The Insider's Guide to Jailhouse Law

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The Insider's Guide to Jailhouse Law

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PART 1
Understanding the Legal System

Introduction

This Guide was inspired by a booklet called *We the People,* written by David Furlani in 2004 for distribution by Prison Book Program. Over the years, thousands of people requested copies of *We the People* and shared positive feedback about it. This Guide updates the law on many of the subjects discussed in *We the People,* covers additional legal subjects, and offers new practical guidance.

A law professor and students in the Equal Justice Clinic at Seton Hall University School of Law's Center for Social Justice researched and wrote this Guide. It was edited by attorney-volunteers from Prison Book Program and was immeasurably improved with input from currently and formerly incarcerated individuals, defense lawyers, and law professors.

The Guide is not meant to provide specific legal advice, and it should not be referred to or cited as legal authority. It was prepared as a public service. It does not answer all questions or guarantee success. Some information contained in the Guide may become out of date. If you need legal advice or representation, it is best to get a lawyer to represent you if possible. We recognize how hard this can be and offer the resources listed in Appendix B for people who are proceeding "pro se"[1] (without a lawyer).

The Guide is divided into four parts. Part 1 is a basic description of the U.S. legal system. Part 2 describes constitutional rights and other laws that protect incarcerated people. Part 3 discusses practical topics such as how to do legal work and what to expect in court. Part 4 contains appendices with information on many additional subjects such as a Dictionary of Legal Terms, Selections from the U.S. Constitution, and the Prison Rape Elimination Act and compassionate release.

[1] Quotation marks are used in this Guide to identify words and phrases that have a particular legal meaning and that generally will be used again later in the Guide. Quotation marks are used in this same way in many legal documents that you will read.

1 The Structure of the U.S. Legal System

The United States Constitution (selections provided in Appendix C) shapes our legal system. The Constitution creates the three branches of the federal government:

1) the legislative branch (Congress), which makes laws;

2) the executive branch (the President and administrative agencies), which carry out the laws; and

3) the judicial branch (the courts, including the U.S. Supreme Court), which decide what the laws mean and enforce people's rights.

The Constitution establishes the powers of each branch of government, places limits on those powers, and guarantees certain rights. It also describes the relationship between federal and state governments and their different powers. The federal and state governments each play a role in our legal system, and the Constitution balances power between them.

All fifty states have their own state constitutions. These constitutions set forth the role and powers of the state governments and the people's rights under the state constitutions. State-elected representatives make laws through state legislatures. Governors of each state and their executive branches carry out these laws. State courts, including state supreme courts, decide what state laws mean and enforce those laws.

State constitutions protect similar rights as the Federal Constitution, but state constitutions sometimes provide additional rights beyond those in the U.S. Constitution. Some state courts have ruled that their state constitutions provide broader protection to people than does the U.S. Constitution.

What is the relationship between the Federal Constitution and the fifty state constitutions? The U.S. Constitution says:

- certain powers belong only to the federal government; and

- the remaining powers belong to the states.

The federal government has authority over a limited number of criminal laws and offenses "enacted" (passed) by Congress. These are mostly laws that involve national interests or interests across multiple states.

The power to enact and enforce criminal laws is mostly left to the states. This is why most people imprisoned in the United States are in state prisons and jails rather than federal prisons.

State laws must "comply with" (follow) the U.S. Constitution. The "Supremacy Clause" of the U.S. Constitution states that the U.S. Constitution and other federal laws are "supreme" over state constitutions and laws. This means that the rights protected by the U.S. Constitution and the laws passed by Congress can "preempt" (override) state laws.

State laws, including laws involving criminal punishment, must always comply with the U.S. Constitution. Although states can provide ***more*** rights than required by the federal Constitution or federal statutory law, they cannot deny rights protected by the federal Constitution.

2 The Court Systems in the United States

Federal and state governments in the U.S. operate separate court systems. There are three levels of courts in the federal judiciary. Starting with the lowest level are the trial courts, called "U.S. district courts," which are the first courts to hear disputes.

Next are the mid-level courts, called "U.S. courts of appeal" (often referred to as "circuit courts"), which are the appellate courts that review U.S. district court decisions. At the top is the U.S. Supreme Court, which primarily has appellate jurisdiction (the ability to review lower court decisions). Most state courts follow a similar model, but some states do not have mid-level appellate courts.

A. Federal Cases

Federal cases (also called "legal actions" or "lawsuits") begin in U.S. district courts. Criminal cases are brought by a "prosecutor," who files criminal charges against a person called the "defendant." Civil cases are brought by a "plaintiff" (a private person or entity), who files a "civil" (non-criminal) lawsuit against another person or entity (also called a "defendant"). Only criminal cases can result in a defendant being incarcerated. The Sixth Amendment of the U.S. Constitution guarantees a right to an attorney in federal criminal cases, but not in civil cases.

If you are a defendant and you lose a district court case or disagree with a decision made by a district court, you can seek review of the decision before the U.S. court of appeals assigned to your district. The federal district courts are grouped into twelve regions called "circuits."[2] Each circuit has a court of appeals that reviews cases from district courts located in that circuit. U.S. courts of appeal are often referred to by their circuit number such as the "Third Circuit Court of Appeals" or the "Third Circuit."

Federal appellate courts, unlike district courts, do not decide factual questions or take testimony or evidence from witnesses. In their review of cases, they only determine whether the district court correctly applied the law. Panels of three appellate judges hear cases. The panels are selected from all of the appellate court judges in that circuit.

The diagram on the next page (Figure 2.1) shows the federal circuit courts of appeals and the regions and territories they cover. In addition, Appendix E provides a list of each U.S. state and territory with its abbreviation and the name of its federal circuit court of appeals.

