

**PRISONERS' RIGHTS**  
**A Publication of The Rutherford Institute™**

**INTRODUCTION**

As the United States Supreme Court has noted, “Prison walls do not form a barrier separating prison inmates from the protections of the Constitution.” As an organization dedicated to the defense of civil liberties and human rights, The Rutherford Institute wholeheartedly agrees. The Institute receives hundreds of requests each year from prisoners seeking advice and information on how to navigate their way through our complicated court system. Faced with pressing legal issues such as claims of innocence, ineffective attorneys, physical abuse and religious discrimination, these prisoners often find themselves lost in our puzzling system. While the Institute does not have the resources to offer each of these people individualized advice, we feel it is our duty to help protect the poor, oppressed and those who lack a voice of their own. It is in this spirit that The Rutherford Institute provides this basic outline for those who have been incarcerated to use to effectively defend their rights in America’s judicial system. The following pages lay out the basic rights and procedures that prisoners can refer to in order to find guidance and help in navigating the twists and turns of our legal system.

**Access to the Courts**

The First Amendment to the United States Constitution guarantees people the right “to petition the Government for a redress of grievances.” In essence, this gives prison inmates a constitutional right to file certain petitions in the courts, such as criminal appeals and civil rights lawsuits. To this end, the Supreme Court in *Lewis v. Casey*, 518 U.S. 343, 350-53 (1996) has ruled that prison officials must provide inmates with access to sufficient legal materials to file “meaningful legal papers.” This means that prisons officials must make sure that inmates have access to “adequate law libraries or adequate assistance from persons trained in the law.” An inmate who has been denied the right to file a non-frivolous lawsuit due to lack of access to legal materials may sue for such access.

Also, since the courts have been willing to require prisons to include legal materials for inmates, those same courts expect inmates who have access to the necessary filing rules to file their legal papers within the correct time frame and with no mistakes. To avoid these kinds of mistakes, the prisoner should review the state law and local rules of the court in which he or she is filing before submitting the papers.

Finally, the Supreme Court in *Martinez v. Court of Appeal of California*, 528 U.S. 152 (2000) has ruled that even though criminal defendants have a constitutional right to a state-appointed attorney for their trial, no such right exists for appeals. However, states may recognize such a right in their own constitutions. Therefore, if a prisoner is in state prison, it is worth studying state law to determine whether such a right exists in that state. If not, there are several legal organizations dedicated to defending the rights of prisoners at no cost.

## **What to Do after Your Conviction**

While it may be difficult to accomplish, there are allowances in the legal system wherein an imprisoned person can overturn his/her conviction. There is more than one way to do this and a set order in which it must be done.

Although the U.S. Constitution does not guarantee the right to an appeal, every state does offer this right. If you should be acquitted upon the deciding of this appeal, you cannot be further prosecuted, as it would then fall under double jeopardy. In other words, a person cannot be tried twice for the same crime.

If your appeal is unsuccessful, a subsequent avenue in attempting to reverse a conviction is to file a habeas corpus petition. However, this can only be filed after the appeals process has been exhausted. And while an appeal must be filed in state court, a habeas corpus petition must be filed at the federal level. This is mandated by the Anti-Terrorism and Effective Death Penalty Act (AEDPA), which was signed into law in 1996 after the Oklahoma City bombing. Although there is a constitutional right to habeas corpus, under AEDPA, there is a one-year statute of limitations to file after the final ruling on your previous appeal. See *Carey v. Saffold*, 536 U.S. 214 (2002); *Evans v. Chavis*, 126 S.Ct. 846 (2006).

The following is a list of cases that may be pertinent to your filing:

- *Brown v. Vasquez*, 112 S.Ct. 1778 (1992)
- *Harris v. Nelson*, 394 U.S. 286 (1969)
- *McCleskey v. Zant*, 499 U.S. 467
- *O'Neal v. McAninch*, 115 S.Ct. 992 (1995)
- *Coleman v. Thompson*, 111 S.Ct. 1546 (1991)

## **Defending Your Rights Inside the Prison Walls**

The task of defending your rights as an inmate can be accomplished, but only by correctly following the set procedures which are already in place.

As an inmate, before filing a lawsuit because you feel your constitutional rights have been violated, you must first exhaust all administrative remedies, as required by the Prison Litigation Reform Act (PLRA), passed by Congress in 1996. These “remedies” are through either verbal or written communication with your prison officials, detailing how you were wronged. Even if you feel your respective facility’s remedies will not be beneficial, you must still go through the process of filling out whatever forms they require. Otherwise, any subsequent court proceedings you attempt to file will be dismissed immediately. It is important to remember that the PLRA only applies to federal

lawsuits and also solely to lawsuits regarding actions occurring inside a prison. It would not be useful to consider the PLRA when you are trying to reverse a conviction.

Another point about filing these remedies is timeliness. Most prisons do not provide large windows for the matters to be addressed in the form of a grievance, and you should make sure you know beforehand the amount of time for filing your grievance or appeal.

