

**An Abridged Version:
Overview of Prisoners' Rights**

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Overview of Prisoners' Rights

Introduction

What follows is a brief overview of the issues concerning prison conditions and practices that commonly affect LGBT clients. This is not a complete research guide, not an exhaustive list of possible causes of action. It is intended to give a bird's eye view of the field.

I. Conditions of Confinement

The primary guarantor of decent living conditions for prisoners is the Eighth Amendment's prohibition of cruel and unusual punishments.

A. The subjective element

Eighth Amendment claims require proof of a subjective element or state of mind requirement, according to the Supreme Court, because the word "punishment" necessarily implies such a requirement.¹ So far the Court has identified two different state of mind requirements in Eighth Amendment cases.

1. Conditions of confinement cases: deliberate indifference

In cases about conditions of confinement, the plaintiff must show "deliberate indifference."² Indifference to what? That's the objective prong of the Eighth Amendment standard, discussed below.

Deliberate indifference means subjective or criminal law recklessness, *i.e.*, disregard for known risks, not risks the defendant should have known about.³ On the other hand, the obviousness of a risk may support an inference of actual knowledge,⁴ as may other relevant

¹ *Wilson v. Seiter*, 501 U.S. 294, 298-99 (1991); *see Farmer v. Brennan*, 511 U.S. 825, 854-55 (1994) (Blackmun, J., concurring in result) (exposing fallacy of that reasoning); *Coleman v. Wilson*, 912 F.Supp. 1282, 1299 n. 11 (E.D.Cal. 1995) (same).

² *Farmer v. Brennan*, 511 U.S. at 834.

³ *Farmer*, 511 U.S. at 839-43; *see Salahuddin v. Goord*, 467 F.3d 263, 282 (2d Cir. 2006) (holding five-month delay in hepatitis C treatment was not reasonable, but doctor could not be held liable absent evidence that he knew the risk of harm).

⁴ *Farmer*, 511 U.S. at 842-43; *see Vinning-El v. Long*, 482 F.3d 923, 924-25 (7th Cir. 2007) (holding jury could infer that guards working in the area knew about grossly filthy cell conditions); *Gates*

circumstances.⁵ Purposefully avoiding knowledge may also amount to deliberate indifference.⁶ The defendant need not know the precise nature of the risk as long as he or she knows that a serious risk exists.⁷

A defendant need not have knowledge of a specific risk to a specific individual from a specific source; *e.g.*, in an inmate-inmate assault case, “it does not matter whether the risk comes from a single source or multiple sources, any more than it matters whether a prisoner faces an excessive risk of attack for reasons personal to him or because all prisoners in his situation face such a risk.”⁸

Injunctive cases are official capacity cases and are “in all respects other than name, to be treated as a suit against the entity.”⁹ In them the focus may be on “the institution’s historical indifference” rather than the state of knowledge and response of a particular individual.¹⁰ In an injunctive case, the knowledge necessary to support the grant of relief may come from the judicial proceeding itself.¹¹

Deliberate indifference is negated if prison officials “responded reasonably to the risk,

v. Cook, 376 F.3d 323, 343 (5th Cir. 2004) (holding deliberate indifference finding supported by “obvious and pervasive nature” of challenged conditions).

⁵ *Hope v. Pelzer*, 536 U.S. 730, 738 n.8 (2002) (holding particular defendants’ awareness of a risk of harm “may be evaluated in part by considering the pattern of treatment that inmates generally received” as a result of the challenged practice); *Hall v. Bennett*, 379 F.3d 462, 465 (7th Cir. 2004) (holding knowledge of the risk of working with live electrical wires without gloves could be shown by a prison rule barring working with live wires and by general safety codes that would be known to an electrical foreman); *LaMarca v. Turner*, 995 F.2d 1526, 1536 n. 21 (11th Cir. 1993) (holding warden’s “supervisory role and the insular character of prison communities” supported inference of knowledge of “apparent” conditions), *cert. denied*, 510 U.S. 1164 (1994).

⁶ *Farmer*, 511 U.S. at 843 n. 8; *see Goebert v. Lee County*, ___ F.3d ___, 2007 WL 4458122 at *12-13 (11th Cir. 2007) (jail captain had a duty to “look into” pregnant prisoner’s complaint that she was leaking fluid, her condition was worsening, and she had not seen an obstetrician).

⁷ *Velez v. Johnson*, 395 F.3d 732, 736 (7th Cir. 2005).

