aclu position paper

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Prisoners' Rights

points

The Prison Litigation Reform Act, passed in 1996, attempts to slam the courthouse door on society's most vulnerable members. It seeks to strip the federal courts of much of their power to correct even the most egregious prison conditions by altering the basic rules which have always governed prison reform litigation. The PLRA also makes it difficult to settle prison cases by consent decree, and limits the life span of any court judgment. Prison litigation has become the test case of Congress' power to strip federal courts of the authority to enforce the Constitution.

The ACLU is leading the nationwide challenge to PLRA. We have achieved key victories in our own cases, and provide ongoing assistance to groups and individual attorneys. In addition, our public policy efforts continue to denounce PLRA and attempt to influence congressional members to repeal its provisions.

DEAR FRIEND:

Thank you for contacting the ACLU concerning prisoners' rights. We hope the information contained in this bulletin will be a helpful resource. If you have access to the Internet, please visit our website at **www.aclu.org.** There are links to many organizations that, like the ACLU, are striving to fight for your rights. Also see the "Resources and Information" and "Advocating for Prisoners" sections of this bulletin. Thank you.

– ACLU Public Education Department and ACLU National Prison Project

disciplinary sanctions

Prisoners may challenge disciplinary sanctions imposed on them under the Due Process Clause of the Fourteenth Amendment.[1] Under *Sandin v. Conner,*[2] prison regulations do not give rise to protected due process 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.[3] 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.[4]

In *Edwards v. Balisok*,[5] the Supreme Court made it 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 sue in state court and get their disciplinary conviction set aside. Yet, despite these obstacles, the basic fact remains that a prisoner has the right to challenge disciplinary sanctions and convictions.

medical care

Prison officials are obligated under the Eighth Amendment to provide prisoners with

adequate medical care.[1] This principle applies regardless of whether the medical care is provided by governmental employees or by private medical staff under contract with the government.[2]

"Deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' proscribed by the Eighth Amendment."[3] In order to prevail on a constitutional claim of inadequate medical care, prisoners must show that prison officials acted with "deliberate indifference" to their serious medical needs, i.e., that officials knew of and disregarded a substantial risk of serious harm to the plaintiff's health.[4] A medical need is considered "serious" if it "causes pain, discomfort, or threat to good health."[5] Budget constraints do not excuse prison officials' liability for inadequate medical care.[6]

Proof of deliberate indifference may be established by direct or by circumstantial evidence. Some of the types of direct evidence prisoners might present are sick-call requests for medical attention or records reflecting:

- the date(s) when 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) when access was provided;
- specific medical staff seen;
- treatment provided by particular staff;
- the nature of follow-up care ordered and whether it was carried out;
- additional information to indicate the adequacy of treatment; and
- complaints and formal grievances filed regarding the inadequate care.

Prisoners should also try to obtain copies of their medical records to see whether medications were properly prescribed or administered and whether their overall treatment was appropriate or carried out properly.

Proof of 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 may be shown by deterioration in prisoners' health such as 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."[7]

Mental Health

Mental healthcare of prisoners is governed by the same constitutional standard of deliberate indifference as is medical care.

protection from assault

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

Protection from Inmate 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.[1] 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.[2] 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).[3] 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.[4] 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.[5]

There are two ways to try to show deliberate indifference in a prisoner

The Prison Litigation Reform Act (PLRA)

The 1996 Prison Litigation Reform Act (PLRA) makes it much harder for prisoners to file lawsuits in federal court. The provisions of this terrible law can be broken down into five main points:

1) **Prisoners have to first exhaust the prison's grievance procedure** before filing a lawsuit. This usually means describing your complaint in writing and giving it to the proper prison official. This complaint, called a grievance or kite, may be the first step. Some prisons may require the prison official to respond to your grievance to the warden, and then you would have to make an appeal to this response in writing. If you file a lawsuit before you have gone through every step of your prison's grievance procedure, chances are your lawsuit will be dismissed.

