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Jail & Prisoner Law Section – December 2018

**Prisoner Lawsuits Concerning
Specific Conditions of Confinement**

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❖ **Introduction**

A substantial number of prisoner lawsuits against prisons, jails, and correctional personnel concern general conditions of confinement. As prisoners are confined to the facility for the duration of their sentences or until their criminal proceedings have

concluded, a myriad number of issues arise involving all the necessary and incidental requirements of daily life.

Addressing all of these issues is a Herculean task. Yet failure to adequately take these complex and often intertwined issues into account has the potential for substantial civil liability, or failing that, prolonged and complex litigation that can drag on for years and require the expenditure of major effort and resources to defend.

This three-part article takes a brief look at some of the most frequent common issues that arise in this area of prisoner litigation. It is by no means exhaustive, and, among other topics, specifically excludes the topic of exposure to [asbestos](#) and other hazardous conditions and substances. It also does not address the provisions of the Prison Litigation Reform Act which procedurally governs such litigation over prisoners' conditions of confinement. [Other articles](#) in this journal have covered the major provisions of that statute. At the conclusion of the series, there is a listing of useful and relevant resources and references.

Police Chiefs and Command staff of law enforcement agencies are encouraged to review this material, as it may apply to their temporary holding facilities, as well as to jails and prisons.

❖ Bugs and Vermin

Insects and rodents spread disease, steal and contaminate food, and can inflict injury. They are attracted by waste and garbage as well as large food handling and serving facilities. It is hardly a surprise that they are attracted to prisons and jails. A number of lawsuits have addressed the issue of the undesirable conditions they can cause there.

In [Gray v. Hardy](#), #13-3413, 826 F.3d 1000 (7th Cir.2016), for instance, an inmate claimed that the warden of the facility where he was incarcerated violated the Eighth Amendment by failing to adequately address the infestation of vermin, insects, and birds in his cell. He alleged that the prison only cleaned “infrequently,” and failed to repair either broken windows or holes in the walls. The inmate, who suffers from asthma, asserted that he had not had an attack for seven years before arriving at this prison.

A federal appeals court overturned summary judgment for the warden, ruling that these individual claims were prematurely dismissed, and that on remand the trial court could determine how to coordinate the case with a pending class action raising similar allegations. There were triable issues of fact for a jury, which should determine the degree of both physical and psychological harm the plaintiff suffered because of the alleged conditions.

Similarly, in [*Solomon v. Nassau County*](#), #08-CV-703, 759 F.Supp.2d 251 (E.D.N.Y. 2011), a federal judge denied a county's motion to dismiss a federal civil rights lawsuit by a pretrial detainee at its jail seeking damages for injuries he suffered when a rat allegedly came out of a hole in his mattress and bit his penis, causing him sexual dysfunction and emotional distress. The plaintiff argued that the county acted with "deliberate indifference to his health and safety in failing to adequately protect him from rodents."

There were allegedly eleven prisoner complaints about rodents in the two years prior to the incident, as well as 50 prisoners signing a petition requesting action against the presence of rodents, and the plaintiff claimed that adequate corrective measures were not taken. The trial judge agreed that the allegations were sufficient to survive summary judgment.

Personal injury was also at issue in [*Benshoof v. Layton*](#), #09-6044, 2009 U.S. App. Lexis 23650, 351 Fed. Appx. 274 (Unpub. 10th Cir.), in which the court ruled that a prisoner established the objective component of an Eighth Amendment claim by alleging that his cell was infested with thousands of fire ants and that he was bitten by them over 200 times, suffering sizzling pain, burning, pus-filled blisters, and swollen appendages.

The defendants were also properly denied qualified immunity, as he had alleged facts from which it could reasonably be concluded that they acted with deliberate indifference to these conditions, failing to transfer him to a new cell or to provide him with ant killing insecticide even after he was treated for the bites.

See also [*Jackson v. Duckworth*](#), #91-1355, 955 F.2d 21 (7th Cir. 1992), ruling that a federal trial court should not have granted summary judgment to prison officials on inmate's suit claiming "subhuman conditions" of confinement, given the inmate's detailed affidavit alleging the presence of filth, rodents, inadequate heating, undrinkable water containing black worms that turned into small black flies, etc.

