

The prison setting imposes greater than normal restrictions on liberty, privacy, and communication. As a result, the prison comes under greater legal scrutiny regarding extent of the restrictions and deprivations of those restrictions and deprivations. Within the prison setting, the placement of inmates in restrictive housing or administrative segregation generates even greater judicial scrutiny due to the level of restriction, reasonableness of the placement and the indeterminate length of the segregation. Even with the proper policies in place, the conditions and programming in restrictive housing require careful review and attention for any correctional facility. In the past few decades, prisoners and prisoner right advocates have successfully challenged many departments on the use of restrictive housing. The following presents a brief overview of the areas in which departments have faced legal challenges.

First Amendment

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.”

Challenges on First Amendment grounds include:

- Restrictions to religious expression
- Restrictions to religious services including group participation
- Restrictions to possessing religious materials
- Limitations adhering to religious diets
- Denial of access to reading materials
- Restrictions on access to outside communication including personal contacts and the press
- Restrictions on visitation

Fourth Amendment

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized

The expectation of privacy inherent in whether a search is reasonable or not is significantly reduced in the prison environment. This reduced expectation of privacy, and the reasonableness of a search of an inmate’s property is expanded in the administrative segregation setting due to safety and security concerns and therefore subject to greater scrutiny by the court.

Challenges on Fourth Amendment grounds include:

- Cross-gender supervision searches
- Denial of confidentiality such as during medical or mental health examinations or interviews
- Bodily searches and the use of medical technology

Sixth Amendment

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.”

Challenges on Sixth Amendment grounds frequently relate to an offender’s due process protections and ability to present a defense to the accusations. Challenges include:

- Limitations on the notice and the ability to obtain evidence
- Restrictions to accessing counsel
- Limited access to law libraries to conduct legal research

Eighth Amendment

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

Two conditions are used to determine grounds for an Eighth Amendment claim:

- (1) The conditions are “sufficiently serious”, meaning that the inmate is denied “the minimal civilized measure of life’s necessities”¹ and
- (2) Institutional staff must be “deliberately indifferent” to the threat posed by the conditions, in that they knowingly disregarded the health and safety risks posed to the inmate.²

Challenges on Eighth Amendment grounds include:

- Use of force procedures
- Limited access to medical and mental health care
- Physical conditions of confinement

¹ Rhodes v. Chapman, 452 U.S. 337, 347 (1981)

² Farmer v. Brennan, 511 U.S. 825, 834 (1994)

Fourteenth Amendment (sec 1)

“All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Challenges on Fourteenth Amendment grounds include

- Conditions of confinement that impose an “atypical and significant” hardship
- Right to know the reason for and length of placement and continued stay in segregation
- Lack of opportunity to contest the placement decision at an impartial hearing
- Restrictions on access to legal resources to defend their liberty interests
- Denial of periodic, meaningful reviews to assess the need for continued confinement