

# **RIGHTS OF DETAINEES AND PRISONERS IN THE UNITED STATES**

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## **I. Development of the law as to the Rights of Prisoners in the United States**

Prior to the 1960s, the prevailing view in the United States was that a prisoner has, as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him. He is for the time being the slave of the state. *Ruffin v. Commonwealth*, 62 Va. 790, 796, 21 Gratt. 790, 796 (1871). This view aptly referred to as the "hands-off doctrine," effectively insulated state and prison officials from judicial condemnation. GARY ROCK, PRISONER'S RIGHTS HANDBOOK 1 (Angus Love ed., Pa Institutional Law Project) (2009).

The 1960s and the early 1970s proved to be a pivotal turning point for prisoners' rights. Propelled by the civil rights movement and the Attica rebellion, the Supreme Court, led by Chief Justice Earl Warren, began expanding constitutional protections afforded to prisoners. *See Wolff v. McDonnell*, 418 U.S. 539, 555 (1974). ("But though his rights may be diminished by the needs and exigencies of the institutional environment, a prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons of this country.ö).

## **II. Rights of Prisoners in the United States**

The protections introduced and later expanded by the Warren Court included a prisoner's right to access courts, right to minimal first amendment protections, right to due process in disciplinary proceedings, freedom from cruel and unusual punishment, and right to equal protection under the law. Each which will be addressed individually below.

To be sure, there are some rights, however, that the Courts have refused to recognize for prisoners such as the freedom from unreasonable search and seizure guaranteed under the Fourth Amendment. The Courts have consistently held that the rights afforded under the Fourth Amendment are irreconcilable with "the concept of incarceration and the needs and objectives of penal institutions[;]" hence a prisoner has no reasonable expectation of privacy in his prison cell, including protection from "shakedown searches" which are designed to root out weapons, drugs, and other contraband. See *Hudson v. Palmer*, 468 U.S. 517, 519-520 (1984); *Proudfoot v. Williams*, 803 F. Supp. 1048, 1051 (E.D. Pa. 1991) ("A prisoner has no reasonable expectation of privacy in his cell that would entitle him to Fourth Amendment protection from unreasonable searches and seizures."); *Williams v. Kyler*, 680 F. Supp 172 n.1 (M.D. Pa 1986) (same).

#### A. Rights of Prisoners to Access Courts

*Ex Parte Hull* is considered to be the genesis of prisoners' access to courts in the United States. ROCK, *supra* at 3. In *Hull*, the Supreme Court struck down a Michigan statute that prohibited prisoners from filing legal documents with the courts unless they were found to be "properly drawn" by the parole board, saying "the State and its officers may not abridge or impair petitioner's right to apply to a federal court for a writ of habeas corpus." 312 U.S. 546, 594 (1941).

In later cases, the Supreme Court struck down other obstacles such as economic barriers. See *Griffin v. Illinois*, 351 U.S. 12 (1956) (fee for trial transcript necessary for appellate review was unfairly burdensome on indigent prisoners); *Burns v. Ohio*, 360 U.S. 252 (1959) (requiring States to waive filing fees for indigent prisoners). Moreover, in *Johnson v. Avery*, the Supreme Court also struck down a Tennessee regulation which prohibited inmates from assisting each

other in preparation of habeas corpus petitions unless the state provided a reasonable alternative of petitions for post conviction relief. 393 U.S. 483 (1969).

*Bounds v. Smith* expanded prisoner in an unprecedented manner. In *Bounds*, the Supreme Court held that the states should not only refrain from obstructing prisoner petitions to the courts, but should shoulder affirmative obligations to assure all prisoners meaningful access to the courts. 430 U.S. 817, 824 (1977), *abrogated by Lewis v. Casey* 518 U.S. 343 (1996). Such obligations meant that prison officials must assist inmates in preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law. *Id.* at 828 The rights granted in *Bounds* were later curtailed somewhat in *Lewis v. Casey*, 518 U.S. 343 (1996). In *Casey*, the Supreme Court held that prisoners alleging *Bounds* violations must show that they have suffered, or will imminently suffer, actual harm. *Id.* at 349. Furthermore, the *Casey* Court determined that prisoners do not have a constitutional right to law libraries or legal assistance but rather a constitutional right to access the courts. *Id.* Prison libraries and legal assistance programs are merely means by which the states ensure prisoners have the opportunity to present their grievances to the courts. *Id.* at 351. Hence, an inmate cannot establish relevant actual injury simply by establishing that his prison's law library or legal assistance program is sub-par in some theoretical sense; the inmate therefore must go one step further and demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim. *Id.* at 351. The *Casey* Court also rejected the notion that prisoners should have access to courts for legal matters beyond habeas corpus and civil rights actions. *Id.* at 355. The *Casey* standard is where the law currently stands.