⁸ *Farmer*, 511 U.S. at 843; *Greene v. Bowles*, 361 F.3d 290, 294 (6th Cir. 2004) (holding that a transsexual prisoner could recover for assault by a known “predatory inmate” either because leaving her in a unit containing high-security inmates threatened her safety, or because placing that inmate in protective custody created a risk for its occupants generally).

⁹ *Kentucky v. Graham*, 473 U.S. 159, 166 (1985).

¹⁰ *LaMarca v. Turner*, 995 F.2d at 1542.

¹¹ *Farmer*, 511 U.S. at 846 n.9; *Hadix v. Johnson*, 367 F.3d 513, 526 (6th Cir. 2004).

even if the harm ultimately was not averted.”¹² However, actions that are “not adequate given the known risk” do not defeat liability.¹³

2. Use of force cases: malicious and sadistic treatment

A stronger showing of intent is required in use of force cases: “When prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency are always violated.”¹⁴ The rationale for requiring such a showing is the need to balance restoration of security and order against prisoners’ rights and the need to act quickly and decisively.¹⁵ However, the applicability of that standard does not turn on the existence of a genuine security need in a particular case; it applies in use of force cases even if it appears there was no genuine security need for force (as *Hudson v. McMillian* itself showed), and the malicious and sadistic standard has generally not been extended to security-related matters other than the direct and immediate use of force by staff.¹⁶ Thus, claims that supervisory officials have failed to train, supervise, investigate, discipline, or otherwise control their subordinates’ use of force are subject to the deliberate indifference standard,¹⁷ as are “bystander liability” claims that staff failed to intervene in excessive force by other staff.¹⁸ The same is true of security-related policy decisions not involving the use of force¹⁹ and even of uses of force that do not involve an immediate need to restore security and order.²⁰ Inmate-inmate assaults that pose security risks are also governed

¹² *Farmer*, 511 U.S. at 844.

¹³ *Riley v. Olk-Long*, 282 F.3d 592, 597 (8th Cir. 2002);

¹⁴ *Hudson v. McMillian*, 503 U.S. 1, 9 (1992).

¹⁵ *Hudson*, 503 U.S. at 7.

¹⁶ *See Farmer v. Brennan*, 511 U.S. 825, 835 (1994) (stating that the deliberate indifference standard is inappropriate in “one class of prison cases: when ‘officials stand accused of using excessive physical force.’”) (emphasis supplied).

¹⁷ *Blyden v. Mancusi*, 186 F.3d 252, 264 (2d Cir. 1999); *Madrid v. Gomez*, 889 F.Supp. 1146, 1249 (N.D.Cal. 1995).

¹⁸ *Buckner v. Hollins*, 983 F.2d 119, 122 (8th Cir. 1993).

¹⁹ *Trammell v. Keane*, 338 F.3d 155, 162-63 (2d Cir. 2003) (applying deliberate indifference standard to extreme disciplinary measures imposed on a disruptive prisoner because they were “preplanned and monitored”).

²⁰ *Hope v. Pelzer*, 536 U.S. 730, 737-38 (2002) (applying deliberate indifference standard to “hitching post” restraint procedure used after any immediate security risk had abated); *Coleman v. Wilson*, 912 F.Supp. 1282, 1321-22 (E.D.Cal. 1995) (applying deliberate indifference standard to use of tasers against prisoners taking psychotropic medications because the policy itself requires deliberation before use).

by the deliberate indifference standard.²¹

3. Calculated harassment unrelated to prison needs

The Supreme Court has held that cell searches amounting to “calculated harassment unrelated to prison needs” may constitute cruel and unusual punishment in violation of the Eighth Amendment.²² Though the Court has not mentioned this holding in 20 years, it is still good law,²³ and presumably is applicable to other forms of harassing conduct besides searches.²⁴ Arguably such harassment is equivalent to malicious and sadistic conduct.²⁵

B. The objective element: “sufficiently serious”

The prisoner must show that challenged conditions are “sufficiently serious to violate the Eighth Amendment.”²⁶ In medical care cases, the Eighth Amendment is violated by deliberate indifference to “serious medical needs.”²⁷ In subsequent decisions the Supreme Court has held generally that deliberate indifference to “excessive risks to inmate health or safety” violate the

²¹ *MacKay v. Farnsworth*, 48 F.3d 491, 493 (10th Cir. 1995) (holding district court erred in applying malicious and sadistic standard to inmate assault case even though the assault presented a security threat).

