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Prisoner Exercise and Civil Liability

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Introduction.

Exercise, including physical fitness and sports activities, is popular among detainees and prisoners in most facilities, and jails and prisons typically offer a variety of such indoor and outdoor opportunities. In some instances, however, facilities have either denied or limited access to such activities to particular persons in custody, for varying reasons and for varying periods of time.

This article takes a brief look at some of the issues surrounding this, including the question of whether there is a right to exercise while in custody, what some of the acceptable reasons for denial or limitation of participation may be, what time periods may be acceptable for such denial or limitation, and selected other issues.

At the conclusion of the article, there is a brief listing of some on-line resources on the general subject of prisoner exercise and recreation programs that may be useful.

A Right to Exercise?

Do prisoners have a right to engage in exercise? Courts have generally found that there is at least some right to engage in it, and that complete denial of it for an extended period of time, or for arbitrary reasons, may constitute a violation of due process or amount to cruel and unusual punishment in violation of the Eighth

Amendment. Additionally, prisoners may have more specific rights, including rights to specific amounts or types of exercise (such as outdoor exercise) under applicable state or federal statutes or regulations, or a correctional facility's own rules.

In [Fogle v. Colorado Dep't of Corr.](#), No. 05-1405, 435 F.3d 1252, 2006 U.S. App. Lexis 2024 (10th Cir.), a prisoner who was held in administrative segregation for three years at three different Colorado prisons was held to have asserted several non-frivolous claims, including complete denial of outdoor exercise. Addressing the denial of exercise, the court noted that:

“There is substantial agreement among the cases in this area that some form of regular outdoor exercise is extremely important to the psychological and physical well being of inmates, and some courts have held a denial of fresh air and exercise to be cruel and unusual punishment under certain circumstances. “

The appeals court further stated that it was "clear" that a fact-finder might conclude that the risk of harm from three years of deprivation of any form of outdoor exercise was "obvious," establishing a claim for "deliberate indifference" in violation of the Eighth Amendment if correctional officials disregarded that risk by keeping the plaintiff in administrative segregation.

While the Eighth Amendment of the Constitution does not require that prisons be comfortable, prison conditions do violate the Constitution where they "deprive inmates of the minimal civilized measure of life's necessities." [Rhodes v. Chapman](#), #80-332, 452 U.S. 337 (1981). Accordingly, a lack of exercise can rise to the level of a constitutional violation, See [French v. Owen](#), 83-2280, 777 F.2d 1250 (7th Cir. 1986), and courts have commented that "exercise is now regarded in many quarters as an indispensable component of preventive medicine." [Anderson v. Romero](#), 94-1251, 72 F.3d 518 (7th Cir. 1995).

In [Powlowski v. Wullich](#), 479 N.Y.S.2d 89 (App. 1984), the court ruled that detainees were entitled to participate in active recreation, and set forth health screening procedures for participation. Similarly, in [Adams v. Wolff](#), #CV-F-80-258, 624 F.Supp. 1036 (D. Nev. 1985), a federal trial court ruled that protective custody inmates were entitled to eight hours a week of outdoor exercise.

Illustrating the fact that state law sometimes also creates such rights, the court in *Inmates of B-Block v. Marks*, #194 C.D. 1981, 434 A.2d 211 (Pa. App. 1981) held that a statute requiring two hours daily exercise for prisoners was mandatory and not directory, and allowed inmates to bring a writ of mandamus to enforce compliance.

Reasons for Denial or Limitation

Restrictions on access to exercise may be justified by the prisoner's own misconduct. In [Bass v. Perrin](#), #96-3428, 170 F.3d 1312 (11th Cir. 1999), the court held that denying two prisoners all outdoor exercise for periods of time did not constitute cruel and unusual punishment when it was done in response to misconduct such as assault on another prisoner, murder of a correctional officer, possession of contraband, and an escape attempt from the exercise yard.

Similarly, in [McGuinness v. Dubois](#), #93-11921, 893 F. Supp. 2 (D. Mass. 1995), the court found that a prisoner's loss of yard exercise privileges because of a series of disciplinary infractions did not violate his constitutional rights.