If you are a defendant and lose your case in a federal circuit court of appeal, you can try to appeal your case to the U.S. Supreme Court. The U.S. Supreme Court is the last court to which you may appeal (sometimes called the court of "last resort").

The U.S. Supreme Court does not hear every appeal it receives. If you wish to appeal your case to the U.S. Supreme Court, you must convince the Court to take your case using a legal filing called a "petition for certiorari" (or "cert petition" for short). The U.S. Supreme Court hears only about 1% of all cert petitions filed each year. This means that it is very unlikely the Court will decide to hear your case. The Court usually only takes cases that raise issues of national importance, resolve disagreements between federal circuit courts, or help to establish important rules for future cases.

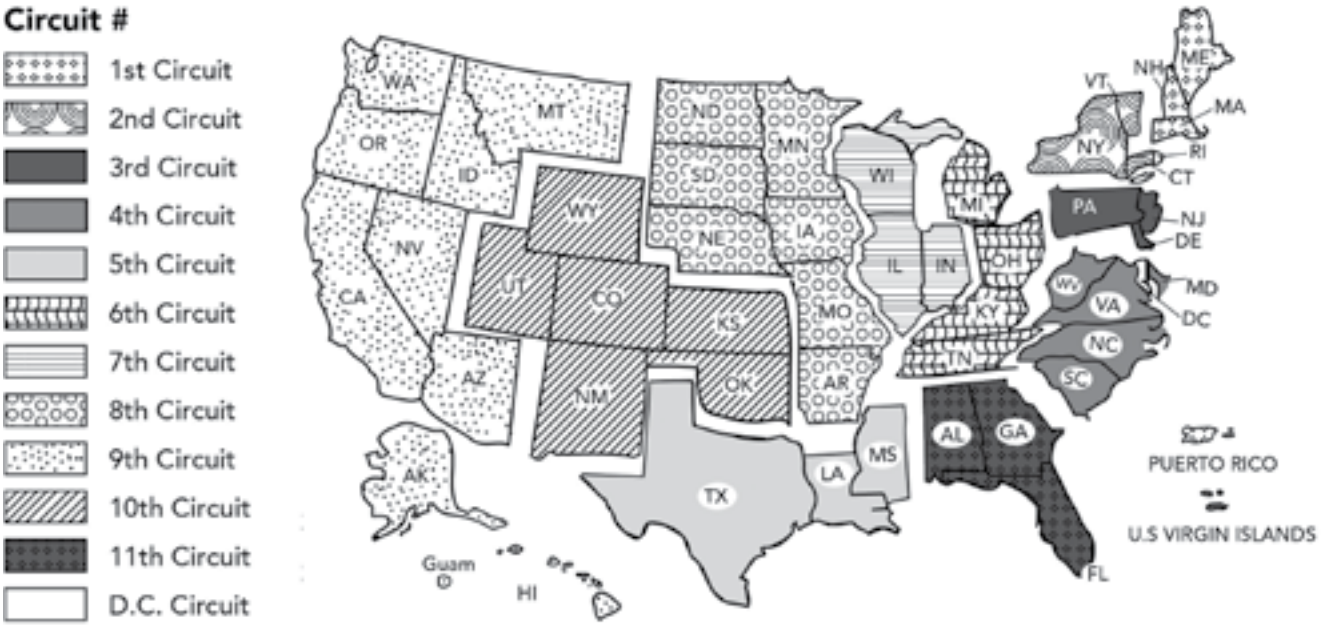
B. State Cases

Court systems at the state level are created by state constitutions and state law. Most states have trial courts, mid-level appellate courts, and a single high appellate court. The highest court in a state system is the state supreme court (although Massachusetts and New York use different names for their highest courts).

[2] There is one additional circuit court called the Federal Circuit, which does not handle criminal cases.

Figure 2.1 – Circuit Courts

The federal circuit courts of appeals and the regions and territories they cover.



Like the federal courts, state courts hear both criminal and civil cases. You can be prosecuted and punished in both federal and state court for the same conduct. State supreme courts do not agree to hear every appealed case. They follow their own rules to determine which cases they ***must*** review and which cases they ***may*** select to review. When state law rules say that the highest court ***must*** review a case, the defendant then is entitled to appeal to that court—sometimes called an "appeal as of right."

State courts generally decide cases involving state law, but they also can decide issues of federal law if they are relevant to the case. State courts make final decisions about their own state laws, but they must follow rulings of the U.S. Supreme Court and may choose to follow federal courts in their own circuit if the case involves federal law.

If your case is in a state appellate court (or in a state trial court if your state does not have mid-level appellate courts), and your case involves only state law, you can appeal to your state's highest court. You will not be able to appeal any further to the U.S. Supreme Court.

If you have appealed your case to your state's highest court and lost, and your case involved federal law (such as your rights under the U.S. Constitution), you can appeal the federal issues in your case to the U.S. Supreme Court. If the Supreme Court decides to take your case, it can overrule your state's supreme court on the federal issues. But it cannot overrule your state supreme court's interpretation of its own state law or constitution. The diagram on the next page (Figure 2.2) illustrates the federal and state court systems, and the arrows going from bottom to top show generally the order in which you can appeal a case.

If you are charged with a state "felony" (a serious crime), you have a constitutional right to an attorney. If you are charged with a "misdemeanor" (a less serious crime), you have a constitutional right to an attorney if a conviction for your offense would result in imprisonment. You may have a state constitutional right to an attorney that is more generous than these two circumstances, but it depends on your state.

Not every type of legal proceeding guarantees you a right to an attorney. You do not, for example, have a Sixth Amendment right to an attorney during grand jury or bail proceedings.

