

# **KNOW YOUR RIGHTS**

## **DISCIPLINARY SANCTIONS AND PUNISHMENT**

ACLU National Prison Project

**Important Note:** The law is always evolving. If you have access to a prison law library, it is a good idea to confirm that the cases and statutes cited below are still good law. The date at the bottom of this page indicates when this information sheet was last updated.

### **Examples of disciplinary punishment**

Examples of disciplinary punishment include: physical punishment, punitive segregation, losing visitation privileges, restricting visitation privileges, monetary restitution, water deprivation, reducing shower privileges and extending sentences. You may not have received a disciplinary hearing before receiving this type of punishment or, if you did, it may not have been a fair hearing. Unfortunately we do not have the resources to assist the many prisoners who have written us about these sorts of problems. We can, however, provide the following information.

### **Challenging the Nature of the Punishment You Received**

Courts give deference to prison officials' decisions about disciplinary punishment. Punishments that fulfill legitimate penological interests (e.g., rehabilitation and crime prevention) are generally upheld. The Supreme Court has provided four factors to decide whether prison regulations violate the Constitution.<sup>1</sup> These factors are: (1) whether the regulation has a "valid, rational connection" to a legitimate governmental interest; (2) whether alternative means are open to inmates to exercise the asserted right; (3) what impact an accommodation of the right would have on guards and inmates and prison resources; and (4) whether there are "ready alternatives" to the regulation.<sup>2</sup>

For example, the Supreme Court has held that a prison administration's decision to restrict visitation for prisoners with two substance abuse violations served the legitimate goal of deterring drug and alcohol use within prison.<sup>3</sup> The Court found that the punishment fulfilled the four evaluation factors listed above although the ban on visits from people other than clergy and attorneys on official business lasted a minimum of two years.<sup>4</sup>

Monetary restitution for property damage or other offenses that cost the prison money is

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<sup>1</sup> See Turner v. Safley, 482 U.S. 78, 89-91 (1987).

<sup>2</sup> Id.

<sup>3</sup> Overton v. Bazzetta, 539 U.S. 126 (2003).

<sup>4</sup> Id.

a permissible form of punishment.<sup>5</sup> Because many prisons have various “tiers” or “levels” of discipline, with different punishments for each, prisoners who commit the same violation may receive different punishments. However, disparities in punishment do not necessarily violate constitutional rights unless the challenged punishment can be proven to be arbitrary.<sup>6</sup>

Although courts would find most punishments with legitimate penological interests constitutional, they have found punishments that involve physical abuse or degrading conditions of punitive confinement unconstitutional.<sup>7</sup> Although courts are reluctant to interfere with the administration of prisons, they probably will dislike punishments that are disproportionate, or that offend idealistic concepts of dignity, civilized standards, humanity and decency.<sup>8</sup> However, courts rarely find prison punishments disproportionate.<sup>9</sup>

### **Challenging the Disciplinary Sanction Itself**

Prisoners may challenge disciplinary sanctions imposed on them under the Due Process Clause of the Fourteenth Amendment.<sup>10</sup> The Supreme Court has said that inmates are not entitled to hearings (or other due process procedures) for disciplinary punishments unless (1) there is a state-created liberty interest in freedom from such punishment, and (2) the punishment imposes atypical and significant hardship.<sup>11</sup> The Supreme Court has not fully defined “atypical and significant hardship.” Most circuits have found that administrative segregation without more does not rise to the level of an atypical and significant hardship.<sup>12</sup> However, in Wilkinson v. Austin, the Supreme Court concluded that being sent to a supermax facility with limited human contact for an indefinite sentence and with no opportunity for parole does satisfy the “atypical and

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<sup>5</sup> Longmire v. Guste, 921 F.2d 620, 623-24 (5<sup>th</sup> Cir. 1991).

<sup>6</sup> Phillips v. Gathright, 603 F.2d 219 (4<sup>th</sup> Cir. 1979).

<sup>7</sup> Jackson v. Bishop, 404 F.2d 571, 579 (8<sup>th</sup> Cir. 1968) (Eighth Circuit enjoined the use of the strap until proper regulations and safeguards against abuse were implemented).

<sup>8</sup> Id.

<sup>9</sup> See, e.g., Savage v. Snow, 575 F.Supp. 828, 836 (S.D.N.Y. 1983) (upholding 90 days loss of good time and confinement in segregation for abuse of correspondence).

<sup>10</sup> Prisoners may also 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).

<sup>11</sup> Sandin v. Conner, 515 U.S. 472 (1995).

<sup>12</sup> See Beverati v. Smith, 120 F.3d 500 (4<sup>th</sup> Cir. 1997); Mackey v. Dyke, 111 F.3d 460 (6<sup>th</sup> Cir. 1997); Pichardo v. Kinker, 73 F.3d 612 (5<sup>th</sup> Cir. 1996); Luken v. Scott, 71 F.3d 192 (5<sup>th</sup> Cir. 1995).

significant hardship" test.<sup>13</sup>

Once a prisoner asserts that the discipline imposed is significant and atypical, he or she must still establish that the procedures in place were inadequate. To make this determination, a court must consider three factors: (1) the private interest involved; (2) the risk of an erroneous deprivation of such interest and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the burdens that different or additional procedural requirements would entail.<sup>14</sup> For example, although the Supreme Court concluded in Wilkinson v. Austin that being sent to a supermax facility *could* violate the Due Process clause, it ultimately concluded that the procedural safeguards were sufficient, and that there was no constitutional violation. In reaching this decision, the Court put much emphasis on the fact that the prisoner was given notice and an opportunity to be heard, and was provided with many opportunities to challenge an erroneous Supermax placement.<sup>15</sup>

The Supreme Court has 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.<sup>16</sup>

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<sup>13</sup> 125 S.Ct. 2384, 2394-95 (2005).

<sup>14</sup> Id.

<sup>15</sup> Id. at 2395-98.

<sup>16</sup> Edwards v. Balisok, 520 U.S. 641 (1997).