2) **Prisoners have to pay their own court filing fees.** If you don't have the money for these fees up front, you can pay the filing fee over a period of time by having monthly installments taken out of your prison commissary account. Court filing fees will, however, not be waived.

3) **Courts have the right to dismiss any prisoner lawsuit** as "frivolous," "malicious," or stating an improper claim. If the judge rules this, not only is the case thrown out of court, but the prisoner filing the case would get a "strike" called against him or herself. After getting three strikes, the prisoner cannot file another lawsuit unless he or she pays the entire court filing fee up front. The only time the up-front fee would be waived under a three-strike situation is if the prisoner is at risk of immediate and serious physical injury. But it is not always easy to prove this threat before the injury has occurred.

4) **Prisoners cannot file a lawsuit** for mental or emotional injury unless they can also show there has been physical injury.

5) **Federal prisoners run the risk of losing good-time credits** if the judge decides your lawsuit was filed in order to harass the people you sued, or that you lied or presented false information.

assault case. One involves prison officials' failure to respond or act reasonably in light of a particular threat of danger to an individual prisoner;[6] and the other involves prison conditions or practices that create a dangerous situation for prisoners in general.[7] Sometimes both theories apply to the same fact situation.

In addition to showing deliberate indifference, a prisoner must show that the actions or practices of prison officials actually caused the assault. There must be a connection between what prison officials did or failed to do and the harm that occurred.[8] Thus, courts have imposed liability on line correctional officers who observed an assault or knew of a risk to a prisoner, but did nothing;[9] on higher-level supervisors who made or failed to make policies, or failed to act on risks they knew about;[10] and on city or county government when a prisoner's assault resulted from a governmental policy.[11] Courts require prisoners to show how individually named defendants are responsible for causing the assault.[12]

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."[13] 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.[14]

The amount of force that courts consider excessive depends on the specific fact situation. As a general rule, however, the force used by prison staff must be more than "de minimis" (very small or insignificant) to violate the Eighth Amendment.[15] Courts disagree on what constitutes a de minimis use of force.[16] 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.[17] However, prisoners do not need to show a serious or permanent injury to establish an Eighth Amendment violation. The extent of the injury is simply one factor to consider in deciding whether staff acted maliciously and sadistically or in good faith.[18] Establishing malice does not require direct proof of what was in an officer's mind. Prison staff's actions alone, in light of the circumstances, may be sufficient to show malice.[19]

Resources and Information

Much of the information in this bulletin can be found in the *Prisoners' Self-Help Litigation Manual* (3d ed., 1995, Oceana Publications, Inc., NY) by John Boston & Daniel Manville. We include case names and citations for those who have access to law libraries and who want to read the court decisions that support this information. We recommend that you consult the *Manual* for more detailed information on any of the cases cited here. This book may be available at your prison library, or perhaps you can ask a friend or family member to consult it on your behalf.

The ACLU also publishes other legal information resources that may be helpful. Contact us at **800-775-ACLU** to order the following :

- *A Step-by-Step Guide to Using the Freedom of Information Act* (item #4002) $2.50
- *Prisoners' Assistance Directory* (item #2500) $30.

The ACLU National Prison Project publishes *The Journal,* a quarterly publication with in-depth analysis of significant new legislation and litigation affecting prisons, reports on AIDS and HIV in prison, and other pertinent information. An annual subscription costs $30 ($2 for prisoners).

Write the **Project** at:
1875 Connecticut Ave., NW, Suite 410
Washington, DC 20009

Many organizations are trying to sway the tide back to more humane conditions and more legal recourse for incarcerated people. Some of those which may be helpful are:

The Prison Activist Resource Center
PO Box 339
Berkeley, CA 94701
(510) 845-8813
www.prisonactivist.org

National Criminal Justice Reference Service
PO Box 6000
Rockville, MD 20849-6000
(800) 851-3420 or (301) 519-5500
www.ncjrs.org

Families Against Mandatory Minimums
1612 K Street NW, Suite 1400
Washington, DC 20006
(202) 822-6700
www.famm.org

notes and citations

This position paper contains cites to legal cases that you can read if you want more information. The cites look like this: Thomas v. Stalter, 20 F.3d 298, 302 (7th Cir. 1994). If you want to look at the cases, you can look them up in the law library. The first number (20 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 numbers (298, 302) are the pages at which the case is published. The information in parentheses (7th Cir. 1994) tells you the court and the year that the case was decided. Ask a law clerk or a friend for help in figuring out the abbreviations.