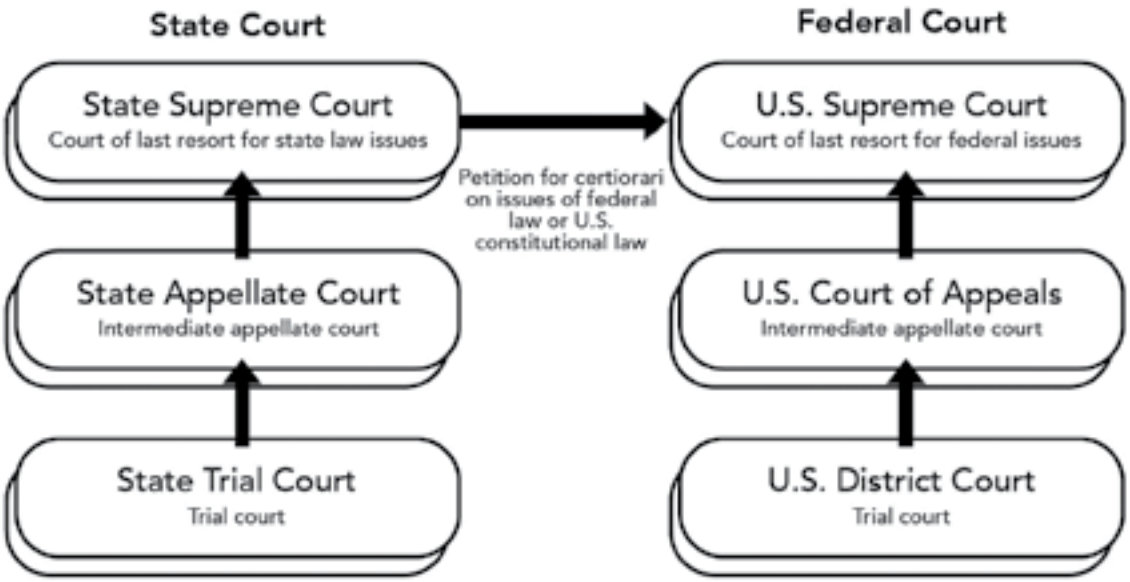
C. Federal and State: Double Jeopardy

Generally, you cannot be prosecuted for the same crime more than once because of the U.S. Constitution's protection against "double jeopardy." This prohibition does not apply when separate state and federal laws criminalize (make illegal) the same conduct. When they do, you can be prosecuted and punished in both federal and state court. This is because federal and state governments are considered to be separate "sovereigns"—separate and different governments with their own interests and powers.

If you receive both a state and federal sentence, you sometimes can ask the court to have your sentences run "concurrently" (at the same time and not "consecutively" (one after the other). There is no guarantee that the court will agree.

Figure 2.2 – State and federal court systems and appeals

The arrows going from bottom to top show generally the order in which you can appeal a case.



3 Sources of Law

This chapter describes the different forms and sources of law and how laws relate to one another.

A. Constitutional Law

Constitutions address the rights of the people and the powers of the government. Most of the "text" (words) in the U.S. and state constitutions were written centuries ago. Constitutional "amendments" make changes to a constitution and become part of that constitution. Modern courts must determine what the text of a constitution means and how the text applies today. When courts analyze constitutional law, they examine both the text of the constitution and any court decisions that have interpreted that text.

B. Caselaw and Precedent

Courts decide legal issues by issuing orders and written decisions explaining their rulings. Court decisions are called "caselaw." In a court decision, a principle of law that answers a legal question is called the "holding." When we describe how a court resolves a case, we may say that "the court held. . ." followed by a description of the principle the court decided.

Decisions also include the court's reasoning, which can be important for courts that are deciding future cases. Holdings become "precedents" (rules) that courts must follow in other similar cases. The practice of following precedents from earlier cases is called "stare decisis." The idea of stare decisis is that courts should decide cases in the same way that past courts have decided similar cases. This can help assure that individuals in similar situations are treated alike instead of based on a particular judge's personal views. Courts generally must follow the prior rulings of courts at the same or higher levels.

Decisions of the U.S. Supreme Court that interpret the U.S. Constitution establish the law nationwide. These decisions become precedents that define constitutional rights throughout the United States for future cases.

Appellate courts can overturn (overrule) their own precedents. The U.S. Supreme Court overturned precedent, for example, in 1954, in the case of B*rown v. Board of Education,* when it overruled its earlier decision in *Plessy v. Ferguson.*

Plessy v. Ferguson had been the law for nearly sixty years. In *Plessy*[3] the U.S. Supreme Court held that states did not violate the U.S. Constitution by requiring racial segregation in public places. *Brown,* in contrast, held that that *Plessy's* reasoning was mistaken: state segregation of public schools by race violates the equal protection guarantees of the U.S. Constitution. After *Brown, Plessy* could no longer be followed as precedent. Historically, there have been relatively few examples of the U.S. Supreme Court overturning constitutional precedent, but the Supreme Court recently has been far more willing to do so.

C. Binding or Persuasive Decisions

Once a precedent is established, it "binds" that court and other lower courts in the same circuit or state. A binding decision is one that must be followed in future cases. If a decision is not binding, it may still be "persuasive," which means a court may choose to follow its holding but does not have to.

Federal courts in each circuit create and follow their own precedents and do not need to follow the decisions of other circuits. Different circuit courts may take different approaches to a particular legal issue, unless a U.S. Supreme Court decision creates a single rule on that issue for all federal courts in the nation.

Similarly, state courts create their own precedents and do not need to follow the decisions of courts in other states.

[3] When citing (referring to) important cases, after the full case name has been stated, such as *Plessy v. Ferguson,* it is common to use just the first part of the case name: *"Plessy."*

Only appellate court decisions that are published become precedent and bind courts in future cases. Published decisions are chosen by the court to be printed in an official book known as a "reporter." Unpublished decisions do not bind courts in future cases or establish binding precedents. Part 3 of this Guide discusses how to use binding precedents in your legal filings and how to make arguments based on caselaw.

