

# LEGAL BULLETIN 4.1

## Rights of Pretrial Detainees

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### Introduction

For purposes of this bulletin, pretrial detainees are incarcerated individuals who are held in jail pending disposition of criminal charges against them, and have not yet been convicted and sentenced or acquitted. This bulletin will not address situations where an individual despite dismissal of charges remain incarcerated. The general overview of the subject provided here is meant to serve only as a starting point for your own research. As will be mentioned later, pretrial detainees have, at a minimum, the same rights and privileges as sentenced inmates, so be careful to not overlook some helpful legal materials and cases simply because they may not deal exclusively with the rights of pretrial detainees.

### Discussion

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. Nevertheless, 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. Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed. 447 (1979). Any other rule or approach would nullify the basic proposition that a person is innocent unless there is a judicial determination of guilt. A sentenced or unsentenced prisoner may not be punished because of the pending charge, unless it involves conduct he engaged in during incarceration.

The presumption of innocence ends when a person is convicted or enters a guilty plea and is sentenced pursuant to that plea. Ingraham v. Wright, 430 U.S. 651, 97 S.Ct. 1401, 51 L.Ed.2d 711 (1977); Kennedy v. Mendoza-Martinez, 372 U.S. 144, 83 S.Ct. 554, 9 L.Ed. 644 (1963). Even if an individual has let it be known that he intends to plead guilty to the charges, he retains the legal status and protections of the presumption of innocence until the court finalizes it. A pretrial detainee can not be punished before there is a formal adjudication of guilt. Pippins v. Adams County Jail, 851 F.Supp.1228 (C.D.Ill. 1994). Pretrial detainees do not forfeit all their constitutional rights just because they are in custody. However, they do not possess the full range of freedoms of people who are not incarcerated. Magill v. Lee County, 990 F.Supp.1382 (M.D. Ala. 1998). For example a detainee has substantial, but not absolute, Fourth Amendment rights of privacy and freedom from unreasonable searches. Clark v. Tinnin, 731 F.Supp. 998 (Colo. 1990).

Courts have held that the government may take measures that are reasonably calculated to effectuate pretrial detention. The authority to take these measures is based upon the legitimate government interests to manage the facility in which the individual is detained. Another basis for the authority of prison officials over pretrial detainees comes from the responsibility of prison officials to ensure the appearance of detainees at trial. Newkirk v. Sheers, 834 F.Supp.772 (E.D.Pa.1993). These legitimate operational concerns may require administrative measures that go beyond those that, strictly speaking, are necessary to ensure that a detainee is available to authorities for trial. Therefore, the government must be able to take steps to maintain security and order at the institution and make certain no weapons or illicit drugs reach the detainees.

The prison's authority to set limits and impose conditions rest primarily upon the responsibility of the prison to provide effective management and security. Most of the cases that arise concerning pretrial detainees will compare the restriction of the detainees' rights to the interests of the prison to maintain order and security. The specific question usually involves an evaluation of whether the prison's actions constitute punishment or legitimate security and management issues.

While the government may not punish pretrial detainees, it may impose upon them conditions and restrictions necessary to maintain jail security. However, these conditions and restraints must be reasonably related to the legitimate goals or interest of the jail. In Jones v. Thompson, 818 F.Supp. 1263 (S.D.Ind.1993), the court found that even though intervention by jail officials was warranted when an inmate attempted suicide that the use of three-way restraints coupled with the absence of medical treatment and denial of even basic amenities such as personal hygiene and toilet usage was not reasonably related to the legitimate purposes of the jail and therefore constituted punishment in violation of the detainee's due process rights.

The restrictive measures used by prison officials may be discomforting. As long as they are reasonably related to the effective management of the facility where the person is confined, they are not considered to be punishment for the crime that the detainee is suspected of committing. In a judicial review of measures used by institutions of confinement, courts may consider whether the implementation of such measures is "peculiarly within the province and professional expertise of corrections officials." In the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts will ordinarily defer to the correctional professionals' expert judgment in such matters.

As mentioned above, a pretrial detainee can not be punished for the charges that he is waiting to go to trial for, he may be punished for misconduct that occurs while in pretrial confinement. In Mitchell v. Dupnik, 75 F.3d 517 (9<sup>th</sup> Cir. 1996) the court held that a pretrial detainee who is subjected to disciplinary segregation must be provided with a due process hearing to determine whether they have in fact violated any rule and if the pending discipline is the appropriate institutional action. This disciplinary due process hearing also serves the purpose of insuring that the disciplinary action is, in fact, what it purports to be and is not really punishment in advance of conviction for the crime that led

to the detention. The court in Mitchell, held that the prison's policy of not allowing inmates to call witnesses on their behalf during disciplinary proceedings violated due process.