In some cases, the court has essentially taken the point of view that the prisoner himself is responsible for the loss of exercise privileges when they are easily able to get such privileges back simply by altering their disruptive or noncompliant behavior. In [Moore v. LaMarque](#), No. 06-15724, 242 Fed. Appx. 458, 2007 U.S. App. Lexis 16163 (Unpub. 9th Cir.), the court found that, under the circumstances of a prisoner's confinement, depriving him of outdoor exercise did not violate his clearly established rights. Additionally, prison employees who deprived him of such outdoor exercise were entitled to qualified immunity. The prisoner could have changed his circumstances, the court noted, by simply agreeing to comply with the prison's work program policy.

Also see [Ziegler v. Martin](#), No. 01-2677, 47 Fed. Appx. 336 (Unpub. 6th Cir. 2002), in which the court found that correctional officials' denial of prisoner's access to yard exercise and telephone access for approximately one month when he was classified as having refused a job assignment was not a violation of his rights. After prisoner pursued the proper avenues to get himself classified as medically unable to work, his access to yard exercise and telephone access was restored.

When the court questions the legitimacy of the reasons for the discipline imposed, it may reach a different result. In [Ortiz v. McBride](#), No. 02-0088, 380 F.3d 649 (2nd Cir. 2004), the court found that the prisoner stated an arguable due process claim by alleging that he was not given any outside exercise for a period of time and was prevented from showering for weeks during his disciplinary confinement in a special housing unit when the only evidence supporting the discipline was an accusation from a confidential informant that he had been selling drugs.

In Knight v. Castellaw, No. 03-16870, 99 Fed. Appx. 790 (9th Cir. 2004), a federal appeals court rejected a prisoner's claim that he was forced, during a modified lockdown following a prison riot, to choose between his constitutional right to regular outdoor exercise and his constitutional right of access to the courts.

Evidence showed that, during the period in question, he had participated in between two to six hours of outdoor exercise per week, as well as managing to use the law library for a period of time sufficient to amend his complaint in one lawsuit, and to successfully file the lawsuit making the immediate claim. This showed that neither right was actually denied.

Length of Denial or Limitation

It is clear from reading the court decisions that the length of time that exercise is either denied or limited is almost always one of the factors that courts will look at in determining whether prisoner rights have been violated.

A very short deprivation, which is very minimal, will not result in liability or court intervention. See Thomas v. Allsip, 12-91-00292, 836 S.W.2d 825 (Tex. App. 1992), ruling that a Texas inmate's constitutional rights were not violated by an alleged denial, for a single day, of out-of-cell exercise and shower.

A deprivation of out-of-cell exercise for an extended period of time, however, could be cruel and unusual punishment unless exceptional circumstances based on a prisoner's alleged repeated violent behavior was shown, according to Mitchell v. Rice, 90-6040, 954 F.2d 187 (4th Cir. 1992).

Often, the issue is a combination of the length of the deprivation and the reason for the deprivation, with a sufficient justification for the deprivation outweighing the longer timeframe. In Hayes v. Garcia, No. 04-2112, 461 F. Supp. 2d 1198, 2006 U.S. Dist. Lexis 80279 (S.D. Cal.), for instance, the court found that a prisoner who allegedly was denied outdoor exercise for over nine months failed to show that warden acted with deliberate indifference to his rights when evidence showed that the restrictions on such exercise were imposed mainly for the purpose of preventing a reoccurrence of racial violence which had previously occurred. Additionally, there was evidence that every time the warden tried to relax restrictions on outdoor exercise, more violent incidents occurred.

Similarly, in Jones v. Garcia, No. CIV. 03CV2441, 430 F. Supp. 2d 1095 (S.D. Cal. 2006), the court held that the denial of outdoor exercise to a prisoner for thirty-five weeks did not constitute cruel and unusual punishment when it was not done as a result of deliberate indifference to his rights and was not motivated by a malicious intent to harm him. Evidence showed, instead, that the action was

motivated by the intent to protect staff and inmate safety and security during a period of racial violence at the facility, which included the murder of an inmate.