## B. Minimal First Amendment Protections

*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*

U.S. CONST. amend. I.

The First Amendment to the United States Constitution is one of the most treasured liberties of the American people, guaranteeing freedom of speech, freedom of the press, freedom of the religion and the right to peacefully assemble and petition the government. The Supreme Court announced its rule regarding prisoners' First Amendment rights in *Turner v. Safley* in which it stated "[w]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interest." 482 U.S. 78, 89 (1987). The four determining factors of reasonability are 1) whether there is a "valid, rational connection" between the prison regulation and a neutral legitimate governmental interest; 2) whether there are alternative means of exercising the right in question; 3) whether the accommodation of the asserted right will have an adverse impact upon guards, other inmates, and prison resources; and 4) whether there is an obvious alternative to the regulation which "fully accommodates the prisoner's rights at *de minimis* cost to valid penological interests." *Id.* at 89.

Likewise, religious freedom, though allowed in prison, is subject to reasonable limitations relating to legitimate penological interests. Before the court can even consider a plaintiff's challenge to a regulation based on a state's restriction of religious freedom, the inmate must show the existence of a *bona fide* religion and sincerely held beliefs in that religion. See *Thomas v. Review Board of Indiana Employment Sec. Div.*, 450 U.S. 707, 713 (1981) ("Only beliefs rooted in religions are protected by the Free Exercise Clause."). When considering whether a *bona fide* religion exists, courts have considered whether the religion addresses

fundamental and ultimate questions having to do with deep and imponderable matters, whether it has a belief system as opposed to an isolated teaching, whether it is recognizable by certain structural characteristics such as ceremonies or clergy, whether the beliefs a moral and ethical system of a way of life. *See Africa v. Commonwealth of Pennsylvania*, 662 F.2d 1025, 1030 (3d Cir. 1981); *United States v. Meyers*, 95 F.3d 1475, 1483 (10th Cir. 1996). In *O’Lone v. Estate of Shabazz*, the Supreme Court articulated a test for prisoners’ free exercise of religion claims that was similar to the *Turner* standards, i.e., that regulations restricting prisoners’ free exercise rights are constitutional if they are reasonably related to legitimate penological objectives. 482 U.S. 342, 349 (1987).

Thus, although prisoners are not completely foreclosed from pursuing First Amendment protections, the court’s imposition of a “reasonable test” grants prison officials wide latitude in implementing restrictive regulations.

### C. Right to Due Process in Disciplinary Proceedings

*“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”*

U.S. CONST. amend. XIV, §1.

In the seminal case *Wolff v. McDonnell*, 418 U.S. 539 (1974), the Supreme Court decided that due process guaranteed by the Fourteenth Amendment applies to prisoners, but since prison disciplinary proceedings are not part of a criminal prosecution, the full array of rights afforded to criminal defendants are not provided to inmates. Where the state provides for good-time credit or other privileges and further provides for forfeiture of these privileges only for serious misconduct, the interest of the prisoner in this degree of “liberty” entitles him to those minimum procedures appropriate under the circumstances. *Wolff*, 418 U.S. at 557. Thus, the Court in *Wolff*

defined a prisoner's "liberty" interest by looking to objective state law and ruled that due process protection is required when a state creates such an interest. Michael Z. Goldman, *Sandin v. Connor and IntraPrison Confinement: Ten Years of Confusion and Harm in Prisoner Litigation*, 45 B.C. L. REV. 423, 433 (2004).