Once your administrative remedies have all been exhausted and if you still feel that your problem has not been resolved, you may then actually file a lawsuit. In filing your lawsuit, you should consult the local rules of the court you are asking to consider your case. The Federal Rules of Civil Procedure, issued by the U.S. Supreme Court, should be located in the law library of your prison. You will also want to consult this material so you will be adequately informed of the procedure you must follow.

The first step in a lawsuit is filing a complaint. Simply put, in a complaint you address what has happened, what you are requesting from the court and what relevant law allows the court to rule in your favor. Materials such as *Wright and Miller's Federal Practice and Procedure* and *Bender's Federal Practice Forms* will be helpful in formulating your complaint properly.

You may also request that a lawyer be appointed to represent you, although courts do not usually appoint counsel to inmates in civil actions. You have the right to legal counsel in a criminal proceeding, but this is not the case in civil matters. While it is not impossible to get representation by an attorney as an inmate in a civil matter, the court will more than likely rule against court-appointed counsel. Another option you can explore is to try to contact organizations or groups that assist inmates.

## **Freedom of Religion**

Even inside prison walls, an inmate has various rights in regard to the practice of religion. These rights are protected not only by the toil of our forefathers, but also by modern governmental workings.

First and foremost, a prisoner's religious freedom is protected under the First Amendment to the U.S. Constitution, which contains both the Free Exercise Clause and the Establishment Clause. To prove a violation of your rights under the Free Exercise Clause, you must convince the court of the sincerity of your religious beliefs (if they in fact are religious). The Establishment Clause protects you in that a prison can neither encourage religion as a whole nor give preference to one particular religion while not allowing others. To determine whether there has been a violation of the Establishment Clause, courts use a test based on *Lemon v. Kurtzman*, 403 U.S. 602 (1971) and *Lee v. Weisman*, 505 U.S. 577 (1992). Another pertinent portion of the U.S. Constitution is the Fourteenth Amendment, which prohibits a prison from favoring a certain religion.

Outside of constitutional protections, a prisoner may also be protected by acts of Congress. The Religious Freedom Restoration Act (RFRA) was valid up until 1997 when the U.S. Supreme Court determined in *City of Boerne v. Flores*, 521 U.S. 507, that RFRA did not apply to prisoners of the state. However, it was not determined whether it still applied to federal prisons, and arguments using RFRA in federal matters have been upheld by some courts. The Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000 is similar to RFRA in that it prevents a prison from burdening an institutionalized person's religious exercise. Where these two acts differ is that RLUIPA's validity is only proper when the offending prison is federally funded. Another point of note is that courts have found RLUIPA to be both constitutional, *Mayweathers v. Newland*, 314 F.3d 1062 (9th Cir. 2002), and unconstitutional, *Madison v. Riter*, 240 F.Supp.2d 566 (W.D.Va.2003).

### **What Can You Do?**

The issue of whether a prisoner has the right to freely practice religion basically falls under one restriction: does it interfere with prison security? Currently, under this restriction, a prison cannot violate your religious practice if it is within reason. In order to know exactly what is reasonable, there are several common instances in which issues have been raised.

The first is religious gatherings, which include services and other meetings with clergy. While inmates do have a basic right to meet with a religious leader of their chosen faith, prisons still have the ability to put a limit on how often and under what circumstances these meetings may occur. In the matters of *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987) and *Thomas v. Gunter*, 103 F.3d 700 (8th Cir. 1997), courts determined that the prison system could somewhat restrict an inmate's access to religious activities.

The next area which may fall under the restrictive ability of a prison is an inmate's hygiene or personal appearance, as well as headgear. The only way a prison may prevent you from wearing a headpiece required by your religion or from having a certain hairstyle or type of facial hair is if the authorities deem it to be a hindrance to security or their policy on hygiene, *Swift v. Lewis*, 901 F.2d 730 (9th Cir. 1990). Also, many times courts will go along with the reason given by the prison, *Young v. Lane*, 922 F.2d 370 (7th Cir. 1991).

The final instance of a common problem an inmate may incur deals with the necessary eating habits and dietary requirements for an inmate's religious practice. More often than not, courts have allowed a prisoner's religious diet, while conversely allowing the prison to do it in a cost-effective manner. Some case examples are: *Beerheide v. Suthers*, 286 F.3d 1179 (10th Cir. 2002); *Ashelman v. Wawrzaszek*, 111 F.3d 674 (9th Cir. 1997); and *Makin v. Colorado Dept. of Corrections*, 183 F.3d 1205 (10th Cir. 1999).

In addition to the information supplied here by The Rutherford Institute, you may wish to view the following materials:

**What May Already Be in Your Prison Library:**

*Federal Rules of Civil Procedure*

*Wright and Miller's Federal Practice and Procedure*

*Bender's Federal Practice Forms*

**Books available at no cost (send request by mail to):**

*The Jailhouse Lawyer's Handbook*

National Lawyers Guild  
132 Nassau Street, RM 922  
New York, NY 10038

*Protecting Your Health and Safety: Prisoner's Rights*

(Available to prison libraries upon request)

Southern Poverty Law Center  
P.O. Box 548  
Montgomery, AL 36101-0548