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**Jail & Prisoner Law Section – January 2019**

**Prisoner Lawsuits Concerning  
Specific Conditions of Confinement**

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❖ **Sanitary Conditions – General**

There have been many lawsuits over prison and jail sanitary conditions in general. Often such claims arise in the context of overcrowded conditions.

In [\*Jacoby v. Baldwin County\*](#), #14-12932, 835 F.3d 1338 (11th Cir. 2016), for instance, a pretrial detainee claimed that the sheriff violated his substantive due process rights by confining him in an unsanitary and overcrowded cell. A federal appeals court found that the detainee’s claim that he was temporarily forced to sleep on a mattress on the floor near a toilet was insufficient to clearly show that his conditions of confinement were unconstitutional. The sheriff was therefore entitled to qualified immunity.

The provisions of the Prison Litigation Reform Act substantially limit the damages that prisoners can claim in lawsuits over conditions of confinement—prohibiting, among other things, the award of damages for mental/emotional damages when the alleged deprivation of rights has not caused any provable physical injury. In [\*Alexander v. Tippah County, Mississippi\*](#), #02-61033, 351 F.3d 626 (5th Cir. 2003), cert. denied, [\*Alexander v. Tippah County\*](#), #03-8992, 541 U.S. 1012 (2004), for example, two prisoners, confined for 24 hours in an “unsanitary” isolation cell designed for one prisoner in which a clogged floor drain resulted in feces and urine remaining on the cell floor, could not recover damages for mental or emotional injuries in the absence of a prior physical injury.

In [\*Walker v. Schult\*](#), #12-1806, 717 F.3d 119 (2nd Cir. 2013), a prisoner who served almost 28 months in a six-man cell claimed that conditions there constituted cruel and unusual punishment in violation of the Eighth Amendment. His claims were plausible that he was deprived of the minimal civilized measure of life’s necessities and subjected to unreasonable health and safety risks because of inadequate space and ventilation, stifling heat in summer and freezing cold in winter, unsanitary conditions, including urine and feces on the floor, too narrow a mattress, insufficient cleaning supplies, and noisy crowded conditions making sleep difficult and putting him at constant risk of violence from his cellmates. Claims against some defendants were rejected, but allowed to proceed against others, with qualified immunity issues to be resolved after further facts were determined.

In [\*Budd v. Motley\*](#), #11-3425, 711 F.3d 840 (7th Cir. 2013), on the other hand, a pretrial detainee claimed that his conditions of confinement at a county jail were unconstitutional, and that the sheriff was deliberately indifferent to his medical needs for an injury to his leg. The conditions complained of included poor

sanitation and hygiene alongside lack of heat and bedding, blocked ventilation, overcrowding, and inadequate recreation. These conditions, he argued, together with a failure to provide detainees with a way to clean themselves with running water or cleaning supplies stated a claim for relief. He said that three doctors told him that his leg infection was the result of the unsanitary conditions. His claim for medical indifference was rejected, since he received ongoing observation, medication, and medical attention, but the federal appeals court ordered further proceedings on his unconstitutional conditions of confinement claim.

Prisoners' own actions may factor into assessing blame for injury or death. In [\*Estate of Rice v. Correctional Medical Services\*](#), #09-2804, 675 F.3d 650 (7th Cir. 2012), a schizophrenic man arrested for an attempted bank robbery often refused to take his medication, bathe or eat while in a county jail. He was transported back and forth between a number of mental health facilities and the jail on a number of occasions. While at the jail pending a transfer to a state psychiatric institution, he died from excessively drinking water ("psychogenic polydipsia."). While his estate could pursue claims concerning the sanitary condition of his cell (despite the fact that he may have helped cause the conditions, based on his mental incompetence), there was no basis that any of the defendants were liable for his death, absent any evidence that they were on notice that he might compulsively engage in water drinking to the extent that it would put his life in danger.

Prisoners who themselves purposely cause unsanitary conditions will not be rewarded by awards of damages for the resulting injuries. In [\*Banks v. Mozingo\*](#), #10-2259, 423 Fed. Appx. 123, 2011 U.S. App. Lexis 7899 (Unpub. 3rd Cir.), for example, summary judgment was properly entered against a prisoner in his lawsuit over his conditions of confinement. While there were indeed feces on the wall of his cell, the plaintiff prisoner was the one who put it there, and correctional employees took necessary measures to see to it that both the prisoner and his cell were cleaned after the mess was created. There was no evidence that the prisoner was denied any of life's basic necessities.

