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Prisoner Clothing: Selected Legal Issues

❖ Introduction

Lawsuits by prisoners and detainees have raised a variety of issues concerning the clothing that they wear while incarcerated. This article takes a brief look at selected legal issues in such cases.

The article does not discuss issues concerning religious clothing, which were covered in a prior article in this publication, Religious Freedom in Correctional Facilities (II)--Appearance and Apparel, 2007 (4) AELE Mo. L.J. 301, issues arising out of strip searches, which were discussed in a number of prior articles here, listed in the resources and references section at the end of this article, nor the issue of gang colors and insignia.

❖ Choice of Clothing

Do prisoners have a due process liberty interest in their choice of clothing? In the case of *In re Alcala*, #A043385, 222 Cal. App. 3d 345, 271 Cal.Rptr. 674 (Cal.App. 1990), ***an intermediate California appeals court said yes, but still ultimately found that prison restrictions on the wearing of certain civilian clothing did not violate due process rights guaranteed by the Fourteenth Amendment.*** The rule, the court reasoned, was designed to help prevent escapes, and could help in doing so, as escaped prisoners in ordinary civilian clothing might more easily be able to disappear into crowds and evade detection and recapture.

The warden had noted that civilian clothing had been used in a number of escapes. In a memorandum he then stated that for security reasons the following seven items of personal clothing were being deleted from the approved list: shirts, sweat shirts, sweat pants, baseball caps, colored T-shirts, windbreakers, and sweaters. Inmates were given a month to dispose of these items and items not disposed of by then would be confiscated.

❖ Clothing as Punishment

Occasionally, some facilities have used particular clothing as punishment, or to infliction humiliation on prisoners or detainees. In *Wagner v. County of Maricopa*, #10-15501, 706 F.3d 942 (9th Cir. 2012), a mentally disturbed man arrested for assaulting an officer was forcibly dressed in pink underwear at the county jail, and yelled out that he was being "raped" (which was not the case). Following his release on bail, and hearing that there was a warrant for his arrest for spitting on an officer during the dress-out he ran away from his home, fearing another arrest. Running four or five miles, he died the next day from acute cardiac arrhythmia.

A federal appeals court found that his estate validly stated a federal civil rights claim, and that testimony was properly offered to show that the decedent experienced a "sense of humiliation at being forced to wear pink." With no explanation or defense offered for the practice of dressing detainees in pink, the practice "appears to be punishment without legal justification." The trial court

acted properly, however, in excluding testimony by the plaintiff's expert that the dress-out procedure was "probably" the cause of his death.

That testimony failed to take into account "generally accepted facts" that cardiac arrhythmia occurred at a generally higher rate among schizophrenics, and explain how that and the fact that stress could render the condition fatal were enough to pinpoint the specific incident that caused the death. Family members should not have been barred from testifying about what the decedent told them about his experiences, for the purpose of showing his state of mind in reaction to it.

While not, at this time, adopted as a requirement by the courts, it is worth noting that the United Nations General Assembly originally adopted in 1955 and amended on September 29, 2015 the Standard Minimum Rules for the Treatment of Prisoners, stating in pertinent part that requiring prisoners to wear degrading or humiliating clothing shall be prohibited. Rule 19 states:

1. Every prisoner who is not allowed to wear his or her own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him or her good health. Such clothing shall in no manner be degrading or humiliating.
2. All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.
3. In exceptional circumstances, whenever a prisoner is removed outside the prison for an authorized purpose, he or she shall be allowed to wear his or her own clothing or other inconspicuous clothing.

❖ Shoes and Prisoner Health

A number of prisoner lawsuits have involved issues concerning prisoner shoes. In Wolfenbarger v. Black, #CIV S-03-2417, 2008 U.S. Dist. Lexis 71050, 2008 WL 3367608 (E.D. Cal.), an inmate challenged a prison’s denial of the right to wear his own shoes. This denial, a federal court ruled, was amply justified by a number of very legitimate penological objectives including security concerns over the possibility of increased fighting among inmates if some prisoners wore more

desirable or fashionable shoes, and the possible appearance of favoritism to particular individuals.