²² *Hudson v. Palmer*, 468 U.S. 517, 530 (1984).

²³ *See Harper v. Showers*, 174 F.3d 716, 720 (5th Cir. 1999) (holding allegation of frequent searches for no purpose but to harass was not frivolous).

²⁴ *But see Johnson v. Dellatifa*, 357 F.3d 539, 546 (6th Cir.) (holding allegations that an officer continuously banged and kicked his cell door, threw food trays through the slot so hard the top came off, made aggravating remarks, insulted him about his hair length, growled and snarled through the cell window and smeared the window so he couldn’t see out, behaved in a racially prejudiced manner towards him, and jerked and pulled him unnecessarily hard when escorting him from his cell would, if true, “demonstrate shameful and utterly unprofessional behavior by [the officer], they are insufficient to establish an Eighth Amendment violation”), *cert. denied*, 543 U.S. 837 (2004). *Compare Parrish v. Johnson*, 800 F.2d 600, 604 (6th Cir. 1986) (holding that an officer’s waving of a knife in a paraplegic prisoner’s face, knife-point extortion of potato chips and cookies, incessant taunting, and failure to relay requests for medical care to the nurses violated the Eighth Amendment. The court emphasizes the plaintiff’s paraplegic condition, his dependence on the officer who was abusing him, and the resulting “significant mental anguish.”)

²⁵ *See Whitman v. Nestic*, 368 F.3d 931, 934 (7th Cir. 2004) (equating “calculated harassment” to searches “maliciously motivated, unrelated to institutional security, and hence ‘totally without penological justification’”) (citation omitted).

²⁶ *Chandler v. Crosby*, 379 F.3d 1278, 1289 (11th Cir. 2004).

²⁷ *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

C. Recurring issues in medical care cases

1. Deliberate indifference

In applying the deliberate indifference principle in medical care cases, an essential principle is that lapses and differences of medical judgment are not actionable.²⁹ However, that does not mean prison doctors' decisions are *per se* unassailable; "a medical professional's erroneous treatment decision can lead to deliberate indifference liability if the decision was made in the absence of professional judgment."³⁰ In all cases, the question is whether legitimate medical judgment is actually at issue.

2. Serious medical needs

The most common definition of "serious medical need" is "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity of a doctor's attention."³¹

In cases of temporary delay or interruption of treatment, the proper question may be whether the delay or interruption—not the underlying medical condition—is objectively serious enough to present an Eighth Amendment question.³²

²⁸ Farmer v. Brennan, 511 U.S. 825, 836 (1994) (addressing risk of inmate-inmate assault); see Helling v. McKinney, 509 U.S. 25, 33 (1993) (holding risks of future harm actionable in case involving environmental tobacco smoke).

²⁹ See McElligott v. Foley, 182 F.3d 1248, 1256-57 (11th Cir. 1999) (holding failure to diagnose prisoner's cancer was not deliberate indifference, though failure to treat his worsening pain might be); Perkins v. Kansas Dept. of Corrections, 165 F.3d 803, 811 (10th Cir. 1999) (denial of protease inhibitor to prisoner with HIV upheld, since other treatment was provided).

³⁰ Johnson v. Doughty, 433 F.3d 1001, 1013 (7th Cir. 2006); see Erickson v. Pardus, 127 S.Ct. 2197, 2200 (2007) (per curiam) (holding that allegation that a prison doctor stopped plaintiffs Hepatitis C medication even though he had commenced a one-year treatment program and needed treatment for the disease pled an Eighth Amendment claim).

³¹ Brown v. Johnson, 387 F.3d 1344, 1351 (11th Cir. 2004) (holding HIV and hepatitis were serious needs); Hill v. DeKalb Regional Youth Detention Center, 40 F.3d 1176, 1187 (11th Cir. 1994).

³² Smith v. Carpenter, 316 F.3d 178, 186-89 (2^d Cir. 2003) (holding brief interruptions of HIV medications, with no discernible adverse effects, did not present serious medical needs; noting that a showing of increased risk, even absent presently detectable symptoms, might be serious enough).