Pretrial detainees pursuing legal remedy for improper punishment should raise the issues under a claim of denial of Due Process (U.S. Constitution's Fifth and Fourteenth Amendments and state constitutional due process guarantees). A sentenced inmate challenging a similar institutional action would ordinarily proceed under an Eighth Amendment claim of cruel and unusual punishment. See, Collignon v. Milwaukee County, 163 F.3d 982 (7<sup>th</sup> Cir. 1998).

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. In Zarnes v. Rhodes, 64 F.3d 285, 290 (7<sup>th</sup> Cir. 1995), the court held that an inmate's allegation that prison guards had shown deliberate or reckless disregard for her safety by placing her with a dangerous inmate, was sufficient to state a claim under the Due Process Clause. Deliberate indifference which violates due process rights requires a showing that prison officials intended for the inmate to die or suffer grievously or that they acted with criminal recklessness. Allegations of negligence or even gross negligence do not amount to punishment of pretrial detainees in this type of action. The situation in Zarnes, supra, must be distinguished from situations where a detainee is placed under restrictive conditions for security purposes that is reasonably related to prison's responsibility and therefore not actionable, Boudin v. Thomas, 543 F.Supp.686 (S.D.N.Y. 1982).

Merely housing a detainee in the same area as sentenced, committed persons does not constitute deliberate indifference to risk of substantial harm. Faulcon v. City of Philadelphia, 18 F. Supp.537 (E.D.Pa. 1998). Compare: Newkirk v. Sheers, 834 F.Supp.772 (E.D.Pa.1993) where it was found that housing pretrial detainees with other inmates in cells designed for a single person and forcing the pretrial detainees to sleep on mattresses on the floors of those cells for periods of between six and fourteen nights violated the detainees due process rights under the Fourteenth Amendment.

Deliberate indifference was shown in Telfair v. Gilberg, 868 F.Supp. 1396 (S.D.Ga.1994), affirmed 87 F.3d 1330, where a pretrial detainee's medical condition prevented him from sitting on his bunk without assistance and the prison guard responded to that disability by shoving the detainee to the floor.

When researching issues of conditions of confinement and allowable restrictions upon pretrial detainees, be sure to check state constitutions, state statutes and applicable regulations. Sometimes these will require more protections and rights for individuals in jail awaiting trial than the federal Constitution and the cases, which have interpreted and applied the Constitution.

Another valuable resource for research can be the prison's policies and the regulations upon which those policies were based. In Strandell v. Jackson County, the court found

that the mandatory language of Illinois' county jail standards provided that detainees shall be assigned suitable quarters and that an emotionally disturbed detainee shall be kept under constant supervision and shall be immediately evaluated by a physician. These standards provided the bases of a protected liberty interest and an expectation of certain minimal standards and treatment. If a prison does not follow its own regulations, it will be more difficult for its officials to argue that their actions or inaction are justified and proper.

When reviewing rules and policies, be careful to examine the language used to determine if the standards and guidelines are mandatory or merely recommendations. If the rules are mandatory, failure by the prison to follow them will substantially strengthen a claim that arises concerning harm to or restrictions upon pretrial detainees. However, if the statutory provision or administrative policy is regarded as advisory and not binding, failure to follow them, while still relevant, will not carry as much weight with the courts. In Faulcon v. City of Philadelphia, 8 F.Supp.2d 537 (E.D.Pa.1998), the court found that a state statutory provision, for housing sentenced prisoners separately from pretrial detainees was merely a recommended guideline rather than a mandatory requirement. Therefore, the correctional facility's failure to implement this guideline in relation to the prisoner did not support the pretrial detainee's claim of a violation of Due Process based upon a failure to protect him.

In addition to reviewing the regulations and standards for prisons, it can also be useful to know when the absence of policy and procedure guidelines may be relevant in court actions. In Faulkner v. Mc Locklin, 727 F.Supp.486 (N.D.Ind. 1989) the county jail had adopted no policy or procedure concerning marking of legal mail. They violated a pretrial detainee's civil rights by opening letters from the American Civil Liberties Union, legal services program, and a United States Senate committee, outside of the detainee's presence. The letters were from attorneys and a senator and had been sufficiently designated to alert the prison officials, absent specific requirements articulated by the jail, of their privileged nature.

