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## **Civil Liability for Wrongful Detention of Detainees and Prisoners**

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### **❖ Official Policy or Custom**

Municipal federal civil rights liability by a city, department or agency requires a showing that the alleged constitutional deprivation took place pursuant to an official policy or custom.

In the absence of such a showing, there will be no municipal liability. In [Mortimer v. Baca](#), #07-55393, 594 F.3d 714 (9th Cir. 2010), for instance, former detainees in a jail claimed that they were wrongfully kept in custody for periods of time ranging from twenty-six to twenty-nine hours after a court had ordered their releases. A federal appeals court held that the Los Angeles Sheriff’s Department was entitled to summary judgment in their federal civil rights lawsuit, as the department’s “many affirmative efforts” to

attempt to remedy the problem indicated that there was no policy amounting to deliberate indifference to the detainees' rights.

Similarly, in [\*West v. Tillman\*](#), #06-14479, 496 F.3d 1321 (11th Cir. 2007), jail supervisory personnel were not shown to have acted with deliberate indifference to the right of prisoners to be released when ordered by a court. Any mistakes that resulted in the plaintiffs being detained after such court orders were not the result of jail policies concerning the processing of court orders, but rather were due to “unfortunate lapses” by non-supervisory personnel, stemming from cuts in the jail’s budget and staff size.

In [\*Dupree v. City of New York\*](#), #04CV0992, 418 F. Supp. 2d 555 (S.D.N.Y. 2006), subsequent decision at 454 F. Supp. 2d 166 (S.D.N.Y. 2006), the court ruled that a city Department of Corrections was not liable for damages for having kept an inmate in custody beyond the maximum length of his sentence. There was no showing that the extended detention was the result of an official city policy or custom. See also [\*Russell v. Hennepin County\*](#), #04-3922, 420 F.3d 841 (8th Cir. 2005), concluding that a detainee kept for six days at county detention facility after a judge ordered his release without bail failed to show that a county policy caused his prolonged incarceration or that there was a widespread pattern of such problems that the county knew about.

In [\*Lund v. Hennepin County\*](#), #05-1791, 427 F.3d 1123 (8th Cir. 2005), the court held that a twelve-hour delay in releasing a detainee after a judge determined that no bail was required on his intoxicated driving charge did not “shock the conscience,” and was not caused by any official county policy or custom. The federal appeals court upheld summary judgment for the county and its sheriff in a detainee’s due process lawsuit.

#### ❖ Eleventh Amendment immunity

A defense available to states, state agencies, and state officials or employees sued in their official (as opposed to individual capacity) is that of sovereign immunity under the Eleventh Amendment. Claims against officials or employees in their official capacities are treated as though they were lawsuits against the state itself, since any resulting judgment must be paid for out of state funds.

Illustrating this is [\*Harris v. McSwain\*](#), #11-1320, 417 Fed. Appx. 594, 2011 U.S. App. Lexis 9527 (Unpub. 8th Cir.), in which a Missouri prisoner sought damages for false imprisonment, claiming that he remained incarcerated for fourteen months after the end of his sentence, because prison officials failed to credit him for time served prior to

sentencing, contrary to the court's order. The state Department of Corrections was immune from a claim for damages under the Eleventh Amendment.

Such Eleventh Amendment immunity, however, does not extend to municipalities of local law enforcement agencies which are not component parts of the state. In [\*Streit v. County of Los Angeles\*](#), #99-55897, 236 F.3d 552 (9th Cir. 2001), for instance, a federal appeals court ruled that the Los Angeles County sheriff's department, in checking records to determine when prisoners are to be released, acts on behalf of the county whose jails it administers, and not as an "arm of the state," and therefore was not entitled to Eleventh Amendment immunity in lawsuit by former prisoners claiming that they were improperly detained for longer time periods.

### ❖ **Damage calculations**

State law in a number of jurisdictions provides a remedy for prisoners or detainees placed in custody improperly or kept in custody longer than authorized. In [\*Dentigance v. Adult Parole Authority\*](#), #2005-04373, 2008 Ohio Misc. Lexis 175 (Ohio Ct. of Claims), a prisoner re-incarcerated for committing criminal offenses while out on parole was legally re-incarcerated, but was not afforded a timely parole violation hearing, resulting in him being falsely imprisoned for 74 days.