3. Mental health care

Mental health care is governed by the same deliberate indifference/serious needs analysis as physical health care.³³ Serious mental illness has been defined by one court as one “that has caused significant disruption in an inmate’s everyday life and which prevents his functioning in the general population without disturbing or endangering others or himself.”³⁴ Immediate psychological trauma may also constitute a serious need.³⁵ Transsexualism or gender identity disorder (GID) is generally recognized as a serious medical need at least in some cases,³⁶ though courts have differed over the extent of prison officials’ obligations in such cases.³⁷

D. Recurring issues in use of force cases

1. Intent requirement

As noted above, convicted prisoners must show that force was used against them with malicious and sadistic intent.³⁸

³³ Langley v. Coughlin, 888 F.2d 252, 254 (2d Cir. 1989); Dolihite v. Maughon by and through Videon, 74 F.3d 1027, 1042-43 (11th Cir.) (holding a prison staff member who knew of the decedent’s extensive history of mental illness and suicidal behavior and talk could be held liable for taking him off close observation if she was shown to be aware of his recent self-injurious behavior), *cert. denied*, 519 U.S. 870 (1996).

³⁴ Tillery v. Owens, 719 F.Supp. 1256, 1286 (W.D.Pa. 1989), *aff’d*, 907 F.2d 418 (3d Cir. 1990).

³⁵ Carnell v. Grimm, 872 F.Supp. 746, 756 (D.Haw. 1994) (holding that “an officer who has reason to believe someone has been raped and then fails to seek medical *and psychological* treatment after taking her into custody manifests deliberate indifference to a serious medical need”), *appeal dismissed in part, aff’d in part*, 74 F.3d 977 (9th Cir. 1996) (emphasis supplied).

³⁶ Cuoco v. Moritsugu, 222 F.3d 99, 106 (2d Cir. 2000) and cases cited.

³⁷ See Praylor v. Texas Dep’t of Criminal Justice, 430 F.3d 1208, 1209 (5th Cir. 2005) (per curiam) (holding denial of hormone therapy was not deliberate indifference under the circumstances; noting that system provided hormone therapy in some cases); De’Lonta v. Angelone, 330 F.3d 630, 635 (4th Cir. 2003) (holding prisoner with GID was entitled to treatment for compulsion to self-mutilate); Maggert v. Hanks, 131 F.3d 670, 671-72 (7th Cir. 1997) (stating in dictum that prison officials need not provide hormonal and surgical procedures to “cure” GID); Brooks v. Berg, 270 F.Supp.2d 302, 310 (N.D.N.Y.) (holding persons with GID entitled to some form of treatment determined by medical professionals and not by prison administrators; holding a policy to treat transsexualism only for those diagnosed before incarceration “contrary to a decided body of law”), *vacated in part on other grounds*, 289 F.Supp.2d 286 (N.D.N.Y. 2003); Kosilek v. Maloney, 221 F.Supp.2d 156 (D.Mass. 2002) (holding an individualized determination by medical professionals is required; a blanket policy denying initiation of hormone therapy in prison is impermissible); Wolfe v. Horn, 130 F.Supp.2d 648, 652-53 (E.D.Pa. 2001) (holding that refusal to continue hormone treatment commenced before incarceration may constitute deliberate indifference).

³⁸ The Second Circuit has said that “*Hudson [v. McMillian]* does not limit liability to that subset

2. Bystander, supervisory, and entity liability

When multiple defendants are involved in a use of force, courts “reject the argument that the force administered by each defendant in this collective beating must be analyzed separately to determine which of the defendants’ blows, if any, used excessive force.”³⁹ Officers who are present and fail to take reasonable steps to prevent excessive force may be held liable.⁴⁰ The deliberate indifference standard is applicable to defendants who do not directly use force.⁴¹ The persistent failure to control and discipline officers who misuse force can support a finding of deliberate indifference by supervisors or municipality.⁴²

3. Sexual abuse

“[S]evere or repetitive sexual abuse” of prisoners can be serious enough to violate the Eighth Amendment, and can demonstrate a sufficiently culpable state of mind as well.⁴³ A recent district court decision holds that contemporary standards of decency have evolved in the years since the Second Circuit’s leading case such as at now “any sexual assault of a prisoner by a prison employee constitutes cruel and unusual punishment.”⁴⁴

of cases where ‘malice’ is present. Rather, *Hudson* simply makes clear that excessive force is defined as force not applied in a ‘good-faith effort to maintain or restore discipline.’ . . . Because decisions to use force are often made under great pressure and involve competing interests, the good-faith standard is appropriate. . . . The Court’s use of the terms ‘maliciously and sadistically’ is, therefore, only a characterization of all ‘bad faith’ uses of force and not a limit on liability for uses of force that are otherwise in bad faith.” *Blyden v. Mancusi*, 186 F.3d 252, 263 (2d Cir. 1999). I have no idea what this means, and the court has not elaborated.

