 1997).

¹⁷⁰ Madison v. Parker, 104 F.3d 765, 768 (5th Cir. 1997); see also Meachum v. Fano, 427 U.S. 215, 224 (1976) (holding that the Due Process Clause does not protect every change in the conditions of confinement having a substantially adverse impact on a prisoner).

¹⁷¹ Smith v. Cockrell, No. 3:01-CV-2549-H, 2001 U.S. Dist. LEXIS 5309 (N.D. Tex. March 28, 2002).

¹⁷² Bulger v. United States Bureau of Prisons, 65 F.3d 48, 49 (5th Cir. 1995).

¹⁷³ See Meachum v. Fano, 427 U.S. 215, 224 (1976) ("The Constitution does not require that the State have more than one prison for convicted felons; nor does it guarantee that the convicted prisoner will be placed in any particular prison if, as is likely, the State has more than one correctional institution."); Biliski v. Harborth, 55 F.3d 160, 162 (5th Cir. 1995) (finding that a Texas prisoner failed to demonstrate that state law created a liberty interest created a liberty interest requiring his transfer from county jail to the TDCJ); David v. Carlson, 837 F.3d 1318,1319 (5th Cir. 1988) (holding that a court may not order the transfer of an inmate where there is no clear duty on the part of the prison to transfer said inmate).

¹⁷⁴ *Madison*, 104 F.3d at 768; *Malchi*, 211 F.3d at 957.

¹⁷⁵ See Serio v. Members of the Louisiana State Bd. of Pardons, 821 F.2d 1112, 1119 (5th Cir. 1987) ("If a prisoner challenges a single hearing as constitutionally defective, he must first exhaust state habeas remedies.").

Did you get due process?

The opportunity to be heard is the fundamental requirement of due process and must be granted at a meaningful time and in a meaningful manner. To satisfy due process requirements, prison disciplinary action must meet these minimum procedures: (1) the prisoner must be given advance written notice of the charges against him; (2) evidence against the prisoner must be disclosed to him; (3) the factfinders must give a written statement of the evidence relied on and the reasons for the disciplinary action; (4) the prisoner should be afforded the opportunity to be heard in person and to present witnesses and documentary evidence in his own defense as long as doing so will not jeopardize institutional safety or correctional goals; (5) the prisoner should be given the right to confront and cross-examine adverse witnesses, unless the hearing officer specifically finds good cause for not allowing confrontation. (179)

Because "federal courts cannot retry every prison disciplinary dispute," the courts may act only where "arbitrary or capricious action is shown." This means that prison disciplinary proceedings will be overturned only where there is no evidence whatsoever to support the decision of the prison officials. Sufficient support for a finding of guilty is provided by "some facts" or "any evidence at all." A disciplinary hearing officer's decision will satisfy the due process requirements if there is "some evidence" in the record to support the decision. 183

petition to this court" after exhaustion of the TDCJ grievance procedure); see also Baxter v. Estelle, 614 F.2d 1030, 1031-32 (5th Cir. 1980); Lerma v. Estelle, 585 F.2d 1297, 1299 (5th Cir. 1978).

¹⁸³ Superintendent v. Hill, 472 U.S. 445, 455 (1985).



¹⁷⁷ *Parratt.* 451 U.S. at 540.

The right to attend a disciplinary hearing is an essential due process protection, but it is not absolute or guaranteed. *See Battle v. Barton*, 970 F.2d 779, 782 (11th Cir. 1992); *Moody v. Miller*, 864 F.2d 1178, 1181 (5th Cir. 1989) (if a prisoner, through no fault of prison officials, is unable to attend a disciplinary hearing, due process requires nothing more than that the hearing be held in accordance with all of the other requirements of due process that are called for under the circumstances).

¹⁷⁹ Wolff v. McDonnell, 418 U.S. 539, 559 (1979); Morrissey v. Brewer, 408 U.S. 471, 489 (1972).

¹⁸⁰ Smith v. Rabalais, 659 F.2d 539, 545 (5th Cir. 1981), cert. denied, 455 U.S. 992 (1982).

¹⁸¹ Smith, 659 F.2d at 545; Reeves v. Pettcox, 19 F.3d 1060 (5th Cir. 1994).

¹⁸²Gibbs v. King, 779 F.2d 1040, 1044 (5th Cir. 1986); *Hudson v. Johnson*, 242 F.3d 534, 537 (5th Cir. 2001) (officer's report standing alone provides some evidence of guilt).