The test for unconstitutional conditions of confinement is objective, not subjective. Prisoners have no guarantee of "pleasant" conditions of confinement that they will like. In [\*Muniz v. Richardson\*](#), #09-2229, 371 Fed. Appx. 905, 2010 U.S. App. Lexis 6703 (Unpub. 10th Cir.), a prisoner's assertion that he and fellow prisoners did not "enjoy" the food provided did not suffice for a claim of denial of a basic human

need in violation of the Eighth Amendment. His various complaints about prison heating, air conditioning, small showers, dirty mops, and repeated playing of TV shows also failed to show unconstitutional conditions.

Unsanitary conditions which arise will not lead to liability when a facility takes swift action to remedy them. In [Wesolowski v. Kamas](#), #03-CV-6405, 590 F. Supp. 2d 2008 U.S. Dist. Lexis 99263 (W.D.N.Y.), affirmed, [Wesolowski v. Kamas](#), #09-2506. 409 Fed. Appx. 476, 2011 U.S. App. Lexis 2729 (2d Cir.), prison officials promptly remedied an inmate's complaints about a soiled mattress and his placement in a cell with a transparent plastic shield. His other complaints about cell conditions, including denying him his chosen cleaning materials, one occasion on which the cell block flooded, and the passing to him of a toilet brush through the same cell door slot used to pass wrapped food did not amount to constitutional violations, but were instead minor inconveniences that were part of prison life.

When unsanitary conditions linger, however, it is a different matter. In [Wheeler v. Walker](#), #08-1898, 303 Fed. Appx. 365, 2008 U.S. App. Lexis 25434 (Unpub. 7th Cir.), 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.

### ❖ Sanitary Conditions: Showers

The condition of facility showers has been the focus of a good number of lawsuits. In [Reynolds v. Powell](#), #03-4156, 370 F.3d 1028 (10th Cir. 2004), a prisoner's claim that he was subjected to "standing water" in a prison shower area resulting in a fall was insufficient to establish a claim for cruel and unusual conditions of confinement posing a substantial risk of serious harm to his health or safety. Despite the fact that the prisoner was on crutches, the danger of falling on a slippery floor was no greater than the daily hazards faced by the general public.

In [\*Coleman v. Sweetin\*](#), #12-40012, 745 F.3d 756 (5th Cir. 2014), a prisoner sued over conditions in a facility, claiming that a shower floor was unsafe and slippery, that he had fallen three times and suffered a fractured hip, and that he had received inadequate medical care for his injuries. Prisoner slip and fall claims, the appeals court held, almost never serve as the basis for constitutional violations as a matter of law. But that was not the end of the matter. Claims against two defendants who allegedly ignored the plaintiff's complaints and pleas for help should not have been dismissed.

In [\*Harrington v. Scribner\*](#), #09-16951, 785 F.3d 1299 (9th Cir. 2015), an African-American prisoner at a California-state prison sued following a lockdown imposed on African-American inmates, complaining, among other things, of injuries he suffered related to shower restrictions, and about the race-based classification of the lockdown. A federal appeals court found that the conditions imposed did not violate Eighth Amendment restrictions on cruel and unusual punishment, for which deliberate indifference had to be shown. That did not, however, bar an equal protection claim for race discrimination under the Fourteenth Amendment. The trial court erred, on the equal protection claim, in allowing the jury to defer generally to officials rather than determining whether the challenged race-based actions were narrowly tailored.

### ❖ Sanitary Conditions - Toilets and Toilet Paper

Leaking or malfunctioning toilets or an inadequate supply of toilet paper unsurprisingly give rise to lawsuits over conditions of confinement. In [\*Frye v. Pettis County Sheriff Department\*](#), #02-1809, 41 Fed. Appx. 906, 2002 U.S. App. Lexis 14991 (8th Cir.), a detainee in a county jail failed to show that a sheriff and his deputies were deliberately indifferent to threats to his health and safety due to toilet in his cell leaking both water and sewage when they supplied him with blankets or towels to absorb water and a repair attempt was made.

In [\*Darnell v. City of New York\*](#), #15-2870, 849 F.3d 17 (2nd Cir. 2017), however, a trial court erred when it granted summary judgment to officers who worked at a booking facility between certain dates on twenty pretrial detainees' claims alleging that conditions of their confinement while awaiting arraignment violated their rights under the Fourteenth Amendment on the basis that no jury could have found

that nine challenged conditions, considered together or separately, amounted to an objective constitutional deprivation. Established standards for evaluating objective deprivations extended to all nine conditions, including overcrowding and unusable toilets, and each condition had to be measured by its severity and duration, not the resulting injury. The conditions also had to be analyzed in combination, at least where one alleged deprivation had a bearing on another. The trial court did not conduct the appropriate analysis.