³⁹ *Skrnich v. Thornton*, 280 F.3d 1295, 1302 (11th Cir. 2002).

⁴⁰ *Skrnich v. Thornton*, *id.*

⁴¹ *See* § I.A.2, above.

⁴² *Iqbal v. Hasty*, 490 F.3d 143, 170 (2d Cir. 2007) (allegation that warden knew of practice of beating administrative segregation prisoners and did not act to stop it despite his knowledge of his subordinates’ propensities stated a supervisory liability claim), *pet. for cert. filed*, No. 07-827 (Dec 17, 2007).

⁴³ *Boddie v. Schneider*, 105 F.3d 857, 861 (2d Cir. 1997); *see* *Smith v. Cochran*, 339 F.3d 1205, 1212-13 (10th Cir. 2003) (holding that sexual abuse or rape by staff is “malicious and sadistic” by definition); *Riley v. Olk-Long*, 282 F.3d 592 (8th Cir. 2002) (affirming damage award against supervisors found deliberately indifferent); *Mathie v. Fries*, 121 F.3d 808, 811-12 (2d Cir. 1997) (affirming trial court’s finding of Eighth Amendment violation).

⁴⁴ *Rodriguez v. McClenning*, 399 F.Supp.2d 228, 237038 (S.D.N.Y. 2005) (relying on trend toward statutory prohibition of sexual contact between prison employees and prisoners).

E. Safety

The Eighth Amendment requires prison officials to provide “reasonable safety” for prisoners.⁴⁵ That principle encompasses protection from assault by other prisoners occasioned by the affirmative acts of staff⁴⁶ or by staff’s failure to respond to known risks of assault,⁴⁷ including sexual assault.⁴⁸

II. Prisoners’ Civil Liberties

A. The reasonable relationship standard

“... [W]hen a prison regulation impinges on inmates’ constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests. . . .”⁴⁹ The reasonableness question is answered by weighing⁵⁰ four factors:

- Whether there is a “valid, rational connection” between the prison regulation and the legitimate governmental interest put forward to justify it. . . . [A] regulation cannot be sustained where the logical connection between the regulation and the asserted goal is so remote as to render the policy arbitrary or irrational. Moreover, the governmental

⁴⁵ *Helling v. McKinney*, 509 U.S. 25, 33 (1993).

⁴⁶ *See Snider v. Dylag*, 188 F.3d 51, 55 (2d Cir. 1999) (assault invited by staff member’s statements to other inmates is actionable); *Fischl v. Armitage*, 128 F.3d 50 (2d Cir. 1997) (assault made possible by officer’s actions is actionable); *Glover v. Alabama Department of Corrections*, 734 F.2d 691, 693-94 (11th Cir. 1984) (affirming liability of official who publicly offered a reward for assaulting the plaintiff), *cert. granted, vacated and remanded on other grounds*, 474 U.S. 806 (1985).

⁴⁷ *Pierson v. Hartley*, 391 F.3d 898, 902-03 (7th Cir. 2004) (holding that prison staff who knew that a prisoner with a violent history had been admitted to a “meritorious assignment” housing unit in violation of prison policy were properly found deliberately indifferent to the risk he would assault others).

⁴⁸ *Johnson v. Johnson*, 385 F.3d 503, 527-30 (5th Cir. 2004) (holding allegation that classification officials, informed of repeated rapes of plaintiff, took no action and told him to “learn to f*** or fight” stated an Eighth Amendment claim).

⁴⁹ *Turner v. Safley*, 482 U.S. 78, 89 (1987); *accord*, *O’Lone v. Estate of Shabazz*, 482 U.S. 342, 349 (1987).

⁵⁰ “*Turner* does not call for placing each factor in one of two columns and tallying a numerical result. . . . *Turner* does contemplate a judgment by the court regarding the reasonableness of the defendants’ conduct under all of the circumstances reflected in the record.” *DeHart v. Horn*, 227 F.3d 47, 59 (3d Cir. 2000) (en banc); *accord*, *Beard v. Banks*, ___ U.S. ___, 126 S.Ct. 2572, 2580 (2006) (plurality opinion) (“The real task . . . is not balancing these factors” but assessing whether the record shows a reasonable, not just logical, relationship).

