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## **Forced Medication or Feeding of Prisoners**

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### **1. Introduction**

It is clear that prisons, jails, and other detention facilities have a constitutional duty to provide prisoners with adequate medical care and adequate food, to preserve life and health, as well as to take adequate measures to prevent the suicide of those in custody. Several past articles in this publication, cited below in section four of this article, address the parameters of those obligations.

Occasionally, however, such facilities also confront issues arising out of the right of individuals to consent or withhold consent to particular medical treatment, or individual prisoners who engage in hunger strikes for either brief or extended periods of time, and must decide whether and when they can engage in forced medication or feeding of prisoners.

These issues arise in a variety of contexts, including detainees who are deemed incompetent to stand trial because of mental illness, mentally ill prisoners who arguably pose a danger to themselves, to other prisoners, or to prison staff members, and prisoners engaged in hunger strikes either as a protest of some sort, or in connection with suicidal tendencies.

In this article, the legal issues involved in these situations will be briefly examined, with particular attention to a number of U.S. Supreme Court cases that have addressed them.

This article does not address in any detail questions concerning the refusal of medical treatment or fasting based on religious beliefs, or questions concerning the

medication of prisoners in order to render them competent to be executed.

## **2. Forced Medication of Prisoners**

The rights of a person guaranteed under the due process clause of the Fourteenth Amendment include “the right to bodily integrity,” according to [Albright v. Oliver](#), #92-833, 510 U.S. 266 (1994). The existence of that right requires correctional institutions to either show that the prisoner or detainee provided consent to medication or other medical treatment, or else demonstrate that there are other factors present sufficiently important to justify proceeding without such consent, such as an imminent danger to the life or safety of the individual, or a need to protect others.

In [Washington v. Harper](#), No. 88-599, 494 U.S. 210 (1990), a Washington state prisoner with a serious mental illness of manic-depressive disorder, who had consensually taken anti-psychotic drugs while temporarily on parole was required to take such medication against his will while incarcerated.

The U.S. Supreme Court found that the due process clause permits a state to treat a prisoner with a serious mental illness with anti-psychotic drugs against his will if he is: 1) dangerous to himself or others, and 2) the treatment is in his medical interest. While the prisoner had a liberty interest under the due process clause of the Fourteenth Amendment in being free from an arbitrary forced administration of anti-psychotic medication, the Court stated, the policy under which the drugs were administered in this case complied with the requirements of due process.

The policy was reasonably related, the Court found, to a legitimate interest in combating the danger otherwise posed by a violent mentally ill prisoner. The policy was also a rational means of furthering that interest because it only applied to mentally ill inmates who are “gravely disabled” or present a significant danger to themselves or others. Additionally, the policy only allowed the administration of the drugs for treatment, as opposed to other purposes, and only under the direction of a licensed psychiatrist.

The Court noted that there is “little dispute” among psychiatrists that a proper use of the drugs in question can be an effective way of treating and controlling mental illness likely to cause violent behavior.

The Court rejected that argument that, prior to providing the anti-psychotic drug treatment, the state had to find him incompetent, and then obtain court approval of the treatment using a “substituted judgment” standard, acting as the prisoner’s guardian. It also ruled that the prisoner had not shown that other

alternatives such as physical restraints or his seclusion from others would better accommodate his rights at minimal cost to valid penological interests.

While the correctional policy at issue did not require a judicial hearing, it did require a hearing before a special committee including a psychiatrist, a psychologist, and an official of the Special Offender Center, a state institute for convicted felons with serious mental illness, where the prisoner was confined. Under the policy, no member of the committee was allowed to be currently involved in the diagnosis or treatment of the prisoner. The committee can order involuntary medication only if the psychiatrist is in the majority. The inmate is provided with notice of the hearing, the right to attend, the right to present evidence and cross-examine witnesses, and the right to representation by a disinterested lay adviser versed in the psychological issues.

The prisoner also had the right to appeal the decision to the facility's superintendent, and the right to a periodic review of any involuntary medication ordered. State law also gave him the right to a state court review of the committee's decision.

The Supreme Court found that these procedures adequately protected the prisoner's due process rights, and that a prior judicial hearing was not required before the forced administration of anti-psychotic medication. It also rejected the prisoner's argument that the state needed to show a "compelling" interest before imposing such forced medication. Indeed, the Court reasoned, the prisoner's liberty interest might even be "better served" by allowing the decision to medicate to be made by medical professionals rather than by a judge. The risks associated with the use of the drugs, the Court stated, are mostly medical issues, which are best evaluated by medical professionals.