D. Statutes

Statutes refer to laws passed by state or federal legislatures. When the U.S. Congress passes statutes that are signed into law by the President, those statutes apply nationwide. When state legislatures pass statutes that are signed into law by the state governor, those statutes apply only in that state.

Statutes can restrict what you are allowed to do. For example, criminal laws make certain acts like drunk driving illegal. Statutes can also protect you by creating "statutory rights" or by limiting the government's power over you. For example, the federal Religious Land Use and Institutionalized Persons Act (discussed in Part 2 below) protects your right to practice your religion while in prison.

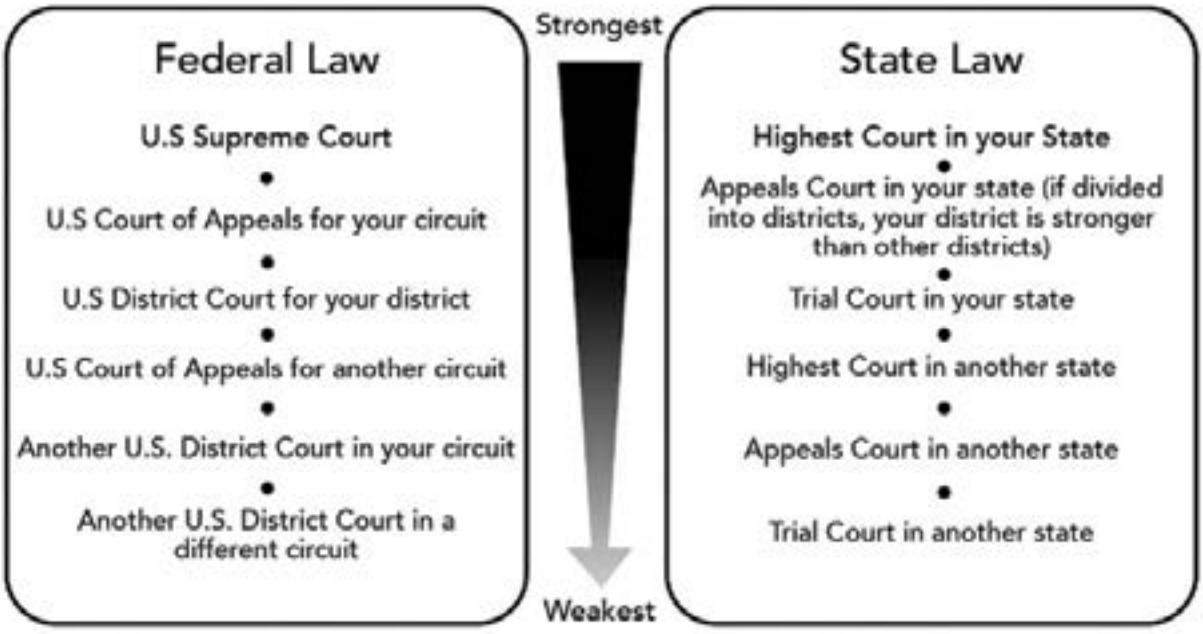
E. Regulations

Since statutes tend to be written in general language, the federal and state administrative agencies that implement the statutes issue "regulations" that provide detail about how the statutes will work in practice. Examples of federal administrative agencies are the Bureau of Prisons ("BOP") and Immigration and Customs Enforcement ("ICE"). On the state level, state departments of corrections may adopt regulations to govern conditions in prisons and jails. State parole boards may adopt regulations describing the factors they will consider when making parole decisions.

Regulations must always be consistent with their statutes. Administrative agencies can issue regulations that interpret statutes that are unclear, but the agencies cannot create regulations that differ from or contradict the statutes.

Figure 3 – Strength of Precedents

Which court decisions help your case? This diagram compares the strength (persuasiveness) of legal precedents.



Both federal and state agencies must usually provide the public with notice of any new regulation they propose, along with the reason for proposing the regulation. This is done by an agency publishing the proposal in a book usually referred to as a "register," where the public can read it. For example, proposed federal regulations are published in the Federal Register. Once a proposed regulation is published, the public usually has a deadline to provide comments and suggest any changes to the proposed regulation, including whether the regulation should be adopted at all. The agency then decides whether to change the proposed regulation based on the public comments. After this process, the regulation or amended regulation becomes final. This process is referred to as the "notice and comment" period. Federally, it is governed by a law called the Administrative Procedure Act ("APA"), 5 USC § 551 et seq. (1946). Many states have their own processes that work similarly to the federal APA.

Separate from this official process for making regulations, many agencies, including prison systems, write *policies* that serve as more specific guidance for the agencies to follow when implementing laws or conducting their operations. Agencies do not follow the APA's notice and comment process when adopting policies.

The Prison Rape Elimination Act ("PREA") is an example of a federal statute that has been implemented (put into effect) through administrative regulations. The PREA aims to eliminate sexual assault in prisons and jails, but does not specify how to achieve this goal. The regulations that implement PREA provide more detail, explaining what prisons must do to investigate "allegations" (complaints) of sexual assault and how prisons can make improvements to protect people in prison. The BOP then changed its policies (which are found in BOP Program Statement 5324.12) to comply with the regulations. Additionally, federal, state, and local offices and agencies have adopted their own policies to govern how they plan to meet their PREA obligations.

F. Rules

Rules are another source of law that can apply to cases filed in court. For example, the Federal Rules of Civil Procedure govern civil cases and the Federal Rules of Criminal Procedure govern federal criminal cases.

Most states have court rules that govern state cases. These court rules may address issues like the process for filing legal documents and deadlines for appealing. If you choose to represent yourself "pro se" (without a lawyer), you should familiarize yourself with the court rules that apply and look for a pro se guide or handbook that explains your court's most important rules.