It may not be possible, however, to prevent all insects from entering a facility, and it is hardly the case that their mere presence will give rise to liability. In [*Wells v. Jefferson County Sheriff Department*](#), #C2-00-0077, 159 F. Supp. 2d 1002 (S.D. Ohio 2001), affirmed [*Wells v. Jefferson County Sheriff Dep't*](#), #01-35-75, 35 Fed. Appx. 142 2002 U.S. App. Lexis 7739 (Unpub. 6th Cir. 1992), for instance, the plaintiff prisoner failed to show unconstitutional county jail conditions by alleging that his single blanket was inadequate to keep him warm as he slept on a mattress on the floor and that cockroaches climbed on him while he slept.

❖ Cleaning Supplies

Cleaning supplies should be required as needed. But prisoners are not absolved of the responsibility of putting in an effort to keep their cells and persons clean. This is illustrated by [*Wishon v. Gammon*](#), #91-3515, 978 F.2d 446 (8th Cir. 1992), in which the court ruled that a prisoner could not complain about his “unsanitary” cell when he was regularly furnished with cleaning supplies but never took the opportunity to use them to clean his own cell.

Similarly, in [*Whitnack v. Douglas Co.*](#), #92-3902, 16 F 3d 954 (8th Cir. 1994), a filthy jail cell did not violate the rights of either a convicted inmate or the pretrial detainee who was his cellmate when they were furnished with adequate cleaning supplies within twenty-four hours of being transferred into the cell.

Personal liability in this area must be based on personal awareness and knowledge. In [*Galloway v. Whetsel*](#), #03-6239, 124 Fed. Appx. 617 (10th Cir. 2005), for instance, a pretrial detainee failed to show that county sheriff was deliberately indifferent to detention officers’ alleged refusal to supply him with disinfectants or cleaning supplies to remove feces from his toilet and the floor of his cell. In fact, he did not even claim that the sheriff was aware of these actions.

On the other hand, in [*Wheeler v. Walker*](#), #08-1898, 2008 U.S. App. Lexis 25434 (Unpub. 7th Cir.), the court found that a prisoner’s allegation that guards, for two weeks, without any explanation, rejected his requests for “basic” cleaning supplies, despite cell conditions that included human waste, filth, and a heavy infestation of roaches, stated a viable Eighth Amendment claim, as did his contention that he was not provided with more than a thin blanket when his unheated cell was exposed to “frigid” air in November. A claim for deliberate indifference to his serious medical

needs, however, was not viable, since the symptoms he described amounted to a “common cold,” which did not indicate a serious medical need.

In [*Christian v. Wagner*](#), #09-2417, 623 F.3d 608 (8th Cir. 2010), the complaint was not about a lack of cleaning supplies, but about the particular cleaning product supplied. The pretrial detainee in this case failed to show that his supposedly adverse reaction to HDQ Neutral, a cleaning product used at the county jail, involved a serious medical need for purposes of trying to establish that the defendants acted with deliberate indifference in violation of his constitutional rights. The prisoner, who was taking medication for asthma, alleged that exposure to the cleaning product caused him to “cough up blood.”

The record indicated that a reasonable jury could find that the prisoner did not show that a physician or other medical personnel had diagnosed him with a medical condition that required treatment while he was detained. An examination of the prisoner revealed only some nasal drainage, and otherwise found him in normal condition, with an instruction that he should move away from where the cleaning products were being used. While one doctor later stated an opinion that chemicals used at the jail caused medical problems for the prisoner, a competing expert rejected the diagnosis of asthma, and found no evidence of pulmonary fibrosis in a CT scan. The jury thus reasonably determined that the prisoner failed to establish a serious medical need while incarcerated.

❖ Dampness

Dampness in a prisoner’s cell, where they are locked in and cannot avoid it, can be a big problem. In [*Spencer v. Bouchard*](#), #05-2562, 449 F.3d 721 (6th Cir. 2006), a pre-trial detainee presented a viable claim against two officers for deliberate indifference to inadequate shelter in his cell, which was allegedly cold and wet, with rain or snow leaking from the ceiling onto the mattress on the floor where he slept.