Subsequently, in [Riggins v. Nevada](#), #90-8466, 504 U.S. 127 (1992), the U.S. Supreme Court ruled that an involuntary administration of anti-psychotic medication to a criminal defendant, when administered for the purpose of rendering him "sane" in order to stand trial was a violation of due process of law if the state was unable to provide evidence establishing a medical need for the drugs and the appropriateness of the medication provided for the detainee's condition. In attempting to satisfy that burden, the state is required to prove that the drug was medically appropriate after all less intrusive alternatives are considered and found wanting. Additionally, the state is required to establish that the medication was required either to protect the safety of the detainee or others, or else that the detainee's guilt or innocence could not be determined without administering the medication.

The key distinction between [Washington v. Harper](#) and [Riggins v. Nevada](#)

would appear to be that the focus in Washington was the medical treatment of the prisoner, while the focus in Riggins was making the prisoner able to stand trial.

More recently, the U.S. Supreme Court further refined the analysis in Sell v. United States, No. 02-5664, 539 U.S. 166 (2003). In that case, the Court found that the standard presented in the prior two cases would indeed permit forced medication solely for the purpose of providing competence of the detainee for trial in “certain instances,” which may be rare.

In those rare instances, a court must first find that there are important governmental interests at stake, such as bringing to trial a person accused of a “serious crime.”

Even then, the Court stated, courts must consider the facts of each case because special circumstances can lessen the importance of bringing the detainee to trial. Indeed, a particular defendant’s refusal to take the drugs may mean lengthy confinement in an institution, based on their condition, which would “diminish the risks” of freeing without punishment a person who has committed a serious crime.

The court must also conclude that the forced medication is substantially likely to make the defendant competent to stand trial, and substantially unlikely to have side effects that will interfere significantly with the defendant’s ability to assist his counsel in conducting a defense. The court must then find that the involuntary medication is necessary to further those goals, that less intrusive treatments are unlikely to achieve substantially the same results, and that administering the drugs is “medically appropriate.”

If, on the other hand, the forced medication is ordered on the basis of other grounds, such as the dangerousness of the detainee, the need to go through all of these steps required concerning authorization on trial competence grounds “will disappear.” The Court suggested that it will often be advantageous to first consider alternative grounds for forced medication, such as dangerousness. The inquiry into whether forced medication is allowable to make an individual non-dangerous, the Court stated, is usually “more objective” and “manageable” than the inquiry into whether it is permissible to render a defendant competent.

In one case, the California Supreme Court ruled that mentally ill inmates, placed in mental institutions after the conclusion of their sentences, may not be forced to take anti-psychotic drugs unless they are found, during a judicial hearing, to be an immediate danger to themselves or others or mentally incompetent to refuse treatment. In re Qawi, No. S100099, 7 Cal. Rptr. 3d 780, 81 P.3d 224.

The immediate case concerned an inmate who was convicted of assault and battery and who was arrested again while on parole on allegations that he had "stalked" a store employee he said was his wife. He was then diagnosed with paranoid schizophrenia, and challenged his involuntary treatment with anti-psychotic drugs, claiming that he could not bear alleged side effects of the medication.

In 1997, a court found that the prisoner continued, after the expiration of his parole status, to meet the statutory criteria for involuntary treatment as an Mentally Disordered Offender, and ordered that he be civilly committed for one year, a status that has been extended annually since that date. He was prescribed anti-psychotic medications, but no specific incidents of violence, threats, or property damage are alleged to have occurred on his part. Evaluators insisted, however, that if he were to be released into the community, it was very likely that he would discontinue medication, come into a more disorganized state, and represent a substantial danger to others.

The majority of the California Supreme Court found that prisoners confined under the Mentally Disordered Offender Act, known as MDO's, had the same rights as those granted to involuntary mental patients generally under the state's general civil commitment scheme, and therefore have the right under Cal. Penal Code section 2972 to refuse anti-psychotic medication in the absence of a judicial determination either that they are incompetent or incapable of making decisions about their medical treatment or that the MDO is dangerous within the meaning of Cal. Welfare and Institutions Code section 5300.