G. Common Law

Common law refers to the laws that come entirely from court decisions, and not from other sources. When a court interprets some other source of law (such as a statute or constitution), the court's decision is not considered "common law." State tort law (such as a claim for personal injury) and contracts are examples of common law legal subjects. In deciding a tort case, for example, a court might typically not examine any statutes, but rather would examine what other courts in the state have decided in similar personal injury cases (state "common law"). Appellate courts dealing with common law claims make decisions by applying precedents or reasoning by analogy (comparison) to prior similar cases.

PART 2
Understanding Your Rights in Prison

Overview

If your rights are violated when you are in prison, there may be actions you can take to fix the situation and you may ask a court to help you. We explain in this section how courts evaluate possible violations of your rights and how to address these rights in your legal papers. We include citations to some of the main court decisions to give you a starting place for further reading and research.

You have individual rights protected by the U.S. Constitution. These include First Amendment freedoms of speech and religion, Eighth Amendment protection against cruel and unusual punishment, and Fifth and Fourteenth Amendment due process protections. The U.S. Supreme Court has held that people who are incarcerated have weaker constitutional rights than people who are not incarcerated, but people do not lose all their rights while in prison.

This idea is reflected in a 1987 Supreme Court decision, ***Turner v. Safley,*** 482 U.S. 78 (1987). In ***Turner,*** the U.S. Supreme Court balanced the interests of a prison in security and order against the constitutional rights of incarcerated people. Courts have used this balancing approach to address the scope of many individual rights in prison.

4 First Amendment Freedom of Speech and Religion

Although incarcerated people have the right to practice their religion and express themselves, courts allow prisons to restrict these rights if the prison's restrictions are reasonably related to the prison's need for security and discipline. In the next sections, we provide examples of how these issues arise in prison. We include arguments to consider if you believe prison officials are violating your rights to freedom of speech or religion.

A. Religious Liberty in Prison

The U.S. Constitution protects your right to exercise your religious faith. The First Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof… ."

Although the First Amendment refers to "Congress," the right to free exercise also applies to the states through the Fourteenth Amendment.[4] This means that you have First Amendment religious rights whether you are incarcerated in a federal prison, state prison, or local jail.

The first part of the First Amendment is known as the "Establishment Clause." It says that the government cannot favor any religion or force you to practice a religion. The second part is the "Free Exercise Clause," which is the focus of this Chapter. It says that the government cannot punish you for your religious beliefs or interfere with your religious practice without an acceptable reason.

Prison officials may place restrictions on your rights in the prison setting without violating the Constitution if they have a valid reason (discussed further below). Prison policies and practices might interfere with religious practices in many ways. For example, prisons might not allow Muslim prisoners to eat after their Ramadan fast, and instead only provide meals when they are normally served in the prison. Prisons might ban incarcerated people from keeping religious texts or rosary beads in their cells. Prisons might fail to provide halal or kosher food.

When prisons provide a valid reason for these practices, Courts often hold that the prison rules do not violate incarcerated people's First Amendment rights. For example, in ***O'Lone v. Estate of Shabazz***, 482 U.S. 342 (1987), the U.S. Supreme Court held that a prison policy that prevented Muslim prisoners from attending Jumu'ah, a required weekly religious service in the Islamic faith, did not violate their Free Exercise rights. Cases like ***O'Lone*** show that courts can be unwilling to force officials to change how they run prisons as long as they have valid reason, even when prison policies interfere with incarcerated individuals' sincerely held religious beliefs.

The First Amendment states:

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.

[4] The Fourteenth Amendment was passed after the Civil War as former Confederate states continued to resist Black emancipation. The Amendment protected individuals from discriminatory laws passed by state legislatures. It is through the Fourteenth Amendment, too, that the protections of the Bill of Rights (the first ten amendments to the Constitution) apply to the states, in addition to the federal government.

However, if a prison official punishes you for your religious beliefs or interferes with your religious practice without a valid reason, you have constitutional rights that may protect you. If this occurs and you are thinking about bringing a legal challenge, first you will need to show that your practices or beliefs are (1) religious in nature and (2) sincerely held—of real importance to you.

Your sincere religious beliefs may be protected by the Constitution even if they are not part of a mainstream or well-known religion, or even if they differ from the beliefs of most people who practice your religion.

For example, in ***Love v. Reed,*** 216 F.3d 682, 685 (8th Cir. 2000), the Eighth Circuit Court of Appeals recognized that an incarcerated person's beliefs were ***religious*** even though he did not "formally ascribe (belong) to any organized religion." The person's "religious beliefs derive[d] from his own interpretation" of the Bible. Although the beliefs were not tied to an established religion, the court held that the belief-system was entitled to First Amendment protection.

Some belief systems, even if important, may not receive constitutional protection as religious beliefs. For example, in ***Africa v. Pennsylvania,*** 662 F.2d 1025 (3d Cir. 1981), the Third Circuit Court of Appeals held that the belief system of an organization called MOVE was not protected. The court asked whether the belief system addressed questions of "life and death, right and wrong, and good and evil," as is typical of other religions. The court also asked whether the belief system was broad in nature and whether MOVE's practices included formal or ceremonial services. The court found that MOVE's belief system was not religious in nature because it did not meet these standards.

When deciding whether you have religious beliefs that are "sincerely held," a court will sometimes consider your knowledge of religious teachings and your faithfulness to those teachings. Evidence that you do not understand the teachings of a religion that you claim to follow can make it hard for you to show that your religious beliefs are sincerely held. If you cannot show that your beliefs are sincerely held, you may be unable to prove that your First Amendment rights were violated, even if the religion you follow is generally recognized and protected under the First Amendment.