The inmate was entitled, under Ohio law, to damages for mental distress, and to compensation for the days he was falsely imprisoned. The measure of damages for false imprisonment, however, was not that afforded under state law to an innocent person who was wrongfully imprisoned, but rather the lesser amount provided to a person falsely imprisoned beyond the term of his lawful incarceration.

Damages may only be recovered for injuries actually suffered. Illustrating this, in [\*Thomson v. Dept. of Rehabilitation and Corrections\*](#), #2006-02617, 2008 Ohio Misc. Lexis 56 (Ohio Ct. of Claims), an inmate held after the expiration of his sentence in an Ohio correctional facility failed to show that he was entitled to damages for lost wages during his false imprisonment when his own statements showed that, when he was not incarcerated, he performed "odd jobs" for cash. He also failed to show that he was entitled to damages for emotional distress, but was awarded a certain amount of damages, \$5,775, including his filing fee.

## ❖ Negligence

While negligence in keeping a prisoner or detainee confined may give rise to liability under state law in some jurisdictions, negligence is insufficient for federal civil rights liability, which requires a greater showing of culpability. See for instance, [\*Golberg v. Hennepin County\*](#), #04-2756, 417 F.3d 808 (8th Cir. 2005) ruling that a ten hour delay in releasing a prisoner from a county detention facility after she had posted bail was insufficient to show a violation of her constitutional rights when it was not based on deliberate indifference by anyone to her right to release, but rather on mere negligence, including a problem with a new computer system in which she was allegedly “lost” for several hours.

The [Federal Tort Claims Act](#), 28 U.S.C. Secs. [1346](#), [2671](#) et seq., provides a remedy against the U.S. government for deprivations that would be actionable under state law, including acts of negligence. In [\*Erlin v. U.S.\*](#), #00-16986, 364 F.3d 1127 (9th Cir. 2004), subsequent decision 470 F.3d 804 (9<sup>th</sup> Cir. 2006), cert. denied, #06-1411, 552 U.S. 811 (2007), the court ruled that the statute of limitations on a former federal prisoner’s claim against the U.S. government under the Federal Tort Claims Act (FTCA), for negligence in miscalculating his release date began to run when he obtained habeas relief from his continued incarceration, rather than on the date that the miscalculation was allegedly made.

## ❖ State law and federal claims

Violations of state laws in detaining a person are not necessarily violations of federal civil rights. [\*Donaldson v. Purkett\*](#), #01-3262, 33 Fed. Appx. 233, 2002 U.S. App. Lexis 7393, 2002 WL 655549. (8th Cir.) illustrates this in holding that a prisoner’s claim contending that seventy days were unlawfully added to his Missouri state court sentence involved only interpretations of state law and therefore could not be pursued as a federal civil rights lawsuit under 42 U.S.C. Sec. 1983.

On the flip side of that equation, the mere fact that a prisoner or detainee may have a claim for false imprisonment under state law does not necessarily eliminate the possibility that they also may have a claim for violation of their federal civil rights. In [\*Gragg v. McKune\*](#), #84,354, 16 P.3d 311 (Kan. App. 2000), the court ruled that the existence of state law remedies for false imprisonment did not bar prisoner’s federal civil

rights claim that his Fourth and Eighth Amendment rights were violated when he was allegedly held in custody for 90 days beyond his scheduled release date.

❖ **“Favorable termination” requirement of *Heck v. Humphrey***

A complex and troublesome issue for convicted prisoners seeking to be awarded damages for being confined beyond their lawful sentences is the U.S. Supreme Court decision in [\*Heck v. Humphrey\*](#), #93-6188, 512 U.S. 477 (1994). Under *Heck*, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a federal civil rights plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court’s issuance of a writ of habeas corpus, in other words, that there has been a “favorable termination” of the proceedings against them. If the prisoner has allegedly been confined beyond their lawful sentence, but has now been released, there may no longer be any clear mechanism to set it aside. Habeas corpus is a remedy seeking to have a prisoner released, and is not available if they are no longer confined.