In Roberson v. Goodman, #A1-02-127, 293 F. Supp. 2d 1075 (D.N.D. 2003), an psychiatrist was found entitled to summary judgment on prisoner's claim against him alleging unjustified forced administration of anti-psychotic drugs and excessive doses of one such drug, causing memory loss, headaches, twitching, and confusion. Prisoner failed to properly present expert testimony or other medical evidence sufficient to establish a claim of deliberate indifference to his serious medical needs, or that the psychiatrist had subjective knowledge that there was an excessive risk to the prisoner's health and that the psychiatrist then failed to act on the basis of that knowledge.

Another case of interest is Johnson v. Meltzer, #95-56404, 134 F.3d 1393 (9<sup>th</sup> Cir. 1998), cert. denied, 525 U.S. 840 (1998), in which a federal appeals court found that officials who allegedly administered an experimental drug to an unconscious person, purportedly for research purposes, were not entitled to summary judgment from liability for doing so without the person's consent. At the time, the man was in the hospital for injuries suffered in a car crash while attempting to evade arrest, and, while not yet then technically a prisoner, the

court found that it would apply the legal standard applicable to prisoners, since he would prevail even under that standard if the facts were as he claimed.

Also see [McCormick v. Stalder](#), #96-30415, 105 F.3d 1059 (5<sup>th</sup> Cir. 1997), upholding forcible treatment of prisoners who had previously tested positive for tuberculosis, given the need to protect other prisoners and prison staff members against this contagious disease.

In summary, forced medication of prisoners will require some established procedure in a correctional facility. If the focus is on medical treatment of the prisoner and/or protection of the prisoner himself or others against the prisoner's dangerous behavior, an internal review procedure utilizing medical professionals, combined with the subsequent right to seek judicial review may be adequate to satisfy due process rights. If the articulated purpose, however, is something else, such as making the detainee competent to stand trial, a judicial proceeding will first be required, and a complex series of inquiries must be satisfied.

### **3. Forced Feeding of Prisoners**

What about instances where a prisoner goes on a “hunger strike,” either for purposes of protest, because of suicidal impulses, or in an attempt to manipulate prison authorities? While there are some prior individual exceptions in decisions by particular state courts, the general trend in the majority of decisions has been to allow for forced feeding of prisoners when a hunger strike significantly threatens their life or health. There has not been a U.S. Supreme Court decision directly addressing the issue, and there have been more decisions on the subject by state courts than by federal courts. Accordingly, the question of whether force feeding is permitted, and under what circumstances, is currently very much dependent on which jurisdiction a correctional facility is in, with the courts of a majority of jurisdictions apparently never having spoken on the subject at an appeals court level.

In [Walker v. Horn](#), No. 03-1896, 385 F.3d 321 (3<sup>rd</sup> Cir. 2004), cert denied, 544 U.S. 1021 (2005), a federal appeals court ruled that prison officials did not violate an inmate's constitutional rights by force-feeding him after he refused to eat for nine days. The court also upheld a jury determination that the fast was not for religious reasons, removing that as a consideration.

The case involved a Pennsylvania prisoner who claimed that his First, Eighth and Fourteenth Amendment rights were violated when prison officials obtained a state court order authorizing them to force-feed him after he refused to eat for nine days. A jury returned a verdict against the prisoner, and a federal appeals court has upheld this result.

The prisoner was in a Special Management Unit reserved for the "most difficult prisoners" in the state system, and he was confined in his cell twenty-three hours a day. He is a member of the Nation of Islam, an Islamic sect that follows the teachings of Elijah Muhammad. Members of the group fast during Ramadan and at certain other times, and the prisoner claims that since his incarceration he has engaged in periodic religious fasts in which he abstains from solid foods but drinks liquids, for periods ranging from three to thirty days.

After he became angry in a dispute over allegedly not receiving legal materials, the prisoner made threats, became argumentative, and was placed on further restriction. He then claimed to have begun a religious fast, which he planned to continue for three to fifteen days. The medical staff monitored him, and read him a form entitled "The Effects of Starvation and Dehydration," which he acknowledged by signing it. This form stated that "the Department of Corrections will do everything within its power to prevent the death of any person committed to its custody, and . . . this means that permission may be sought from a judge to force [an inmate] to eat or drink."

After the fast had lasted nine days of documented refusal to eat, the Department sought an injunction from a state court alleging that the prisoner was on a hunger strike. The prison's medical director submitted an affidavit concerning the prisoner's lethargic appearance, which "could be the effects of starvation and dehydration" and stated that unless he received nutrition and hydration "as soon as possible," he could suffer "tissue breakdown . . . which may result in coma, cardiac arrest and possibly death." The Department asked for authorization to provide treatment including, but not limited to, nutrition, hydration, and medication, as medically necessary to preserve the prisoner's health and life, as well as permission to involuntarily obtain specimens of bodily fluids for analysis.