*Wolff's* state-created liberty interest doctrine allowed prisoners to challenge the discretionary manner in which prison administrators implemented a variety of decisions and narrowed the ability of officials to issue capricious judgments that could have significant effects on the lives of prisoners. *Id.* Nearly two decades later, in *Sandin v. Conner*, 515 U.S. 472 (1995), the Supreme Court rejected the *Wolff* standard. In *Sandin*, the Supreme Court abandoned the state-created liberty interest doctrine which had focused on state statutory language in its determination of the existence of a liberty interest. Goldman, *supra*, 45 B.C. L. REV. at 438. The *Sandin* court held that henceforth prison officials would only deprive prisoners of liberty interests protected by the Due Process Clause when prison authorities imposed an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Id.* at 439. The *Sandin* Court emphasized that "discipline by prison officials in response to a wide range of misconduct falls within the expected perimeters of the sentence imposed by a court of law." *Id.* at 439. Unfortunately, the Court provided little explicit guidance for determining when an "atypical and significant" deprivation has occurred. *See Sandin*, 515 U.S. at 490 n.2 (Ginsburg, J., dissenting) ("The Court ventures no examples, leaving consumers of the court's work at sea, unable to fathom what would constitute an atypical, significant deprivation, and yet not trigger protection under the Due Process Clause directly.").

Despite the initial expressions of confusion, some lower courts have begun to apply the *Sandin* "atypical and significant" standard to more serious confinement issues. In post-*Sandin*

jurisprudence, minor disciplinary sanctions, such as cell restriction, loss of privileges, and good-time credit generally have not satisfied the test of "atypical and significant hardship." ROCK, *supra* at 61-62. For harsher discipline, such as solitary confinement, the result varies based on the circuits. Any clarification of these differences will depend on future U.S. Supreme Court decisions.

D. Prisoners' right to be free from cruel and unusual punishment

*"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."*

U.S. CONST. amend. VIII.

For 185 years, the United States Supreme Court consistently interpreted the Eighth Amendment to prohibit cruel and unusual sentences, such as drawing and quartering or burning at the stake, rather than regulating conditions in prisons, since courts only impose sentences, not general conditions of confinement. *See* Sara L. Rose, *Cruel and Unusual Punishment need not be Cruel, Unusual, or Punishment*, 24 CAP. U.L. REV. 827, 827-828 (1995). Then, in *Estelle v. Gamble*, 429 U.S. 97 (1976), the Court suddenly and drastically expanded the scope of the cruel and unusual punishment clause by applying it to conditions inside a prison. *Id.* Since *Estelle*, the Court has continued to revise and expand the meaning of "cruel and unusual punishment." *See, e.g., Gregg v. Georgia*, 428 U.S. 153, 173 (1976) (extending the phrase "cruel and unusual" to include those punishments that were "unnecessary and wanton infliction of pain" or "grossly out of proportion with the severity of the crime"); *Helling v. McKinney*, 509 U.S. 25, 31 (1993) ("[T]he treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment.").

In order to prove a violation of his or her Eighth Amendment right, a prisoner must show 1) the conditions of the confinement are objectively serious enough to justify Eight Amendment

scrutiny; 2) the responsible prison official had a "sufficiently culpable state of mind;" and 3) prison officials failed to act. *See Farmer v. Brennan*, 511 U.S. 825, 834 (1994).

In the analysis of the first prong, prisoners claiming Eighth Amendment violations must prove that they were either deprived of "the minimal civilized measure of life's necessities" such as essential food, clothing, medical care, and sanitation, *see Rhodes v. Chapman*, 452 U.S. 337, 347 (1981), or are "incarcerated under conditions posing a substantial risk of serious harm." *Farmer*, 511 U.S. at 834. The degree of culpability required in the second prong depends on the type of conduct challenged. *Wilson v. Seiter*, 501 U.S. 294, 302 (1991) ("wantonness does not have a fixed meaning but must be determined with due regard for differences in the kind of conduct against which an Eighth Amendment objection is lodged") (citations omitted). In situations that require prison officials to act quickly, such as in prison riots, the prisoner must show the prison official acted "maliciously and sadistically for the very purpose of causing harm." *Whitley v. Albers*, 475 U.S. 312, 320-321 (1986). Otherwise, when the general prison conditions are being challenged, the prisoner must show that the prison officials acted with deliberate indifference. *See Wilson*, 501 U.S. at 303. Deliberate indifference to serious medical needs of prisoners can constitute the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment. *Estelle v. Gamble*, 429 US 97, 104 (1976). However, a claim of negligence or malpractice is insufficient for a constitutional violation. *See id.*