Any prisoner who believes that his rights as a pretrial detainee have been violated is required to follow the institution's grievance policy and procedure. Courts will not review such claims until all administrative remedies have been exhausted. There are a few exceptional situations, such as a serious life threatening condition, which a court will hear before the conclusion of the administrative process, but these are very rare.

Courts, in general, are more lenient towards detainees than convicts on visitation issues. In U.S. v. Gallo, 653 F.Supp.320 (E.D.N.Y. 1986), the court stated that detained defendants should be allowed as much liberty as possible considering the limited purpose of their detention. Such liberty included relatively free access to family, attorneys and recreational and educational opportunities.

Many pretrial detainee cases apply the legal standard that the prison need only show a legitimate and reasonable administrative interest to justify restrictions placed upon pretrial detainees. However, in certain cases, some courts have required that restrictions

on access to visitors for pretrial detainees must be justified by a compelling state interest. See, Epps v. Levine, 480 F.Supp.50 (D.Md.1979). Like any other issue of law, it will be necessary to find the cases that apply in the circuit that has jurisdiction of the inmate's case. This higher standard is applied most often when there is a fundamental Constitutional right at issue. For example, in questions of visitation by an attorney, the Sixth Amendment right to defense counsel raises a higher degree of court scrutiny than a question of the right to social visits by family members.

In spite of some leniency sometimes allowed to pretrial detainees, wardens have discretion to control visitation. This wide discretion, for example, allows wardens to deny visiting privileges when they have any suspicion that a visitor is attempting to bring in contraband. Smith v. Matthews, 793 F.Supp.998 (D. Kan. 1992). In this case a mere suspicion was enough to overcome the detainee's visiting privileges. The court in Charon v. Medium Sec. Inst., 730 F.Supp.987 (E.D.Mo.1989) held that that there is no constitutional requirement that mandates pretrial detainees be allowed contact visits when administrators have determined that such visits will jeopardize security at the facility.

Pretrial detainees retain such constitutionally protected interests as Sixth Amendment rights to effective assistance of counsel and to a speedy trial. Detainees should have at least as many rights as those granted to convicted persons, Ryan v. Burlington County, 674 F.Supp.464 (D.N.J.1987). In Ryan jail overcrowding was deemed to constitute prohibited punishment of a pretrial detainee who was rendered quadriplegic by the actions of his cellmate. If pretrial detainees are placed under conditions that would amount to cruel and unusual punishment under the Eighth Amendment for convicted prisoners, these conditions would likewise be a violation of Due Process in relation to the detainees, Carver v. Knox County, Tenn., 753 F.Supp. 1370 (E.D. Tenn. 1989).

Ryan illustrates the degree of seriousness or severity of the injury or restriction. Compare Ryan who was rendered a quadriplegic and was granted relief by the court and Ellis v. Meade, 887 F.Supp.324 (D.Mo.1995), where a pretrial detainee brought an action because a corrections officer patted him on the buttocks. The court found the patting was not done to punish but was done to placate the detainee. Therefore it was deemed to be rationally connected to the officer's stated purpose and was not excessive.

Even though courts ordinarily deny remedy if the seriousness of the injury or restriction is not severe, there are exceptions. Officials' actions may result in a finding that the prisoner's constitutional rights have been violated if the inmate alleges and proves that prison officials acted in retaliation for his having exercised a substantive due process right such as the right to petition for redress of grievances. See, Warburton v. Underwood, 2 F.Supp.2d 306 (W.D.N.Y. 1998).

The Thirteenth Amendment to the United States Constitution was adopted to end slavery. It states that individuals shall not be subjected to "involuntary servitude." Some prisoners have argued that being required to do certain tasks at the prison amounted to a violation of that amendment. In Ford v. Nassau County Executive, 4 F.Supp.2d 392 (E.D.N.Y. 1999), the court held that requiring a pretrial detainee to work without

payment as a food cart worker did not violate the Thirteenth Amendment. The court found that this job for which the inmate received at least some consideration, although not pay, did not rise to the level of indignity and degradation that accompanied slavery.

Rights of pretrial detainees are similar to those of sentenced prisoners. The areas where detainees' receive more protection are primarily related to constitutional rights that concern the ability to prepare for trial. When an inmate is preparing a grievance or court case it is very important to relate every restriction or violation to a constitutional right if at all possible. For example, if visitation with a family member is being restricted, the inmate should not only complain of the detrimental effect such restrictions may have upon his and his family's emotional well being, but, if factual, include how such restrictions impinge on fundamental constitutional rights. For instance, if the family member is assisting in gathering information for defense at the trial, include this fact and the relevant constitutional provision concerning such rights.