NAMES & ADDRESSES FOR ADVOCACY GROUPS, GOVERNMENT OFFICES, AND OTHER POTENTIAL RESOURCES

TO CONTACT THE ACLU OF TEXAS PRISON AND JAIL ACCOUNTABILITY PROJECT:

Prison & Jail Accountability Project ACLU of Texas P.O. Box 3629 Austin, TX 78764 (512) 478-7309 (ph) (512) 478-7303 (fax)

OTHER TEXAS ADVOCATES FOR PRISONERS AND FAMILIES

CRIMINAL JUSTICE REFORM/CIVIL RIGHTS ORGANIZATIONS

C.U.R.E. Texas Chapter

Organizes prisoners, their families and other concerned citizens to achieve reforms in the Texas criminal justice system. Publishes a quarterly newsletter, News & Notes, free to Texas prisoners and Texas CURE members contributing \$10 or more. Limited referrals; no legal assistance.

472 Wicker Way Burleson, TX 76028

Muslim Legal Fund of America

Committed to preserving, safeguarding and promoting the civil rights of Muslim individuals in the United States of America.

2701 W. 15th St. Suite 640 Plano, TX 75075

Texas Civil Rights Project

Litigates prison and jail conditions cases. 1405 Montopolis Drive Austin, TX 78741-3438

Texas Criminal Justice Reform Coalition

Empowers individuals to become effective advocates for themselves and their communities by encouraging collaboration among Coalition members to educate the public and our members about available resources, best practices, current policies and practices, and legislation. Does not advocate for particular individuals in the criminal justice system or provide any legal assistance.

1506 S. 1st

Austin, TX 78704

Texas Prisoners' Labor Union

Formed in 1995 by 3 TDCJ inmates, has now grown to 10 outside offices run by released inmates, inmate families, etc., with a jailhouse lawyer and activist members dedicated to reform of TDCJ.

Dwight L. Rawlinson Texas Prisoners' Labor Union 2121 S. 4th Waco, TX 76706

DEATH PENALTY

Lamp of Hope Project

Support network for death row prisoners, friends and family. Free newsletter.

P.O. Box 305

League City, TX 77574-0305



Murder Victims For Reconciliation

Chapter of national organization bringing together murder victims' families and families of executed persons to advocate against the death penalty.

P.O Box 1286 Tomball, TX 77377-1286

Stand Down Texas Project

Supporters and opponents of the death penalty working for moratorium on executions in Texas in order for the state to study critical problems with the application of the death penalty.

P.O. Box 3629 Austin, TX 78764

Texas Coalition to Abolish the Death Penalty

Grassroots organization working to end the death penalty through education and action. 3400 Montrose Blvd., Ste. 312 Houston, TX 77006

Texas Death Penalty Abolition Movement

Multi-racial, multi-generational group of activists and friends and family of death row prisoners. Goals include abolishing death penalty and, until then, creating changes in the inhumane and unconstitutional living conditions of Texas's death row, so that those under sentence of death can live in dignity as human beings.

C/o SHAPE Community Center 3903 Almeda Road Houston, TX 77004

Texas Defender Service

Seeks to improve representation for indigent Texans charged with a capital crime or under a sentence of death. Provides limited direct representation.

412 Main St., Suite 1150 Houston, TX 77002

Texas Moratorium Network

Grassroots organization dedicated to advancing legislation to establish a temporary halt on executions in Texas.

14804 Moonseed Cove Austin, TX 78728

University of Texas Capital Punishment Clinic

Assists in representation of a limited number of people charged with or convicted of capital murder.

727 E. Dean Keeton St. Austin, TX 78705-3294

FAMILIES

Families of Incarcerated Loved Ones (FILO)

Dedicated to the growth and empowerment of children and families of prisoners.

P.O. Box 5285 Austin, TX 78763

Mothers (Fathers) for the Advancement of Social Systems

Assist with re-entry back into society. 6301 Gaston Avenue, Suite 300 Dallas, TX 75214 (214) 821-8810

Rebirth America

Rebirth America provides free transportation to families of incarcerated men and women in Texas prisons.

P.O. Box 41110 Houston, TX 77240 (832) 237-4900

Texas Inmates Families Association (TIFA)

Advocates for families with incarcerated loved ones. Helps families assist their incarcerated members with conditions issues; provides educational and other information; advocates for legislative reform and public awareness.