Properly fitting shoes can be a factor in prisoner health, while shoes that are the wrong size can cause blisters and infections. This may become an acute problem for prisoners with diabetes, lymphedema, or other medical conditions. In *DeLuna v. Mower County*, #18-1933, 936 F.3d 711 (8th Cir. 2019), a jail prisoner sued the county and other defendants for negligence, claiming that a jail official provided him with shoes too small for his feet and made him wear them.

This was alleged to cause a blister on a left toe, ultimately leading to a severe Methicillin-Resistant Staphylococcus Aureus (MRSA) infection, a super-strain of staph infection resistant to usual penicillin-based medication. This in turn resulted in the need for several corrective surgical procedures. (For an article on avoiding liability for such infections, click here).

A federal appeals court overturned summary judgment for the county, ruling that there was a genuine issue of material fact as to whether the county negligently caused the claimed injury. The trial court's finding that the infection was not a foreseeable result of wearing shoes that were too small was erroneous, and the proper question was whether some harm was foreseeable, rather than the specific type of infection suffered.

The evidence presented at least a factual question as to whether the too-small shoes were a substantial (even if not exclusive) factor in causing the inmate's MRSA infection. The appeals court also held that the county was not entitled to vicarious official immunity, as the duty of providing suitable shoes in a county jail setting is "ministerial," and largely dictated by shoe size, rather than discretionary.

❖ Required Underwear and "Dignity" Interests

An unusual policy concerning required underwear for female detainees was at issue in *Mulvania v. Rock Island County Sheriff*, #16-1711, 850 F.3d 849 (7th Cir. 2017). In that case, a woman arrested for domestic battery refused to exit the vehicle transporting her to the jail. She shouted obscenities, exhibited slurred speech, and was extremely combative. She tested positive for cocaine and cannabinoids, and later claimed that she had been experiencing a "post-traumatic

stress disorder flashback." Refusing to change into a jail uniform, two female and three male officers restrained her, placed her on her stomach, held her arms over her head, and lifted off her shirt. She responded by banging her head against the floor while shouting, "They're going to rape me." The officers removed her clothing, draped a jail uniform over her body, and left her in a cell.

She then had a seizure and was hospitalized. She sued under 42 U.S.C. Sec. 1983 and the Americans with Disabilities Act (ADA). Her lawsuit claimed that the jail had a "widespread practice" of using excessive force during strip searches, and failing to reasonably accommodate people experiencing emotional distress during such searches. Other prisoners joined her lawsuit to challenge a policy requiring female detainees to wear either white underwear or no underwear at all. The strip search claims were properly rejected, as there was insufficient evidence of such a custom or practice.

Summary judgment was inappropriate, however**,** as to the detainees' claim that the jail's policy requiring female detainees to wear white underwear or no underwear violated the Fourteenth Amendment because the record did not show that the policy was within any correctional mainstream, irregular enforcement created the potential for abuse, and the detainees alleged a credible harm to dignity interests.

❖ Removing Clothing

Sometimes, at least temporarily, some clothing must be removed from some detainees or prisoners for a variety of legitimate reasons, such as suicide prevention, preventing the display of gang colors or insignia, or other reasons. But care must be taken that such actions not be unnecessarily prolonged or carried out in a way that can damage health.

In *Mammana v. Fed. Bureau of Prisons*, #18-2937, 934 F.3d 368 (3rd Cir. 2019), a lawsuit against the Federal Bureau of Prisons and two prison employees, a federal appeals court held that the trial judge erred in dismissing a former prisoner's claim under the Eighth Amendment on the ground that the conditions of his confinement were merely "uncomfortable." In actuality, the prisoner adequately alleged an excessive risk to his health and safety from the extreme and protracted deprivation of warmth and the ability to sleep. His alleged deprivations and exposure included

the claim that he was deprived of his clothing, provided only “paper like” coverings instead, denied bedding, and exposed to low cell temperatures and constant bright lighting for four days. This, the court found, reflected more than the denial of a "comfortable prison," but rather the denial of the “minimal civilized measure of life's necessities,” specifically warmth and sufficient sleep.