The case involved a Michigan detainee who claimed that several officers with the Oakland County Sheriff’s Office violated his constitutional rights by failing to provide him with adequate shelter. While claims against some defendants were properly rejected because the plaintiff prisoner failed to properly exhaust available administrative remedies available against them, a federal appeals court found that there was sufficient evidence to create a genuine issue of material fact as to whether

two defendant officers violated the plaintiff's rights by providing him inadequate shelter. These two defendants had been named in a grievance the prisoner filed concerning his inadequate shelter claim.

The detainee, who was formerly incarcerated at the Oakland County Jail in Pontiac, Michigan, claimed that the shelter provided was not adequately warm and dry. The appeals court noted that, as a pre-trial detainee, the plaintiff's rights were provided by the [Fourteenth Amendment's](#) due process clause, rather than the [Eighth Amendment's](#) prohibition on cruel and unusual punishment, but stated that the Fourteenth Amendment provides the same "if not greater protections" than the Eighth Amendment.

The appeals court found that shelter is a "basic need," and that the plaintiff had a right to adequate shelter. He was detained in a cell during the fall and winter, and for more than 90 days had to sleep on a mattress on the floor due to overcrowding. There was evidence that the cellblock was "very cold," and that other inmates complained about it, and that it was particularly cold at the end of the cellblock where the plaintiff's cell was located. While it was allegedly cold enough for the officers to wear their winter coats indoors there, the plaintiff and other inmates there were only dressed in their "standard jumpsuits."

The plaintiff also alleged that whenever it rained or snowed, water leaked "real bad" through the ceiling above the plaintiff's mattress, and caused the area where he slept to be flooded. The appeals court found that there was sufficient evidence to satisfy the "objective" component of the plaintiff's Eighth Amendment claim, i.e., whether the conditions were sufficiently harsh to violate constitutional rights.

The appeals court further found that the plaintiff presented "much" evidence in support of his claim that the two remaining defendant officers knew of the harsh conditions he suffered and acted with deliberate indifference to them. These defendants were among the officers seen wearing their winter coats indoors, according to the plaintiff, and received complaints about the cold and wet conditions from him and from other inmates, but failed to take any measures to remedy the conditions, such as by providing adequate clothing and blankets, fixing the leaks, bringing in heaters, or moving the inmates to other quarters.

Further, the plaintiff claimed, these two officers "actively interfered" with inmates' own attempts to "abate the risk," by allegedly responding to complaints about the

cold by conducting “shake downs” and confiscating extra blankets that any inmates had obtained on their own, and by tearing down “awnings” made out of garbage bags that the detainee and his cellmates had placed on the ceiling to try to divert the leaking water away from his bed. One of them also allegedly told the plaintiff, while tearing down such an “awning,” that “It’s your own damn fault you in here so deal with it!” These allegations, if true, were sufficient to show subjective deliberate indifference to unconstitutional conditions of confinement.

Water flows, and sometimes it will unavoidably seep in. Courts know that. With a standard of deliberate indifference, the key is to take action to attempt to remedy the problem when it occurs. In [*Honeycutt v. Ringgold*](#), #10-6077, 2010 U.S. App. Lexis 20378 (Unpub. 10th Cir. 2010), a prisoner complained that, for three days, liquid seeped through vent holes in the cinder block wall of his cell onto the floor. He failed to show that this condition violated his constitutional rights, as the jail administrator responded promptly to his complaints, the incident did not last long, and cleaning materials were made available.

❖ **Constant Illumination**

A number of lawsuits have focused on issues surrounding illumination in prison facilities. Some courts have disagreed on the issue of constant illumination. Correctional officials who mandate this should be prepared to justify why they do so, which may be a very fact-specific inquiry. Some facilities use constant illumination in the context of administrative or disciplinary segregation for security purposes.