If a court decides that your belief system is religious in nature and your beliefs are sincerely held, the court will apply the ***Turner v. Safley*** test to evaluate whether the prison has a valid reason for limiting your free exercise rights. Most importantly, the court will ask whether the prison's restriction on your religion "is reasonably related to legitimate penological[5] interests." ***Turner,*** 482 U.S. at 89. In other words, does the prison have a valid reason for its action, such as maintaining discipline and security inside the prison or limiting the work of prison staff? And is that valid reason reasonably related to the restriction imposed on you?

If you wish to claim that your prison's restrictions on your religion are not reasonably related to legitimate prison interests, you will need to address these four questions under ***Turner***:

1) Does the prison's restriction on your religious practice have a reasonable connection to a legitimate (valid) government interest, such as security or order?

2) Do you have reasonable other options for exercising your religious beliefs?

3) Would it harm the prison if it were required to respect your religious rights? (For example, would respect for your rights have a negative impact on prison staffing, on other incarcerated people, or on prison resources?)

4) Does the prison have other ways to address its needs without restricting your religious practice? If it does, but chooses to restrict your religious practice instead of choosing the alternative, is this reasonable?

[5] "Penological" means the practice of criminal punishment and prison management.

Unfortunately, the *Turner* test often favors the prison, as *O'Lone v. Estate of Shabazz,* 482 U.S. 342 (1987), mentioned earlier, demonstrates. Policies that interfered with the Muslim prisoners' religious practice were upheld because the Court concluded that they were reasonably related to the prison's security concerns.

In addition to the First Amendment, several laws enacted by Congress further protect incarcerated people's rights to practice their religion. These are discussed in Chapter 8.

B. Free Speech in Prison

The First Amendment also protects your freedom of speech. This includes, for example, freedom to read newspapers and other publications, send and receive mail, and express political beliefs. The First Amendment states that "Congress shall make no law ... abridging the freedom of speech... ." (U.S. Const. Amend. I)

This protection applies to the states through the Fourteenth Amendment. So, incarcerated people have First Amendment free speech rights whether they are held in federal prison, state prisons, or local jails.

However, just as we've seen that the government can place limitations on your religious freedom, the government can place limitations on your free speech rights. Courts use the *Turner* test in these situations. The government again is favored: *Turner* allows limitations on your free speech rights if they are reasonably related to prison discipline, security, preservation of resources, or other valid prison management objectives.

Still, people who are incarcerated have had some success in challenging limitations on their free speech rights. One example is when prisons adopt overly broad bans on the written materials incarcerated people can access. *See Couch v. Jabe,* 737 F. Supp. 2d 561 (W.D. Va. 2010) (striking down policy banning sexually explicit reading material that was so broad it prevented people in prison from reading famous works of literature); *Clement v. California Department of Corrections,* 364 F.3d 1148 (9th Cir. 2004) (striking down policy that barred prisoners from receiving "mail containing material that has been downloaded from the internet"). One state prison banned Michelle Alexander's book, *The New Jim Crow,* about race and America's system of mass incarceration, but the prison reversed the ban after legal advocates threatened to sue.

Some courts, however, have allowed prisons to restrict people's access to reading materials. *See Prison Legal News v. Livingston,* 683 F.3d 201, 207 (5th Cir. 2012) (upholding Texas's decision to ban a book about the treatment of women in prison because it contained a one-sentence description of a woman prisoner's sexual abuse as a child).

Challenging prison restrictions on reading materials and speech is never easy because of *Turner*. But if you are denied access to reading material that, for example, criticizes a prison or contains political, sexual, racial, or religious content, you should consider arguing that the First Amendment protects your right to receive this material. *See Thornburgh v. Abbott,* 490 U.S. 401, 415-16 (1989) (stating that absent a justified security basis, a prison cannot ban reading material based upon its content alone).

5 The Fifth and Fourteenth Amendment Rights to Due Process of Law

A. Procedural Due Process

The Fifth Amendment to the Constitution gives you the right to "due process." This means that the federal government cannot deprive you "of life, liberty, or property" without some form of a fair proceeding. This protection also applies to the states through the Fourteenth Amendment. So, incarcerated people have due process rights whether they are held in federal prison, state prisons, or local jails.

This Guide focuses on "procedural due process," which requires the government to follow fair procedures before it can deprive you of your liberty (freedom) or property.

Another kind of due process called "substantive due process" protects other rights, like the right to marry and the right to be a parent. These rights apply to incarcerated people, but may be limited. This Guide does not focus on substantive due process rights.

Although people in prison lose a significant amount of freedom, they still have some protected "liberty interests." Procedural due process is not required before you can be deprived of every right. It is only required before you can be deprived of rights that are important enough to be considered "liberty interests."

A liberty interest might exist when a statute or regulation establishes the interest. For example, if a law says that you "shall" or "must" receive good time credits (days subtracted from your sentence, earned by engaging in good behavior), you may have a liberty interest in receiving those credits. If so, then the prison cannot deny you the good time credits unless it first provides you with an opportunity to challenge the denial.

If the law instead says that you "may" receive good time credits, which gives the prison discretion, you might not have a liberty interest in receiving the credits. Then, the prison could take away the credits without providing you any opportunity to challenge the denial.

In a case called ***Sandin v. Conner,*** 515 U.S. 472, 484-87 (1995), the U.S. Supreme Court held that mandatory language in a statute or regulation such as "shall" or "must" is not enough on its own to create a liberty interest. Rather, a liberty interest will exist only if you also can show that:

- a prison's action results in your spending more time in prison; or
- a prison's treatment of you imposes "atypical and significant hardship," meaning burdens that are more significant and unusual than the hardships ordinarily suffered by everyone in prison.

Sandin makes it much harder to show that you have a protected liberty interest that receives due process protection.

The Fifth Amendment states:

No person ... shall be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law... .