P.O. Box 181253 Austin, TX 78718-1253

HEALTH/MENTAL HEALTH/ HIV/HEPATITIS

Advocacy, Inc.

Advocates for people with disabilities. 7800 Shoal Creek Blvd., #171-E Austin, TX 78757-1024

AIDS Foundation Of Houston

Run peer-based HIV/STD/TB/HCV education program with TDCJ and UTMB.
3202 Weslayan Annex
Houston, TX 77027

ARC's Access to Justice Initiative

Produces informational pieces and conducts training on people with cognitive disabilities and retardation who come in contact with the law enforcement, victim services, and court systems.

1600 West 38th, Ste. 200 Austin, TX 78731

Capacity for CURE

Counsels prisoners with mental disabilities and their loved ones.

203 Leisure Lane Magnolia, TX 77355

Texas Hep C Connection

P.O. Box 16399 Houston, TX 77222-6399

Texas Department of Mental Health and Mental Retardation

Protective & Regulatory Services P.O. Box 149030 Austin, TX 78714-9030 Mail code: 019-3

Welcome House, Inc.

Offers housing, food, clothing, and the introduction to recovery as described by AA guidelines. Provides a safe place to prisoners, HIV-infected individuals, and women to live. Affiliated with Dallas's court system and frequently goes to court with offenders and testifies to program adherence. Assists parolees in establishing a home in a structured drug-free environment. Distributes a free client brochure on agency specifics.

921 Peak St. Dallas, TX 75204

TDCJ Health Services Liaison: TDCJ Health Services Liaison, Department of Professional Standards

Investigates all medical prisoner grievances at the last step of the grievance process.

TDCJ Health Services Division 3009-A HWY 30 West Huntsville, TX 77340-0769 Phone: (936) 437-3618

Family Hotline: (936) 437-4271

IMMIGRANTS

Lawyers' Committee for Civil Rights Under Law of Texas

Committed to attaining and preserving civil rights for immigrants and refugees through impact litigation, public advocacy, and backup services to non-profit immigration advocacy organizations and pro bono attorneys.

118 Broadway, Suite 502 San Antonio, TX 78205-1994

Mexican Nationals

Mexican Consulates provide help for Mexican nationals in U.S. prisons. This chart lists Mexican consulate addresses:

Austin

200 E. 6th Street, Suite 200 Austin, TX. 78701

Brownsville

724 E. Elizabeth Street Brownsville, TX 78522

Corpus Christi

800 N. Shoreline Bvd. Ste. 410, North Tower Corpus Christi, TX 78401

Dallas

8855 N. Stemmons Freeway Dallas, TX 75247

Del Rio

300 E. Losoya Del Rio, TX 78841

Eagle Pass

140 Adams St. Eagle Pass, TX 78852

El Paso

910 E. San Antonio St. El Paso, TX 79901

Houston

4506 Caroline St. Houston, TX 77004

Laredo

1612 Farragut St. Laredo, TX 78040

McAllen

600 S. Broadway McAllen, TX 78501 Midland

511 West Ohio, Ste. 121 Midland, TX 79701

San Antonio

127 Navarro St. San Antonio, TX 78205

SEXUAL ABUSE

Montrose Counseling Center

Assists sexual assault survivors. 701 Richmond Houston, TX 77006-5511

Texas Association Against Sexual Assault

Advocates on behalf of survivors of sexual assault. 7701 N. Lamar Blvd., Ste. 200 Austin, TX 78752

WOMEN

Women's Advocacy Project

Women's legal counseling and referral service. P.O. Box 833 Austin, TX 78767

TEXAS GOVERNMENT RESOURCES

Attorney General of Texas

P.O. Box 12548 Austin, TX 78711-2548

Board of Pardons and Paroles

P.O. Box 13401 Capitol Station Austin, TX 78711

Law Libraries

Prison law libraries are administered by: Access to Courts P.O. Box 99 Huntsville, TX 77342

State Bar of Texas Grievance Commission

Offers lawyer referral services throughout the state. Investigates alleged wrongdoing or unethical practices by state licensed attorneys.

1414 Colorado, Ste. #501 Austin, TX 78701

Texas Commission on Human Rights

P.O. Box 13006 Austin, TX 78711

Texas Commission on Jail Standards

Accepts complaints regarding conditions of county jails, as well as complaints regarding treatment in jail. No TDCJ complaints.