*Hutto v. Finney*, 437 U.S. 678 (1978) was the first case in which the Supreme Court considered whether prison conditions could be a violation of the Eighth Amendment and recognized that although individual conditions may not be a violation, the conditions cumulatively could violate the prohibition against cruel and unusual punishment. *Id.* at 687. For example, in *Hutto* the court found that all the conditions "including more prisoners in isolation

cells than beds, inmate violence and vandalism, the ðgrueö diet, the frequent use of nightsticks and mace by guards, and arbitrary length of isolation ó were a violation of the Eighth Amendment. In a more recent case, *Hope v. Pelzer*, 536 U.S. 730 (2002), the Supreme Court determined that simultaneously hitching the Plaintiff to a pole with handcuffs, requiring him to stand in the sun without a shirt on for lengthy periods of time, allowing water once or twice, and not allowing bathroom breaks while the guards looked on and taunted the prisoner, was a clear constitutional violation. *Id.* at 2521.

Excessive use of force can constitute cruel and unusual punishment when the use of force by the prison officials was not ðin a good faith effort to maintain or restore disciplineö but rather is applied ðmaliciously and sadistically for the very purpose of causing harm.ö *Hudson v. McMillian*, 503 U.S. 1, 6, 7 (1992).

While the courts have come a long way from the ðhands offö doctrine, proving an Eighth Amendment violation is a formidable task given the constitutional constraints established by the Supreme Court.

#### E. Equal Protection under the Law

*No State shall “deny to any person within its jurisdiction the equal protection of the laws.”*

U.S. CONST. amend. XIV, § 1.

The constitutional provision stated above ðis essentially a direction that all persons similarly situated should be treated alike.ö *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 439 (1985).

To prevail on an equal protection claim, a prisoner must prove: 1) that the State treated him or her differently from others who were similarly situated; and 2) that the difference in treatment was not rationally related to any legitimate governmental interest. *See Village of*

*Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). The "rational relationship" review in the second prong of the test has been described by the Supreme Court as the "most relaxed and tolerant form of judicial scrutiny under the Equal Protection Clause." *Dallas v. Stanglin*, 490 U.S. 19, 26 (1989). The rational basis scrutiny does not focus on whether the State's policy lacks wisdom, fairness and logic but simply whether it is rational in light of the State's objectives. *See Heller v. Doe*, 509 U.S. 312, 319-320 (1993).

The relaxed "rational relationship" test, however, gives way when the different treatment of prisoners is based on suspected classifications such as race, alienage, or national origin. A statute or policy classifying prisoners on such a basis is "subjected to strict scrutiny and will be sustained only if [it] [is] suitably tailored to serve a compelling state interest." *City of Cleburne*, 473 U.S. at 440.

Recognizing that discrimination based on suspected classification is difficult for States to rectify. Courts have been instrumental in defeating racially prejudiced practices in American prisons.

### **III. Distinction between Prisoners and Detainees**

Unlike prisoners who have been charged, convicted, and are serving their sentence, pretrial detainees are "persons who have been charged with a crime but who have not yet been tried on the charge." *Bell v. Wolfish*, 441 U.S. 520, 523,(1979). These persons may be legitimately incarcerated by the government prior to a determination of their guilt or innocence. *Id.*

Detainees at a minimum receive as many rights as those granted to convicted persons, *see Hudson v. Palmer*, 468 U.S. 517, 545 (1984) (pretrial detainees "retain at least those constitutional rights . . . enjoyed by convicted prisoners"). However, a person lawfully detained

in pretrial confinement because there is probable cause to believe that he has committed a crime, is subject to certain restrictions on his liberty. *See id* at 545 (‘‘A detainee simply does not possess the full range of freedoms of a non-incarcerated individual.’’). Nevertheless, a person held in confinement as a pretrial detainee may not be subjected to any form of punishment for the crime for which he is charged. *Id.* at 535 (‘‘a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law’’) (citations omitted). A convicted inmate, on the other hand, can be punished as long as the punishment is not cruel and unusual and, therefore, is prohibited by the Eighth Amendment as discussed above.