The trial court granted the requested order, scheduled a further hearing on the matter, and appointed a lawyer to represent the prisoner at the hearing.

The prisoner claimed that his statements that he was fasting for religious reasons were subsequently ignored, and that correctional officers took him from his cell to the infirmary, where he was stripped, strapped to a hospital bed, and placed in ankle and wrist restraints. His head was also restrained, and a chest strap was used to prevent him from moving. He was read the court's order and given a copy of it.

The prisoner claimed that he told those standing near his bed at that point that he was willing to stop his hunger strike to avoid being force-fed. The medical director, however, testified that this was not the case, and that the prisoner still refused to eat. Nurses placed a nasogastric tube through his nose, down his throat and into his stomach, and he was then force-fed through the tube, while the procedure was videotaped. The prisoner subsequently complained that he was fed



liquefied liver and mashed potatoes with milk even though he told medical personnel that he did not eat meat or milk products because both foods upset his stomach. The medical director denied this.

The forced feeding continued for two days. The prisoner subsequently filed a federal civil rights lawsuit. The jury found that the prisoner was not involved in a religious fast, and that the prisoner's constitutional rights had not been violated by the prison medical director.

The prisoner was the sole witness testifying as to his religious purpose for his fast, and the only witness stated that he had never been offered a liquid protein supplement by the defendant, a disputed factual issue.

The appeals court noted that no mention was made of a religious fast during arguments over the preliminary injunction in the state court, and the plaintiff's lawyer there even stated that the fast was not religious at all, but an attempt to focus attention on the prisoner's then pending litigation. (The prisoner was involved in a number of lawsuits at the time). Evidence also showed that a friend and fellow litigant of the prisoner also engaged in a hunger strike and was not even a member of the Nation of Islam. The appeals court therefore upheld the jury's verdict.

Similarly, in [People of Illinois ex rel. Department of Corrections v. Fort](#), No. 4-03-0661, 352 Ill. App. 3d 309, 815 N.E. 2d 1246 (4th Dist. 2004), an Illinois intermediate appeals court found that an injunction allowing the force-feeding of an prisoner to keep him alive was justified by evidence that prisoner's purpose in staging his hunger strike was protesting the conditions of his confinement and attempting to manipulate correctional officials.

The case involved an Illinois prisoner who appealed from the issuance of a permanent injunction permitting the Illinois Department of Corrections (DOC) to force-feed him to prevent his death. He argued that the state failed to prove that "a legitimate penological interest was affected by defendant's hunger strike."

The medical director at the prison at which the inmate was confined stated, in an affidavit submitted to the trial court, that there was a substantial possibility that the prisoner "could experience cardiac arrest, liver and neurological complications, or renal failure if his hunger strike continued." Evidence at a hearing on the issue indicated that the inmate had engaged in a number of prior hunger strikes, and the court first granted a temporary restraining order, permitting DOC to monitor the prisoner and to force-feed him if necessary to prevent his death.

There was testimony that the prisoner could die if he continued his hunger strike. The prisoner at issue suffered from a thyroid disorder, seizure disorder (epilepsy), and emphysema. The prisoner's hunger strike allegedly started in



response to a routine shakedown of his cell, during which he allegedly "went berserk" when he saw officers removing property from his cell. He subsequently claimed that the officers took the property during the shakedown and threw it in the trash. He told officials he was on hunger strike over this.

He was transferred to another facility, and continued his hunger strike allegedly because of various disputes over conditions there. In testimony at the hearing on issuing the preliminary injunction, the prisoner stated that by hunger striking he was "letting the administration know that by me prolonging this hunger strike, that they need to start taking me seriously." He also stated that he would stop the hunger strike if he were transferred back to his prior prison because it "is just a much better facility." Following that hearing, the trial court entered a preliminary injunction, which was subsequently made permanent.

While the prisoner's appeal was pending, he was transferred back to his prior facility, and ceased his hunger strike. The appeals court noted that this rendered the present controversy moot. The court agreed, however, with the state's request to retain jurisdiction and consider the issue involved under a "public-interest" exception to the mootness doctrine. This, the court agreed, was an issue likely to recur and it was desirable to have an "authoritative determination for the purpose of guiding" correctional officials.