Inspector, Inmate Complaints P.O. Box 12985 Austin, TX 78711-2985

Texas Commission on Judicial Conduct

Takes complaints regarding misconduct by sitting state judges. A judicial disciplinary agency that exercises jurisdiction over judges and judicial officers in Texas. The agency does not have the authority to change the decision of any court or to act as an appellate review board.

P.O. Box 12265 Austin, TX 78711

Texas Commission on Law Enforcement Standards

Has authority to issue/revoke licenses and implement training procedures for county jailers and peace officers. Investigations are based on alleged criminal, not civil rights, violations.

6330 Hwy 290 E, Ste. 200 Austin, TX 78723

Texas Department of Criminal Justice Board

Executive Director P.O. Box 99 Huntsville, TX 77342

Texas Department of Criminal Justice Counsel for Offenders ("Staff Counsel for

Offenders")

Provides free legal services to indigent prisoners of TDCJ, primarily involving defense, to prisoners charged with a new crime while incarcerated, appeals, post-conviction relief, civil commitments, family law, detainers, INS deportation hearings, and time questions. Does not accept fee generating cases, or actions against TDCJ or its employees.

P.O. Box 4005 Huntsville, TX 77342

Texas Department of Criminal Justice Ombudsman Assistance

TDCJ Ombudsman Coordinator P.O. Box 99 Huntsville, TX 77342 Coordinator may refer you to offices around Texas that provide information for families and friends of prisoner, including assistance with complaints and inquiries of a general nature about Texas Department of Criminal Justice.	TDCJ Community Justice Assistance Division Ombudsman P.O. Box 12427 Austin, TX 78711 Handles complaints and inquiries relating to community supervision (adult probation), including those from community supervision offenders themselves.	TDCJ State Jail Division Ombudsman 209 West 14 th Street, 5 th floor Austin, TX 78701 Handles complaints and inquiries from the public relating to state jails and substance abuse felony punishment facilities.
TDCJ Institutional Division Ombudsman P.O. Box 99 Huntsville, TX 77342 Handles complaints and inquiries from the public relating to state prison issues.	TDCJ Parole Division Ombudsman P.O. Box 13401 Austin, TX 78711 Handles complaints and inquiries from the public relating to parole supervision. May also respond to complaints and inquiries from offenders on parole or mandatory supervision.	

Texas Department of Mental Health and Mental Retardation

Protective & Regulatory Services P.O. Box 149030 Austin, TX 78714-9030

Mail code: 019-3

Texas Juvenile Probation Commission

Supports and enhances juvenile probation services throughout the state.
4900 North Lamar
Austin, TX 78751

Texas Workforce Commission Project Rio

Job search & employment assistance for ex-felons. Project Rio Program, Room 202 T 101 East 15th Street Austin, TX 78778

Texas Youth Commission

Complaints from the public regarding the operations of and services provided by the Texas Youth Commission (TYC) may be filed with the administrator of a TYC-operated facility or with:

Youth Rights Administrator Texas Youth Commission P.O. Box 4260 Austin, TX 78765

NATIONAL RESOURCES

CRIMINAL JUSTICE REFORM/LEGAL

ACLU National Prison Project

Litigation generally limited to major class actions, but also provides advice and materials to individuals or organizations involved in prison issues.

733 15th St. NW, Ste. 620 Washington DC 20005

American Bar Association Criminal Justice Section

Sponsors a number of programs to improve the justice system. They are not able to help people with specific legal problems or cases.

740 15th Street, NW, 10th Floor Washington, DC 20005-1009

American Friends Service Committee

Goal is to reduce and eliminate incarceration as a "solution" to crime and violence. Works with groups nationwide to create a system that is not based on prisons, jails, and executions, but on the needs of both victims of crime and perpetrators. Through publications and other forms of media outreach, AFSC alerts the public to the long-term effect of our present system and the need to develop alternatives to incarceration.

Criminal Justice Program 1501 Cherry Street Philadelphia, PA 19102-1479

Amnesty International

(Southern Regional Office)

Dedicated to freeing prisoners of conscience, gaining fair trials for political prisoners, ending torture, political killings and "disappearances," and abolishing the death penalty throughout the world.

131 Ponce De Leon Ave. N.E., #220 Atlanta, GA 30308

Center for Community Alternatives

Develops rehabilitation programs for adult prisoners, juvenile offenders, and "at-risk" youth.