In [*Chavarria v. Stacks*](#), #03-40977, 102 Fed. Appx. 433, 2004 U.S. App. Lexis 14945 (Unpub 5th Cir.), a prison’s policy of constant illumination of cell in administrative segregation unit was reasonably related to a legitimate interest in guard security, so that prisoner could not pursue his claim that it violated his rights under the Eighth Amendment because it deprived him of sleep.

The case involved a Texas prisoner confined to an administrative segregation unit reserved for the most dangerous prisoners, and who has been there since April of 2000, alleged that bright fluorescent lights and light bulbs completely illuminate his cell twenty-four hours a day. In a federal civil rights lawsuit, he asserted that he

cannot sleep because of these lights, and that his grievances over this were rejected with an explanation that it was necessary to keep the lights on for security reasons. Prison officials also rejected a suggestion that the lights could be dimmed during the night and turned up by guards when they passed by to inspect the cells, arguing that such a practice would be even more disruptive of sleep.

The trial court dismissed the lawsuit as frivolous and for failure to state a claim under [28 U.S.C. Sec. 1915A](#). It found that the policy was a reasonable security measure, and that, although sleep is a basic human need, the prisoner had not shown a deprivation rising to the level of an [Eighth Amendment](#) violation. There was no evidence, the court noted, that the prisoner had complained to medical personnel about lack of sleep.

In upholding this result, a federal appeals court found that, even assuming for the purposes of argument, the prisoner could allege conditions leading to a sleep deprivation sufficiently serious, he could not establish an Eighth Amendment violation because he could not show that the deprivation is “unnecessary and wanton.” The court found the policy justified and reasonably related to the legitimate penological interest of guard security.

One judge, in concurring with the result, said that he regarded the judicial attention paid to the prisoner’s claim as “much ado about nothing,” since “a little cloth over his eyes would solve the problem, negate deprivation, and escape this exercise in frivolity.” A strong dissent was filed in the case by the Chief Judge of the Fifth Circuit, who stated that he would hold that the court abused its discretion in dismissing the claim as frivolous.

Too much continuous light was the claim in [Grenning v. Miller-Stout](#), #11-35579, 739 F.3d 1235 (9th Cir.). In this case, a prisoner claimed that having continuous 24-hour a day light in his cell was a violation of his Eighth Amendment rights. A federal appeals court found that there were material issues of fact as to how bright the light in the cell was, what effect it had on him, and whether the defendants were deliberately indifferent to that effect. Assuming that the defendants could defeat the Eighth Amendment claim by showing a legitimate penological interest in the constant cell illumination, so far they had failed to do so.

In [King v. Frank](#), #04-C-338, 328 F. Supp. 2d 940 (W.D. Wis. 2004), the court found that an inmate’s allegation that his cell was constantly illuminated could

constitute a valid Eighth Amendment claim, depending on how bright the light was. Constant illumination may be a civil rights violation if it “causes sleep deprivation or leads to other serious physical or mental health problem.” Ultimately, however, it was found factually that the level of illumination was insufficient to cause such sleep deprivation. [*King v. Frank*](#), #04-C-338, 371 F.Supp.2d 977 (W.D. Wis. 2005).

In [*Walker v. Woodford*](#), #08-56676, 2010 U.S. App. Lexis 18210 (Unpub. 9th Cir.), a California prisoner claimed that the night light in his cell caused him insomnia in violation of his Eighth Amendment rights. Rejecting this claim, a federal appeals court noted that there was undisputed medical evidence that the amount of illumination coming from the night light in the cell would not cause insomnia. Further, there were medical records indicating that the plaintiff “had complained of insomnia, stress, and depression before the new night light policy was implemented, and continued to complain of insomnia and other symptoms after he was transferred to a prison that did not have night lights.”

Similarly, in [*Wills v. Terhune*](#), #1:CVF986052, 404 F. Supp. 2d 1226 (E.D. Cal. 2005), the court found that constant illumination in a prisoner’s cell in a security housing unit was not cruel and unusual punishment. While the prisoner claimed that it prevented him from sleeping, it was merely a single low-watt bulb which even the plaintiff agreed was not bright enough to read or write by.

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