The reverse is also true. The length and severity of the deprivation may be found unreasonable far easier if the court has its doubts about the justification for the deprivation to begin with. In [Delaney v. DeTella](#), No. 00-4145, 256 F.3d 679 (7th Cir. 2001), the court stated that the complete denial of all out-of-cell exercise to prisoner confined in "phone booth" size cell during 6 month prison lockdown could be an Eighth Amendment violation when prisoner posed no special security risk. The defendant prison guards and warden, therefore, were not entitled to qualified immunity.

In [Pearson v. Ramos](#), No. 98- 4110, 237 F.3d 881 (7th Cir. 2001), a federal appeals court ruled that a denial of yard privileges for outdoor exercise for an entire year, imposed in four 90-day periods because of major disciplinary infractions, did not violate a prisoner's rights. The court therefore overturned a \$30,000 award against the prison superintendent.

Other cases of interest involving the duration of deprivation of exercise privileges include:

* [Davidson v. Coughlin](#), #81 Civ. 5657, 968 F.Supp. 121 (S.D.N.Y. 1997), stating that limiting a prisoner's exercise while he was in "keeplock" status for a month did not violate the 8th Amendment because the parameters of the right to exercise were not clearly established in 1981-83.

* [Rodgers v. Jabe](#), 93-2323, 43 F.3d 1082 (6th Cir. 1995), finding that prison officials were entitled to qualified immunity from liability for restricting exercise for a prisoner in punitive segregation, because the constitutionality of using exercise restriction as a punitive measure for prisoner misconduct was not clearly established as of 1991.

* [Conner v. Sakai](#), 91-16704, 40 F.3d 1001 (9th Cir. 1994), ruling that prison officials were not entitled to qualified immunity for failing to provide a prisoner placed in special housing unit for disciplinary reasons with more than 45 minutes of outdoor exercise a week during a six-week period.

* [Housley v. C.D. Dodson](#), 93-6196, 41 F.3d 597 (10th Cir. 1994), a decision ruling that a county jail inmate's claim that he was allowed only 30 minutes of out-of-cell exercise during a three-month period was sufficient to state a federal civil rights claim against jail officials based on the cruel and unusual punishment prohibition of the Eighth Amendment.

* [Thomas v. Ramos](#), 94 C 4080, 130 F.3d 754 (7th Cir. 1997), concluding that a prisoner's inability, for 70 days in administrative segregation, to engage in yard exercise did not violate his clearly established rights. The prisoner was able to engage in some exercise in cell and all prisoners were denied yard exercise for a 30-day period during lockdown.

* [Henderson v. Lane](#), 90-2973, 979 F.2d 466 (7th Cir. 1992), finding that an Illinois inmate had no clearly established constitutional right to more than one hour of exercise or more than one shower per week.

* [Shoats v. Owen](#), 2446 C.D. 1987, 563 A.2d 963 (Pa. Cmwlth.1989), holding that it was not safe and practical to provide a prisoner in restrictive housing unit with two hours of indoor exercise on inclement days.

Denial of Particular Activities or Facilities

What about correctional officials' denial of a prisoner's request for a particular form of exercise or facility?

In [Reimann v. Frank](#), No. 05-C-501, 397 F. Supp. 2d 1059 (W.D. Wis. 2005), the court ruled that a prison's denial of an inmate's request for access to weight training facilities did not violate his Eighth Amendment rights in the absence of any showing that the official making the denial knew that such weight training was allegedly necessary to treat the prisoner's femoral neuropathy and other leg ailments.

Clearly, however, the court's reasoning points to the possibility that when a prisoner requires certain forms of exercise for rehabilitative purposes, the issue of denial of such exercise or the necessary facilities or equipment to engage in it may need to be considered in tandem with an analysis of the right of the prisoner to adequate medical care.

[For a discussion of the standards for adequate medical care, see an earlier article in this publication, [Civil Liability for Inadequate Prisoner Medical Care](#), 2007 (9) AELE Mo. L.J. 301.].