In *Bell v. McAdory*, #15-1036, 820 F.3d 88 (7th Cir. 2016), a civilly detained sexually dangerous person who declined to cooperate with intake procedures at a treatment facility and threatened guards was taken to a secure infirmary room with large windows and denied clothing. He spent eight days there without clothes, but was given clothing on the ninth day after he started cooperating, and was then moved to the general population.

A federal appeals court overturned summary judgment for the defendants on due process claims against them. The detainee's eight days without clothes in a fan-blown stream of chilled air, imposed without a hearing was not justified as a part of the penalty for a crime, since he was not a prisoner convicted of a crime.

Further, even for a convicted prisoner, that treatment might not be proper when it was for the goal of gaining cooperation in posing for a picture as part of the facility's procedures.

Similarly, in *Howard v. Klicka*, #05-35795, 242 Fed. Appx. 416, 2007 U.S. App. Lexis 14255 (9th Cir.), an Oregon prisoner claimed that he was improperly placed in suicide watch status and then deprived of clothing other than underwear, in violation of a state administrative rule. The appeals court found that the trial court, in granting the defendant correctional officers qualified immunity, failed to properly determine that there was no constitutional violation, so that further proceedings were required.

In two prior decisions, the courts addressed the issue of deprivation of clothing under the Oregon administrative rule. The court ruled in *LeMaire v. Maass*, #89-382, 745 F. Supp. 623, 639 (D. Or. 1990), that deprivation of clothing and property was unconstitutional when misuse does not present a serious risk to safety, and a federal appeals court then ruled on appeal in *LeMaire v. Maass*, 12 F.3d 1444 (9th Cir. 1993), that the state's rules were constitutional as written.

❖ Prison Laundry

In *Wilson v. Director of the Division of Adult Institutions*, #CIV S-06-0791, 2007 U.S. Dist. Lexis 32067, 2007 WL 1146575 (E.D. Cal.), a prisoner filed a federal civil rights lawsuit over the way prison laundry was handled and soiled clothing exchanged. The trial court ruled that his lawsuit did not properly show an unconstitutional policy or practice relating to how prison laundry was cleaned or exchanged, but rather only asserted "generic complaints" about the handling of his clothing/laundry.

He also failed to show that he was caused to wear pants and shirts that aggravated a skin condition, in violation of his Eighth Amendment rights. The court, however, granted him permission to file a further amended complaint to attempt to make out a viable claim.

❖ Resources

- Clothing. AELE Corrections Case Summaries.
- Hairstyle and Appearance Regulations & Discrimination. AELE Employment Case Summaries
- Personal Appearance. AELE Corrections Case Summaries.
- Prison uniform. Wikipedia article.
- Standard Minimum Rules for the Treatment of Prisoners. Wikipedia article.
- Standard Minimum Rules for the Treatment of Prisoners, (United Nations, September 29, 2015).

❖ Prior Relevant Monthly Law Journal Articles

- Religious Freedom in Correctional Facilities (II)--Appearance and Apparel, 2007 (4) AELE Mo. L.J. 301.
- Rights of Rastafarian Employees and Inmates, 2015 (8) AELE Mo. L. J. 201.

- Grooming and Appearance Rules for Public Safety Workers Part Two - Tattoos, Piercings, Jewelry, Dental Ornamentation, Cosmetics and Religious Headwear, 2007 (2) AELE Mo. L. J. 201.
- Routine Strip Searches to Combat Contraband, 2010 (4) AELE Mo. L. J. 301
- Cross Gender Strip Searches of Prisoners -- Part One, 2010 (5) AELE Mo. L. J. 301.
- Cross Gender Strip Searches of Prisoners -- Part Two, 2010 (6) AELE Mo. L. J. 301.
- Federal Appeals Court Reexamines Cross-Gender Strip Searches, 2011 (2) AELE Mo. L. J. 301.
- An Update on Jail Strip Searches of General Population Detainees, 2013 (2) AELE Mo. L. J. 301.

❖ **References:** (*Chronological*)

1. What Inmates Really Wear in Prison, by Jessica Pishko, Racked (June 24, 2015).
2. Prisoner's Clothing During Trial, by Christine Mukai, 20 Cleveland State Law Review 391 (1971).

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