115 East Jefferson, Ste. 300 Syracuse, NY 13202

Center for Constitutional Rights

Trains lawyers, law students, and legal workers in constitutional law. Represents political activists and conducts litigation on behalf of groups working for social change.

666 Broadway, 7th Floor New York, NY 10012

Center on Juvenile and Criminal Justice

Develops programs promoting alternatives to incarceration.

1622 Folsom Street San Francisco, CA 94103

Criminal Justice Policy Foundation

Educational organization promoting solutions to problems facing the justice system.
8730 Georgia Avenue, Suite 400
Silver Spring, MD 20910

Department of Justice, Civil Rights Division

Enforces Civil Rights of Institutionalized Persons Act which authorizes the Attorney General to initiate suits against state or local officials who operate institutions in which a pattern or practice of flagrant or egregious conditions deprive residents of their constitutional rights. The Section also enforces Title III of the Civil Rights Act of 1964, which prohibits race discrimination in public facilities.

Special Litigation Section 950 Pennsylvania Avenue NW Washington, DC 20530

DOJ Office of the Inspector General

Investigates complaints regarding the violation of civil rights/civil liberties by Department of Justice employees. Civil Rights and Civil Liberties
Office of the Inspector General
950 Pennsylvania Avenue NW
Suite 4322
Washington, DC 20530-0001

Families Against Mandatory Minimums (FAMM)

Works to change mandatory sentencing laws. Provides information about laws and how to change them. FAMM's local chapters hold rallies, meet with the media, give speeches, and distribute information so a wider audience will understand the need for alternatives to incarceration and fair punishment. Offers newsletter.

1612 K St. NW, Ste. 700 Washington, DC 20006

Fortune Society

Ex-prisoner self-help program. Provides educational programs, general counseling, HIV-AIDS assistance and court advocacy. Publishes Fortune News, free to prisoners.

53 West 23rd Street, 8th Floor New York, NY 10010

Human Rights Watch

Largest human rights organization based in the United States. Conducts fact-finding investigations into human rights abuses, and publishes those findings, generating extensive coverage in local and international media.

350 Fifth Avenue, 34th Floor New York, NY 10118-3299

Vera Institute of Justice

Organization dedicated to making government policies more fair, humane, and efficient.

233 Broadway, 12th Fl.

New York, NY 10279

DEATH PENALTY

ACLU Capital Punishment Project

Provides general information on death penalty. Does not provide legal representation.

122 Maryland Ave. N.E. Washington, DC 20002

Hope of CURE

Organizes death row prisoners and their loved ones. P.O. Box 1176 Burleson, TX 76097

Mexican Capital Legal Assistance Project

Assists Mexican nationals facing the death penalty 2520 Park Avenue South Minneapolis, MN 55404

NAACP Legal Defense and Education Fund

Litigates limited number of death penalty and prison or general jail conditions cases.

99 Hudson Street, 16th Floor New York, NY 10013

National Coalition to Abolish the Death Penalty

Provides information and advocacy against the death penalty. Does not provide legal assistance.

920 Pennsylvania Avenue SE

Washington, DC 20003

FAMILIES/VISITATION

The Center for Children of Incarcerated Parents

Clearinghouse of materials for prisoners and their families; catalog available by mail. Hosts correspondence parent education course for prisoners and conducts child custody advocacy.

P.O. Box 41-286 Eagle Rock, CA 90041

Legal Services for Prisoners with Children

Advocates for the civil rights and empowerment of incarcerated parents, children, family members and people at risk for incarceration through litigation, community activism, by responding to requests for information, and providing training and technical assistance.

1540 Market Street, Suite 490 San Francisco, CA 94102

HEALTH/MENTAL HEALTH/HIV/HEPATITIS

AIDS Education Project of the National Prison Project

Provides educational and legal information about AIDS in prison.

733 15th St. NW, Ste. 620 Washington DC 20005

Bazelon Center for Mental Health

Legal advocacy for the civil rights and human dignity of people with mental disabilities.

1101 15th Street NW, Ste. 1212 Washington, DC 20005-5002

CDC National Prevention Information Network (National AIDS Clearinghouse)

Develops and collects information on the prevention and control of HIV/AIDS, sexually transmitted diseases, and tuberculosis. Disseminates this information to the CDC, national preventions hotlines, state and local health departments, grassroots community groups, and health professionals. Maintains comprehensive databases with up-to-date information on community resources and services, educational materials, and news summaries from the popular press and scientific and medical journals.