Disciplinary Sanctions

[1] Prisoners 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, 486-87, 114 S.Ct. 2364, 2372 (1994).

[2] 515 U.S. 472, 115 S.Ct. 2293 (1995).

[3] See, 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); McGuiness v. DuBois, 75 F.3d 794 (1st Cir. 1996); Mitchell v. Dupnik, 75 F.3d 517 (9th Cir. 1995).

[4] See Ayers 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.

[5] 520 U.S. 641, 117 S.Ct. 1584 (1997).

Medical Care

[1] See Estelle v. Gamble, 428 U.S. 97, 103, 96 S.Ct. 2831, 2856 (1976).

[2] See West v. Atkins, 487 U.S. 42, 57-58, 96 S.Ct. 2250, 2260 (1988); Richardson v. McKnight, 521 U.S. 399, 117 S.Ct. 2100 (1997).

[3] Estelle v. Gamble, 429 U.S. at 104, 96 S.Ct. at 2857.

[4] See Farmer v. Brennan, 511 U.S. 825, 114 S.Ct. 1970 (1994).

[5] Dean v. Coughlin, 623 F.Supp. 392, 404 (S.D.N.Y. 1985); Hemmings v. Gorczyk, 134 F.3d 104, 108 (2d Cir. 1998). Constitutional medical needs also include special diets that are medically prescribed.

Advocating for Prisoners

In general, the ACLU is only able to consider taking on cases that will help large groups of prisoners with very serious legal problems (class action suits). If you are incarcerated, and have a problem that affects many prisoners, please describe it in detail, ask other prisoners to sign the description with you and send it to our National Prison Project (see "Resources" on p.3). We are able to investigate some of the most serious complaints we hear about, but unfortunately, we cannot investigate each one, and writing us does not guarantee that we can take on your case.

It is clear that the PLRA and other laws, as well as the decisions in several legal cases, do not make it easy for an incarcerated person to have his or her day in court. We advise you to be as strong an advocate for yourself as you possibly can.

- Try to get relatives or friends to contact wardens and local elected officials on behalf of yourself and other prisoners.
- Write local groups that help prisoners with the type of problem you have. (The names of some groups are listed on p.3.)
- File a lawsuit in federal court if you have exhausted your prison's grievance procedure, and are pretty sure that you don't run the risk of having the case dismissed.

[6] See Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 392-93 (1992).

[7] Farmer v. Brennan, 511 U.S. at 843 n.8, 114 S.Ct. at 1982 n.8.

Assault

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

[2] See Farmer v. Brennan, 511 U.S. at 847, 114 S.Ct. at 1984.

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

[4] See Farmer v. Brennan, 511 U.S. at 844-45, 114 S.Ct. at 1982-83.

[5] See Davidson v. Cannon, 474 U.S. 344, 346, 106 S.Ct. 668, 669 (1986).

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

[7] 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).

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

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

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

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

[12] 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).

[13] Hudson v. McMillian, 503 U.S. 1, 6, 112 S.Ct. 995, 999 (1992).

[14] See Graham v. Connor, 490 U.S. 386, 397, 109 S.Ct. 1865, 1872 (1989) (arrestees); Johnson v. Glick, 481 F.2d 1028, 1033 (2d Cir. 1973) (pre-trial detainees); Hudson, 503 U.S. at 5-6, 112 S.Ct. at 998-99 (convicted prisoners).

[15] See Hudson, 503 U.S. at 9-10, 112 S.Ct. at 1000.

[16] 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 are 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).

[17] 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).

[18] See Hudson, 503 U.S. at 7-9, 112 S.Ct. at 999-1000.

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

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