If a court finds that you have a liberty or property interest at stake, then it cannot be taken away by a prison unless you are first provided with procedural "due process of law." What does procedural due process of law require? It requires that you are given at least:

1) the right to receive notice of any proposed official action that will deprive you of a liberty interest; and

2) an opportunity to contest (to fight against) the official action.

If you are not given notice or a chance to contest, you may have a legal claim against the prison for violation of your constitutional due process rights.

Courts decide what kind of "due process" is required in particular situations by using a balancing test established in the case *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Under this test, a court balances three things:

1) the importance of your liberty interest that is affected by the government's (the prison's) action;

2) the risk that the government's action will wrongfully deprive you of your liberty interest, and whether an alternative action might prevent this from happening; and

3) the government's own interests, including the burdens on the government of having to use an alternative action.

The degree of procedural protection you must receive to protect your interest will depend on how important your liberty interest is. Outside of prison, if a court views a liberty interest as very important, then "due process" might include access to legal counsel or an interpreter or the right to cross-examine witnesses. If you are in prison and a court views your liberty interest as less important or considers the interest to be limited (for example, because of your incarceration), due process might include only the ability to share your side of the story in writing.

The following are examples of how courts have viewed these issues and how due process arguments may be relevant for people in prison.

B. Due Process in Prison Disciplinary Proceedings and Appeals

1. Protections from Punishment

In the 1974 case *Wolff v. McDonnell*, 418 U.S. 539 (1974), the U.S. Supreme Court addressed the due process protections a prison must provide before punishing incarcerated people with the loss of "good time credits" for "flagrant or serious misconduct." *Wolff* held that incarcerated people have a liberty interest in good time credits if a mandatory state law establishes how credits are earned. When this liberty interest exists, due process requires that a prison provide procedural safeguards before punishing someone by taking away those credits. Specifically, the procedural safeguards include:

1) written notice of the claimed disciplinary violation; and

2) a written statement of the evidence relied on by prison officials who concluded that a violation occurred.

Wolff also held that incarcerated people may have the right to call witnesses and present documents in their defense, as long this does not threaten the prison's safety or other needs. There is no due process right to legal counsel in disciplinary proceedings.

Subsequent court decisions have described the types of notice and evidence from prisons that incarcerated people are entitled to in disciplinary proceedings. For example, a federal court in *Reeves v. Pettcox*, 19 F.3d 1060, 1062 (5th Cir. 1994), held that due process was violated when an incarcerated person in Texas was punished for breaking a rule that he had no way of knowing about.

Federal courts in Illinois have ruled that an incarcerated person must be informed of any information held by prison officials that is "exculpatory" (shows that the person is not guilty), and that the prison must consider that information before making a disciplinary decision. *Whitford v. Boglino*, 63 F.3d 527, 536 (7th Cir. 1995); *Chavis v. Rowe*, 643 F.2d 1281, 1285–86 (7th Cir. 1981).

In the 1985 case *Superintendent, Massachusetts Correctional Institution at Walpole v. Hill*, 472 U.S. 445 (1985), the U.S. Supreme Court addressed the level of proof that prison officials must show to punish someone who violates prison disciplinary rules. The Court explained that due process requires only "that there be some evidence to support the findings made in the disciplinary hearing." "Some" evidence is not a lot. This standard makes it very hard for incarcerated people to bring challenges in prison disciplinary proceedings.

It is not always clear what types procedural protections may be required to protect your liberty or property interests in a given situation in disciplinary proceedings. The Constitution may require more or less depending on the importance of your interests and the prison's needs. If you are punished in a way that is more severe than loss of good time credits, you might argue that an even greater liberty interest is at stake and even stronger procedures than the basic *Wolff* protections are needed.

2. Appeals

It is possible to challenge disciplinary decisions for reasons other than lack of due process. If you are in state prison, there may be a process within the prison for appealing a final disciplinary decision. Be sure to follow all internal prison rules for appealing disciplinary decisions. The requirement that you complete or "exhaust" all remedies available to you is called "exhaustion." Also, be sure to comply with any deadlines.

Once you exhaust all remedies available to you in the prison system, you can generally appeal the prison's decision as a "final agency action." The court will evaluate whether the prison's decision was reasoned and rational and whether it was supported by enough evidence. If it was not, then the prison's decision may be overturned as being "arbitrary and capricious." Different states have different processes for appealing from prison disciplinary decisions. They also have different standards for reviewing disciplinary findings as "final agency decisions."

If you are in federal prison, see Chapter 10.F regarding the Prison Litigation Reform Act for more information.

C. Due Process and Housing, Transfers to Other Prisons, and Placement in Solitary Confinement

Generally, courts have been unwilling to recognize due process protections when prison officials assign people to housing or transfer them from one prison to another.

1. Transfers

For example, in *Meachum v. Fano,* the U.S. Supreme Court held that an incarcerated person's interest in remaining at a particular prison was not significant enough to require due process protections when the prison decided to transfer the person to another institution. 427 U.S. 215, 228 (1976). The Court found that an incarcerated person had no "liberty interest" in a particular housing assignment, and therefore no procedures were required before the transfer or assignment could take place.

2. Transgender People

A lower federal court recognized, however, that assigning transgender people to housing units that do not match their gender identity may present an "atypical and significant hardship," triggering due process protections, even if housing transfers ordinarily do not. *See, e.g., Doe v. Massachusetts Dep't of Correction,* No. CV 17-12255-RGS, 2018 WL 2994403 (D. Mass. June 14, 2018). Procedures may be required to protect transgender people's liberty interests in these circumstances.

Questions regarding the rights of transgender people to safety and dignity while incarcerated bring up many legal issues. The Prison Rape Elimination Act, addressed in Chapter 8, includes specific protections for transgender people. (For more information, people should also see the resources in Appendix D.)