P.O. Box 6003 Rockville, MD 20849-6003

CorrectHELP (a non-profit project of the Tides Center)

Seeks to improve the treatment of prisoners living with HIV by working with prisoners and institutions to improve conditions for prisoners with HIV, both medically and socially, through education and legal advocacy.

P.O. Box 46276 West Hollywood, CA 90046

Hepatitis C Support Project

Community organization providing information and support about hepatitis C, including the newsletter HCV Advocate.

P.O. Box 427037 San Francisco, CA 94142

National AIDS Hotline (Toll-Free)

Phone: (800) 342-AIDS

(800) 344-SIDA (Spanish) (800) 243-7889 (TTD)

National Alliance for the Mentally Ill

Seeks equitable services for people with severe mental illnesses. Promotes treatment alternatives to criminalization of people with severe brain disorders. Colonial Place Three

2107 Wilson Blvd., Ste. 300 Arlington, VA 22201-3042

National Commission on Correctional Health Care

Publishes standards for health services for jails, prisons and juvenile confinement facilities; serves as an accreditation body; develops programs for training correctional and health care personnel; provides technical assistance to facilities; develops and distributes publications and uniform documentation; acts as a clearinghouse on correctional health care; conducts research on selected aspects of correctional health care. Publishes a quarterly newspaper, CorrectCare, which is available free to prison libraries but cannot be sent free to individual prisoners. Write for a complete list of publications.

1300 W. Belmont Ave. Chicago, IL 60657-3240

National Minority AIDS Council

Develops and disseminates HIV/AIDS education and training interventions for target groups, including prisoners living with and at risk for HIV/AIDS, prison health care providers and community based HIV/AIDS service personnel.

Prison Initiative 1931 13th St., NW Washington, DC 20009-4432

Prisoners with AIDS-Rights Advocacy Group

Provides prisoners' rights advocacy on the issues of HIV/AIDS medical care and treatments and educational program development. Offers Prisoner Legal Assistance Services Program (PLASP) to assist prisoners with serious legal issues regarding HIV/AIDS and adverse impact of HIV status on living conditions in prison.

1626 North Wilcox Ave., #537 Los Angeles, CA 90028

IMMIGRANTS

Global Exchange

Global Exchange is an international human rights organization dedicated to promoting social justice, including for foreign nationals in U.S. prisons and jails. 2017 Mission Street #303
San Francisco, CA 94110

Mexican Capital Legal Assistance Project

Assists Mexican nationals facing the death penalty 2520 Park Avenue South Minneapolis, MN 55404

GAY/ LESBIAN/ BISEXUAL/ TRANSGENDER

Lambda Legal Defense and Educational Fund

Focuses on gay and lesbian issues and also issues involving people with AIDS.

120 Wall Street, Suite 1500 New York, NY 10005-3904

Gay & Lesbian Prisoner Project

Provide limited pen pal service for G/L/B/T prisoners and send resource information and articles related to G/L/B/T prisoner issues. Publish Gay Community News 3 or 4 times a year, free to lesbian and gay prisoners. Volunteer-run, services are limited.

Gay & Lesbian Prisoner Project 29 Stanhope St. Boston, MA 02116

National Gay and Lesbian Taskforce

NGTLF provides no legal services. It is the largest gay civil-rights and public education organization in the country.

1325 Massachusetts Avenue NW, Suite 600 Washington, DC 20005

SEXUAL ABUSE

Safer Society Foundations

Provides sexual abuse prevention and treatment publications and operates national referral line for those seeking treatment providers for sexually offending behaviors. This program is free and confidential, and open to all: prisoners, family and friends of prisoners, social workers, court and corrections personnel and therapists.

P.O. Box 340 Brandon, VT 05733

Stop Prisoner Rape

Seeks to end sexual violence committed against men, women, and children in all forms of detention. Founded by survivors of prisoner rape, SPR works to shed light on this pervasive human rights violation through advocacy and outreach.