The court in [\*Wilson v. Johnson\*](#), #07-6347, 535 F.3d 262 (4th Cir. 2008), confronted the dilemma head-on. It ruled that a prisoner who claimed that the state of Virginia subjected him to false imprisonment by improperly extending the length of his prison sentence could pursue a federal civil rights claim under 42 U.S.C. Sec. 1983 for money damages. The court noted that the federal courts of appeal were split about whether a prisoner could obtain money damages in such a case when it was no longer possible to meet the “favorable termination” requirement of *Heck* via habeas corpus, but held that the “high purposes” of Sec. 1983 would be “compromised” if there was no judicial forum to seek relief for alleged unlawful imprisonment, and ruled that the plaintiff could proceed with his lawsuit.

The exact opposite approach was taken in [\*Randell v. Johnson\*](#), #99-11092, 227 F.3d 300 (5th Cir. 2000), cert. denied, #00-1054, 532 U.S. 971 (2001). That court ruled that a former Texas prisoner, who claimed he was incarcerated for nine-months after the proper termination of his sentence, could not seek money damages in federal civil rights lawsuit when his conviction and sentence were not previously set aside. The fact that he could no longer seek federal habeas relief, since he was no longer in custody, did not alter the result.

In reaching this result, the court disagreed with three other federal appeals circuits which have ruled that *Heck*'s rule requiring the favorable termination of prior court proceedings concerning the plaintiff's conviction or sentence should be relaxed for plaintiffs who have no procedural vehicle to challenge them. See [Jenkins v. Haubert](#), #98-2408, 179 F.3d 19 (2d Cir. 1999); [Shamaeizadeh v. Cunigan](#), #98-5451, 182 F.3d 391 (6th Cir.), cert. denied, 120 S. Ct. 531 (1999); and [Carr v. O'Leary](#), #96-3885, 167 F.3d 1124 (7th Cir. 1999). Two other federal appeals circuits, on the other hand, have adopted the same rule more strictly applying *Heck*. See [Cabrera v. City of Huntington Park](#), #96-55258, 159 F.3d 374 (9th Cir. 1998), and [Figueroa v. Rivera](#), #97- 2252, 147 F.3d 77 (1st Cir. 1998).

More recently, the court in [McKinney v. Pennsylvania Board of Probation & Parole](#), #10-3331, 405 Fed. Appx. 646, 2010 U.S. App. Lexis 26124 (Unpub. 3rd Cir.) also adopted the strict construction of *Heck* approach. In the case a prisoner claimed that he had been incarcerated beyond the maximum terms of his sentences for state convictions and a parole violation, and that the defendants violated his due process rights by incorrectly calculating his maximum sentence and by failing to conduct a parole revocation hearing when they revoked his parole and continued to detain him. A federal appeals court found that a federal lawsuit for damages was unavailable when success would necessarily imply the invalidity of the fact or duration of his confinement, which had not been otherwise invalidated.

See also [Mitchell v. Dept. of Corrections](#), #3:02-CV-2219, 272 F. Supp. 2d 464 (M.D. Pa. 2003), ruling that a prisoner who claimed that his sentence had been miscalculated, resulting in him being held beyond his proper release date, could not seek damages following his release when he had failed to previously have his sentence set aside. The fact that, after his release, habeas action to challenge the constitutionality of his sentence was no longer available did not alter the result.

## ❖ Resources

- [Defenses: Eleventh Amendment Immunity](#). AELE Case Summaries.
- [Defenses: Qualified Immunity](#). AELE Case Summaries.
- [False Imprisonment](#). AELE Case Summaries.
- [False Imprisonment](#), Am. Jur. 2d, by Francis Collins.
- [False Imprisonment](#). Wikipedia article.

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  - “[Obstacles to Litigating Civil Claims for Wrongful Conviction: An Overview](#),” by Michael Avery, *Public Interest Law Journal*, Vol. 18, pgs. 439-451 (2009).
  - “[Defining the Reach of Heck v. Humphrey: Should the Favorable Termination Rule Apply to Individuals who Lack Access to Habeas Corpus?](#),” *Harvard Law Review*, Vol. 121, pgs. 868-889 (2008).
  - “[Are False Imprisonment Recoveries Taxable?](#)” by Robert W. Wood, *Tax Notes* (April 21, 2008).
  - “A Misconceived Issue in the Tort of False Imprisonment,” by Keng Feng Tan, *The Modern Law Review*, Vol. 44, Issue 2, pgs. 166-177 (March 1981). [Abstract](#).
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