[Whether an inmate may starve to death while under the care of DOC is a matter of public importance, and the role of DOC in these situations is a recurring question.](#)

In the present case, the court found, the purpose of the prisoner's hunger strike "was to manipulate DOC," and protest his transfer to and treatment at the prison he was at. Under these circumstances, the court ruled, the trial court's issuance of the injunction was proper.

The same court, in [Illinois ex rel. Illinois Department of Corrections v. Millard](#), No. 4-01-0857, 335 Ill. App. 3d 1066, 782 N.E.2d 966 (4<sup>th</sup> District, 2003) found that the interest in running an "orderly and disciplined institution" outweighed the prisoner's rights to continue his hunger strike.

In an earlier Illinois decision, a trial court ruled that prison officials should be given permission to force feed an inmate who went on hunger strike for three weeks at the point where his hunger strike becomes threatening to his life. The prisoner stopped eating because he said he was upset about his daughter's death, and the court granted prison authorities the right to monitor his condition through blood tests and to feed him intravenously or through a feeding tube at the point that his life is in jeopardy. [In Re Robert Weeks](#), Circuit Court, Livingston County, Ill., reported in *The Chicago Tribune*, p. 13 (Jan. 26, 2002).

Also see: State ex rel. White v. Narick, No.15442, 292 S.E.2d 54 (W. Va. 1982) (ruling that the state's interest in preserving an inmate's life outweighed his personal privacy and freedom of expression rights when a hunger strike was involved); In re Caulk, No. 84-246, 480 A.2d 93 (N.H. 1984) (finding that the maintenance of an "effective criminal justice system" was more important than a prisoner's purported right to conduct a hunger strike which could lead to his death), and McNabb v. Dept. of Corrections, #23310-3-III, 112 P.3d 592 (Wash. Ct. App. 2005) (stating that correctional officials may "force-feed a starving inmate, whose actions are undertaken with the intent to cause his own death and have the potential of disrupting the internal order of our prison system").

Not all courts have reached the same result, however. In Thor v. Superior Court (Andrew), #S026393, 21 Cal.Rptr.2d 357, 855 P.2d 375 (Cal. 1993), the California Supreme Court held that a quadriplegic prisoner had a right to refuse to submit to feeding and medication, even if it meant his death. It further ruled that the right to refuse treatment and food does not depend on prisoner's condition being terminal. Similarly, in Zane v. Prevatte, #38375, 286 S.E.2d 715 (Ga. 1982), the Georgia Supreme Court ruled that a prisoner had a right to starve himself to death through a hunger strike and that the state could not force-feed him. A prisoner, it stated, "by virtue of his right of privacy, can refuse to allow intrusions on his person, even though calculated to preserve his life." Also, in Singletary v. Costello, #95-0774, 665 So. 2d 1099 (Fla. App. 4<sup>th</sup> Dist. 1996), a Florida intermediate appeals court agreed with these two prior decisions, stating that the state's interest in the preservation of an inmate's life "cannot overcome the fundamental nature of" the prisoner's privacy right, while also cautioning that "our resolution of this case should not be interpreted as universally holding that a prison inmate has the right to starve to death."

The federal Bureau of Prisons has explicit and detailed procedures concerning prisoner hunger strikes, which are cited in the final section of this article.

#### **4. Relevant Resources**

Past issues of this publication have featured a number of articles of related interest, including Civil Liability for Prisoner Suicide, 2007 (2) AELE Mo. L.J. 301, Prisoner Diet Legal Issues, 2007 (7) AELE Mo. L.J. 301, and Civil Liability for Inadequate Prisoner Medical Care, 2007 (9) AELE Mo. L.J. 301. Other material of interest include:

Position Statements of the American Correctional Health Services Association on Forced and Involuntary Psychotropic Medication, and on Hunger Striking Prisoners.

The Federal Bureau of Prisons has regulations addressing such topics as involuntary psychiatric hospital admission, involuntary psychiatric treatment and

medication, and care of inmates on hunger strikes ([28 C.F.R. 549.42, 549.43, and 549.50-549.66](#)).

[“Forced Medication of Defendants to Achieve Trial Competency: An Update on the Law After Sell,”](#) by Hilgers, Kelly, and Ramer, Paula, The Georgetown Journal of Legal Ethics, Summer 2004.

Note: “What They Can Do About It: Prison Administrators’ Authority to Force-Feed Hunger-Striking Inmates,” by Tracey M. Ohm, 23 [Wash. U.J.L. & Policy](#) 151 (2007).

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