In the seminal case of *Bell*, the Supreme Court articulated the test for determining whether particular restrictions and conditions accompanying pretrial detention amount to punishment in the constitutional sense of that word. Michael Clements, *Virtually Free from Punishment Until Proven Guilty: The Internet, Web-Cameras, and the Compelling Necessity Standard*, 12 RICH. J.L. & TECH. 4 (2005). First, the court must look for an express intent to punish on the part of the detention facility officials. *Id.* If the court does not make such a finding, the inquiry then turns upon whether the ‘‘particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective[;] it does not, without more, amount to ‘punishment.’’’ *Bell*, 441 U.S. at 538-539. ‘‘Conversely, if a restriction or condition is not reasonably related to a legitimate goal -- if it is arbitrary or purposeless -- a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees.’’ *Id.* at 539. A condition or restriction placed upon a pretrial detainee may amount to impermissible punishment if it can be shown that the officials were ‘‘deliberately indifferent’’ to a substantial risk to the detainee’s safety. *Zarnes v. Rhodes*, 64 F.3d 285, 290 (7th Cir. 1995).

#### IV. Recent Trends and Emerging Issues

An emerging issue in the prisoners' rights area is the resurgence of the "hands off" doctrine, albeit a less primitive version than the pre-1960 era. *ROCK, supra* at 1. One of the driving points behind this resurgence was the Prisoner Litigation Reform Act (PLRA). Although it was passed over a decade ago, this politically popular Act is still heavily affecting inmates throughout the country. The PLRA was enacted to curtail the number of frivolous prisoner law suits and to restrict the power of federal courts to order prospective relief in cases challenging prison conditions. *See Woodford v. Ngo*, 548 U.S. 81, 83 (2006) (stating that the PLRA was enacted "in the wake of a sharp rise in prisoner litigation"). The PLRA requires prisoners filing constitutional violation suits to meet certain exhaustion, filing, and relief requirements or otherwise have their case be dismissed. *See* 42 U.S.C § 1997(e) *et seq.* ("No action shall be brought with respect to prison conditions until such administrative remedies as are available are exhausted."). The PLRA additionally requires prisoners to show a physical injury in order for the claim even to be heard. 42 U.S.C § 1997(e)(e) ("No federal civil action may be brought by a prisoner for mental or emotional injury suffered while in custody without a prior showing of physical injury."). The latter requirement has made it nearly impossible for prisoners to get compensatory damages under First Amendment, Due Process, or Equal Protection claims, although the courts have refused to foreclose recovery of nominal or punitive damages. *See Allah v. Al-Hafeez*, 226 F.3d 247, 252 (3d Cir. 2000) ("Neither claims seeking nominal damages to vindicate constitutional rights nor claims seeking punitive damages to deter or punish egregious violations of constitutional rights are claims for mental or emotional injury.").

Another recent trend in the United States is the use of out-of-state private prisons. The concept of privatizing prisons dates back to the nation, but had died down in the twentieth century. See Shymeka Hunter, *More than just a private affair: Is the practice of incarcerating Alaska prisoners in private out-of-state prisons unconstitutional?* 17 ALASKA L. REV. 319, 325 (2000). In the late eighties, due to massive overcrowding and budget shortfalls, both federal and state governments began utilizing in-state private prisons. See *id.* The use of out-of-state private prisons, however, presents a new trend and new constitutional issues concerning prisoner rights that the courts have just begun to address. Those issues include whether transfer to an out-of-state prison that would effectively prevent familial visitation violate an inmates constitutional right to rehabilitation, see *Brandon v. State Dep't of Corr.*, 938 P.2d 1029, 1030 (Alaska 1997) (deciding yes), and what due process, if any, is due to an inmate being transferred to an out-of-state facility.

Prison reform has come a long way in the United States from the original "hands off" doctrine. While the Supreme Court has addressed most of the rights afforded to prisoners, new constitutional questions continue to arise and prisoners' rights remain a dynamic and unsettled part of American Law.