Access to exercise or to particular forms of exercise, at least one court has asserted, may not be denied if the underlying motivation is discriminatory. See [Moore v. Clarke](#), #86-1996, 821 F.2d 518 (8th Cir. 1987), ruling that an inmate could sue prison for disbanding a boxing program for allegedly racial motives.

In [Clay v. Miller](#), #80-6026, 626 F.2d 345 (4th Cir. 1980), the court held that the presence of a day-room at a Virginia jail met minimum constitutional exercise

requirements, rejecting arguments that the jail should provide more elaborate facilities.

Other Issues

Some other cases of interest on issues concerning exercise include:

* [Perkins v. Kansas Dept. of Corrections](#), #98-3005, 165 F.3d 803 (10th Cir. 1999), in which a federal appeals court reinstated an HIV- positive prisoner's lawsuit complaining of nine months of denial of outdoor exercise and a prison's requirement that he wear a face mask whenever leaving his cell. The court believed that such restrictions might constitute due process or Eighth Amendment violations.

* [Anderson v. Romero](#), 94-1251, 72 F.3d 518 (7th Cir. 1995), prison officials were not entitled to qualified immunity on HIV positive inmate's allegations that they "punished" him for that status by preventing him from exercising in the prison yard.

* [Williams v. Goord](#), #99 Civ. 1680, 142 F. Supp. 2d 416 (S.D.N.Y. 2001), in which a court ordered further proceedings to determine factually whether the plaintiff prisoner was actually deprived of meaningful exercise opportunities for twenty eight days while under a restraint order following his verbal harassment of a correctional officer. Issues included whether the handcuffs and waist chain restraints kept on him prevented him from "meaningfully exercising" in an exercise area, and whether he had any meaningful opportunity for in-cell exercise, as well as the question of whether prison officials' actions were justified under the circumstances.

* [New York State Commission of Correction v. Ruffo](#), 530 N.Y.S.2d 469 (Supp. 1988), concluding that a county could not be compelled to construct a new jail to increase outdoor recreation opportunities. The court did rule, however, that the sheriff was required to transport prisoners each day for outdoor recreation.

Resources

- Federal Bureau of Prisons (BOP) [Program Statement 5370.10](#) (Recreation Program, Inmate), includes discussion of physical fitness, sports, and exercise programs, activities, and equipment.
- Provision of the Code of Federal Regulations, [28 C.F.R. Sec. 551.115](#) governs recreation programs provided to pretrial inmates, including outside and indoor recreation, physical exercise equipment. It states that, at a minimum, pretrial inmates shall be provided with one hour daily of outdoor

recreation, weather permitting, or two hours daily of indoor recreation, as well as access to physical exercise equipment, as well as other recreation equipment. The regulation notes that pretrial inmates housed in administration detention or disciplinary segregation shall be provided with exercise as provided by the rules on Inmate Discipline, 28 C.F.R. part 541, subpart B, 28 C.F.R. Sec. 541.21 and 541.22 (amounting to five hours of exercise each week) and that the provisions of the regulation “must be carried out unless compelling security or safety reasons dictate otherwise.” Additionally, “Institution staff shall document these reasons” for failing to provide such exercise.

- [Correctional Recreation](#). A website with links to articles and information about correctional recreational programs and their impact, including exercise and sports programs.
- [Weight Lifting in Prison: Laws and Issues](#). A collection of links to information about prison weight lifting, and the controversy surrounding it. Includes links to proposed federal and state statutes concerning weightlifting in prison, and selected information on the status of those proposals.
- [“Effects of Moderate Physical Activity on Offenders in a Rehabilitative Program,”](#) by Nelson, Meredith; Specian, Victoria L.; Tracy, Nancy Campbell; and DeMello, J. Jesse, Journal of Correctional Education, December 2006. Argues that moderate physical activity provides substantial health benefits not only in fitness, athletic, and health organizations, but also for individuals who struggle with addictions and behaviors in correctional programs.

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