6303 Wilshire Blvd, Ste. 204 Los Angeles, CA 90048

WOMEN

ACLU Reproductive Freedom Project

Handles issues related to reproductive rights, abortion. Contact should first be made through Texas ACLU. 125 Broad St., 17th Floor New York, NY 10004

ACLU Women's Rights Project

Handles issues related specifically to sex discrimination.
Contact should first be made through Texas ACLU.
125 Broad St., 17th Floor
New York, NY 10004

National Clearinghouse for the Defense of Battered Women

Accepts collect calls from women in prison. 125 South 9th Street, Ste. 302 Philadelphia, PA 19107 (215) 351-0010

Out of Control Lesbian Committee to Support Women Political Prisoners

Publishes Out of Time newsletter 5 times a year and is free to all prisoners. Volunteer-run; services are limited. 3543 18th St., Box 30 San Francisco, CA 94110

LEGAL RESEARCH RESOURCES

AIDS in Prisons Bibliography

Catalogs resource materials on AIDS in prison. References corrections' policies on AIDS, educational materials, medical and legal articles, and recent AIDS studies. It also provides a listing of "prisoner-friendly" AIDS organizations. Available for \$10, prepaid.

733 15th Street NW, Ste. 620 Washington, DC 20005

Jailhouse Lawyer's Manual (5th Ed.)

Informs prisoners of legal rights, how to secure these rights through the judicial process, guides them through procedures involved in the criminal and civil justice system on the federal level and, to the extent possible on the state level, with particular emphasis on New York state law. \$31 for prisoners. Please include name, mailing address, prisoner number and check, money order or \$31 in postage stamps.

Columbia Human Rights Law Review 435 W. 116th St. New York, NY 10027

Lewisburg Prison Project

Distributes a variety of legal bulletins and legal publications at a minimal cost. Accepts stamps as payment.

P.O. Box 128 Lewisburg, PA 17837

National Prison Project Journal

NPP's quarterly newsletter featuring articles, reports, legal analysis, legislative news, and other developments in prisoners' rights. An annual subscription is \$2 for prisoners.

733 15th Street NW, Ste. 620 Washington, DC 20005

Prison Legal Assistance Project Practice Manuals

Manuals on commutation of sentence, parole revocation, and disciplinary hearing presentation. Free to prisoners.

Austin Hall, Room 107 1515 Massachusetts Avenue Cambridge, MA 02138

Prison Legal News

Provides monthly review and analysis of prisoner rights court rulings and news about prison issues. Provides prisoners with a voice in the public policy debate on issues of crime and punishment, with a goal of helping prisoners and their supporters organize and participate in the process of progressive change. Subscriptions \$15 for prisoner.

2400 NW 80th Street #148 Seattle, WA 98117-4449

PLRA: A Guide For Prisoners

Part of a special issue of the NPP Journal. Provides a comprehensive explanation of the Prisoners' Litigation Reform Act. \$2 a copy for prisoners.

National Prison Project 733 15th Street NW, Ste 620 Washington DC, 20005

Prisoners' Self-Help Litigation Manual

By John Boston & Dan Manville. Manual for prisoners filing lawsuits on their own. Introductory & advanced information on law for prisoners, as well as tips on researching, writing, and presenting legal claims.

Oceana Publications, Inc. 75 Main Street

Dobbs Ferry, NY 10522

PUBLICATIONS/BOOKS

Aleph Institute

Offers Jewish religious instruction to prisoners; religious articles; correspondence courses; counseling; and religious freedom advocacy.

9540 Collins Avenue Surfside, FL 33154

Coalition for Prisoners' Rights

Short monthly newsletter published since 1976. News from and for prisoners throughout the country. Emphasizes resources and analysis of US punishment system. Free to prisoners. No lawyers on staff.

P.O. Box 1911 Santa Fe, NM 87504

Colorlines Magazine

PMB 319 4096 Piedmont Ave. Oakland, CA 94611-5221

Double Jeopardy

Services' handbook on living with HIV and Hepatitis C, available in English and Spanish.

Consumer Prescription Services P.O. Box 1279 Old Chelsea Station New York, NY 10113-1279

Hepatitis C Awareness News

Hepatitis C Awareness Project PO Box 41803 Eugene, OR, 97404

HEPP Report

HIV and Hepatitis Education Prison Project Brown University Box G-B4 Providence, Rhode Island 02912

Human Kindness Foundation

2 free books or catalogue of other "hard to find" spiritual books.

Box 61619 Durham, NC 27715

Inside Books Project

Free books to Texas prisoners.
827 W. 12th Street
Austin TX 78701
512-647-4803
insidebooksproject@yahoo.com

International Prison Ministry

Provides counseling for prisoners on death row. Provides free Bibles, Bible Study and Lifechanging books to prisoners.