In this area also, a prisoner's own misconduct may be a factor in assessing liability. In [\*Howard v. McCray\*](#), #606-CV-062, 2008 U.S. Dist. Lexis 44194, 2008 WL 2316718 (S.D. Ga.), for instance, a prisoner with a history of throwing excrement was barred from flushing his toilet himself, and prison employees were told to flush his toilet every two hours. The court rejected the prisoner's claim that his Eighth Amendment rights were violated when employees allegedly deliberately failed to flush his toilet on the two-hour schedule. The employees were entitled to qualified immunity, as there was no prior case law concerning the issue. Further, the prisoner did not show that he suffered any injury or medical harm because of the unflushed toilet, or that he came into contact with the unflushed toilet water. The court also noted that the prisoner did not argue with the fact that there was a "behavior management problem," based on his prior conduct, and that, absent that conduct, there would have been no need for the restrictions on him flushing the toilet himself.

In [\*Burnette v. Bureau of Prisons\*](#), #06-30540, 277 Fed. Appx. 329, 2007 U.S. App. Lexis 28492 (5th Cir.), a federal prisoner sufficiently alleged that certain prison employees violated his Eighth Amendment rights through the conditions of his confinement to defeat the dismissal of those claims. He asserted that he was required, while in a special housing unit strip-cell, to use a trash bag as a toilet and to share it with a mentally unstable cellmate, and that the cellmates were not allowed to remove the bagged sewage from the cell.

Occasional inconveniences are insufficient to prove a constitutional violation. In [\*Beltran v. O'Mara\*](#), #04-cv-071, 405 F. Supp. 2d 140 (D.N.H. 2005), a detainee's claim that toilet paper had been withheld from him was insufficient to state a due process claim under the Fourteenth Amendment when he merely had been made to wait over one hour for toilet paper and he presented no evidence concerning how frequently such incidents occurred.

## ❖ Sleeping Accommodations and Celling

A frequent source of prisoner complaints involves sleeping accommodations and/or overcrowded cells. Courts will often find that temporary problems in this area do not lead to liability. In [\*Jacoby v. Baldwin County\*](#), #14-12932, 835 F.3d 1338 (11th Cir. 2016), for instance, a pretrial detainee claimed that the sheriff violated his substantive due process rights by confining him in an unsanitary and overcrowded cell. A federal appeals court found that the detainee's claim that he was temporarily forced to sleep on a mattress on the floor near a toilet was insufficient to clearly show that his conditions of confinement were unconstitutional. The sheriff was therefore entitled to qualified immunity.

See also [\*Allen v. Figuera\*](#), #10-1162, 416 Fed. Appx. 771, 2011 U.S. App. Lexis 6097 (10th Cir.), in which the court found, despite a prisoner's complaints, that a policy of double-bunking did not violate his constitutional rights, nor did one night spent with an "unhappy" cellmate demonstrate unconstitutional conditions of confinement. The prisoner's Eighth Amendment claims were properly dismissed.

The purpose of an alleged deprivation may alter how courts regard it. In [\*Bowers v. Pollard\*](#), #09-1771, 345 Fed. Appx. 191, 2009 U.S. App. Lexis 20855 (Unpub. 7th Cir.), the plaintiff inmate did not face atypical hardships based on any of the conditions of a Behavioral Action Plan, such as denying him a mattress because of his attempts to use it to harm himself, so he had no valid due process claim. The conditions imposed also did not amount to cruel and unusual punishment, since they were not punitive, but instead intended to protect him from self-harm, and were regularly re-evaluated.

A prolonged deprivation without a justification, however, is a different matter. In [\*Townsend v. Allen\*](#), #05-cv-204, 2009 U.S. Dist. Lexis 9911, 2009 WL 347010 (W.D. Wis.), a correctional officer was found, by a jury, to have deprived a prisoner of the "minimal civilized measure of life's necessities" by compelling him to sleep on an unsanitary mattress for about two months. The trial court declined to set aside the jury's verdict, finding that the evidence presented was consistent with a finding of deliberate indifference in violation of the Eighth Amendment. The officer, however, would be entitled to a new trial on damages unless the plaintiff prisoner would accept a reduction in the punitive damages of \$295,000 awarded to

\$29,500.

See also [\*Herbert v. Maxwell\*](#), #05-30929, 214 Fed. Appx. 451, 2007 U.S. App. Lexis 1160 (5th Cir.), ruling that a sheriff and deputy were not entitled to qualified immunity on a detainee's claim that he was kept for two days in a jail cell lacking a bed and which was contaminated with human waste. There were other cells with beds available, and there was no compelling interest justifying placing the plaintiff in a cell without a bed.

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### **AELE Monthly Law Journal**

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