P.O. Box 130063 Dallas, TX 75313-0063

Mennonite Central Committee, US

Provides information on issues such as ministry to victims and prisoners.

21 S. 12th St. P.O. Box 500 Akron, PA 17501-0500

National Veterans Legal Services

Self-help Guides on Agent Orange, Gulf War and VA Claims: \$7.50 for one and \$5.50 for each additional.

2001 S Street, NW, Ste. 610

Washington, DC 20009

Prison Fellowship Ministries

Publishes INSIDE JOURNAL, a bi-monthly prisoner newspaper distributed in prisons via the Chaplain's office.

1856 Old Reston Avenue Reston, VA 20190

Prison Library Project

Provides reading material free of charge to prisoners; prison chaplains, libraries, and study groups; veterans; recovery groups; and victims of abuse. Maintains "Ways and Means" resource list sent out free to all prisoners.

976 W. Foothill Blvd., #128 Claremont, CA 91711

Prison Mirror

Oldest continuously published prison newspaper. Published monthly by and for the men of the Minnesota Correctional Facility.

970 Pickett Street N Bayport, MN 55003-1490

Prison News Service/ PSC Publishers

Information about the prison movement in North America. Written mostly by prisoners and published by prison rights activists. Subscriptions \$10 and up.

Box 5052, Stn A Toronto, Ontario CANADA M5W 1W4

Prisoners' Assistance Directory

Lists and describes local, state, national and international organizations that provide services to prisoners, exprisoners and their families. Available for \$30.

National Prison Project 733 15th Street NW, Ste 620 Washington DC, 20005

Race Traitor

Motto: "Treason to whiteness is loyalty to humanity." Anti-racist print and online journal.

P.O. Box 499 Dorchester, MA 02122

Raze the Walls! Prisoner Resource Guide

Network of individuals committed to self-education and expanding/defending the civil, political and human rights of Prisoners.

Prisoner Support P.O. Box 22774 Seattle, WA 98122-0774

Refuse & Resist

305 Madison Ave., Suite 1166 New York, NY 10165

Rocky Mountain Peace and Justice Center

Prisoners' Rights Project P.O. Box 1156 Boulder, CO 80306-1156

The Sentencing Project

514 10th Street NW, Suite 1000 Washington D.C. 20004

"Serve the People" Free Books to Prisoners Maoist International Movement

Free newsletter, journals and books with a revolutionary perspective. Current events, revolutionary nationalism, Marxist classics.

P.O. Box 29670 Los Angeles, CA 90029

Siddha Yoga Meditation Prison Project

Receive free twelve year Siddha Yoga correspondence course and additional materials and assistance.

SYDA Foundation

P.O. Box 99140 Emeryville, CA 99140

T.A.O Inc. (Transformational Assistance for Offenders)

Receive a free copy of their newsletter. Send a \$.37 stamp as payment along with name and address.

11 Irving Street Revere, MA 02151

Voices from Prison Community Partners in Action

110 Bartholomew Avenue Hartford, CT 06106

Women's Prison Book Project

Arise Bookstore 2441 Lyndale Avenue So. Minneapolis, MN 55405

COUNT YOURSELF AS A CARD-CARRYING MEMBER OF THE ACLU!

Join with over 330,000 Americans who contribute to the defense of liberty with an ACLU membership. A portion of your membership goes toward a year's subscription to the national newsletter, *Civil Liberties*, and the *Texas Civil Liberties Dispatch*.

Please note that membership does not in any way guarantee representation or response to prisoner-related complaints.

☐ Individual \$20 ☐ Joint \$35 ☐ Limited Income \$5
☐ \$35* ☐ \$50 ☐ \$75 ☐ \$125 ☐ \$
*Please give this amount or more if you possibly can.
Please Print.
Name
Address
City/State/Zip
Home Phone
Work Phone
Email
☐ New Membership ☐ Membership Renewal
☐ I do not wish to become a member; please consider this a contribution towards the union's work.
☐ I am interested in volunteering for the ACLU.
Please make checks payable to ACLU, Inc. and send them to ACLU of Texas Membership, P.O. Box 3629, Austin, TX 78764-9966.

Prison & Jail Accountability Project ACLU of Texas

P.O. Box 3629 Austin, TX 78764 (512) 478-7309 (ph) (512) 478-7303 (fax)