3. Solitary Confinement

The U.S. Supreme Court has recognized that placing people in solitary confinement (a "Special Housing Unit," "SHU," "administrative segregation," or "ad seg") may raise due process interests in a narrow category of circumstances. In *Sandin,* the 1995 case referenced

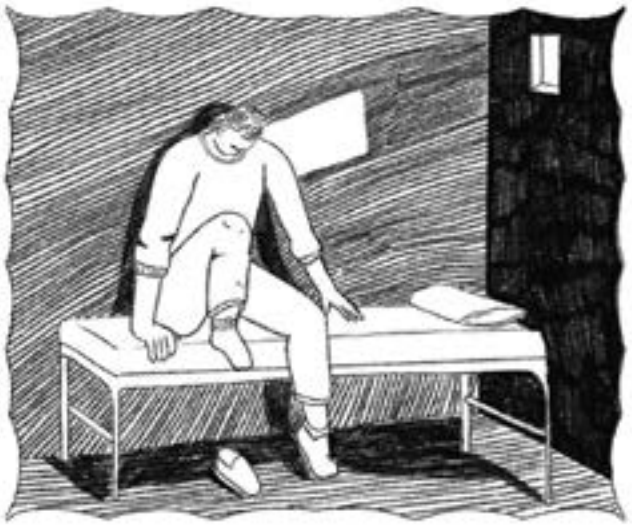
earlier, the U.S. Supreme Court held that a liberty interest does not necessarily exist when an incarcerated person is removed from the general prison population and placed temporarily in administrative segregation. 515 U.S. 472, 485–87 (1995). The Court decided that this did not impose a "dramatic departure from the basic conditions" of an incarcerated person's sentence. But, the Court noted, if a transfer to segregation does impose an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life," then a liberty interest may arise. If a liberty interest arises, the person will be entitled to due process protections before the transfer can occur.

To determine whether a transfer to solitary confinement causes "atypical and significant hardship," courts examine the length of time that the person would be in solitary confinement and if the conditions are unusually harsh. The longer the time a person spends in solitary, the more likely the court is to conclude that it is "an atypical and significant hardship."

But courts disagree about what amount of time in solitary is enough to be an "atypical and significant" hardship. For example, the court in ***Colon v. Howard,*** 215 F.3d 227, 231–32 (2d Cir. 2000), said 305 days was an atypical and significant hardship, but in another case the same court held that SHU confinements of fewer than 101 days could constitute atypical and significant hardships if the conditions were more severe than is typical. ***Palmer v. Richards,*** 364 F.3d 60, 65 (2d Cir. 2004). In ***Griffin v. Vaughn,*** 112 F.3d 703 (3d Cir. 1997), yet another court held that 450 days was not an atypical and significant hardship.

Some courts evaluate whether solitary confinement raises a protected liberty interest by comparing the conditions a person will experience in solitary to conditions in the general prison population. Other courts consider how conditions in solitary compare to other solitary confinement units throughout the state. Both may be relevant.

If conditions in solitary are much harsher than the general prison population or other state solitary confinement units, a court is more likely to find that a person has due process rights requiring greater procedural protections before a transfer can occur.



4. Super-Max Prisons

Due process protections apply when a person is assigned to a super-maximum-security ("supermax") prison or unit. Supermax units are the most restrictive housing assignments. Typically, they subject incarcerated people to isolation for 23 hours per day, with minimal contact with staff and other incarcerated people.

In ***Wilkinson v. Austin,*** 545 U.S. 209, 223 (2005), the U.S. Supreme Court applied the ***Sandin*** "atypical and significant hardship" test to a supermax prison. The Court concluded that conditions in supermax prisons exceed the ordinary conditions of prison life. This means that a person has a liberty interest, protected by due process, in avoiding placement in a supermax prison. The Court applied the ***Mathews v. Eldridge*** balancing test to determine whether the state's procedures for determining who would be placed in a supermax prison were enough to protect that liberty interest. The prison's procedures involved:

1) giving notice to the person of the prison's reason for the assignment to a supermax; and

2) the opportunity to rebut (challenge) the basis for the assignment in writing or through explanation at a hearing.

The Court held that these "informal, non-adversary" procedures were all that due process required before placing a person in a supermax unit.

6 Eighth Amendment Protections

Overview

The Eighth Amendment protects people in federal prison against "cruel and unusual punishment" after they have been convicted of a crime. Through the Fourteenth Amendment, this protection also applies to people in state custody. The U.S. Supreme Court has enforced the ban on cruel and unusual punishments through two types of Eighth Amendment decisions:

- decisions that govern prison conditions; and
- decisions that place limits on the severity of sentences for particular kinds of offenses or for categories of people who have committed crimes, like young people or people with disabilities.

This chapter addresses the first type of decisions: Eighth Amendment protections related to prison conditions. Chapter 7 addresses the second type and focuses on Eighth Amendment limits on sentences imposed on young people. Section C of this Chapter 6 discusses the protections for people who are in jail awaiting trial.

A. Restrictions on Conditions of Confinement

The Eighth Amendment protects you from excessively harmful or unsafe conditions in prison. Nonetheless, courts have found that "restrictive and even harsh" conditions may be acceptable and not violate the Eighth Amendment. The Supreme Court held that the Constitution "does not mandate comfortable prisons." *Rhodes v. Chapman*, 452 U.S. 337, 349 (1981).

The Eighth Amendment states:

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

What kinds of conditions are considered unconstitutional? To challenge prison conditions, you must show:

1) first, that you faced or experienced serious harm or were denied a "basic human need;" and
2) second, that prison officials knew that you were exposed to the harm or denied basic needs, but did nothing to fix the situation. (A stricter standard for people held pretrial is discussed below.)

Courts have examined what each of these requirements mean.

1. Showing Unconstitutional Harm or Denial of Basic Needs

Harm that is serious enough to receive Eighth Amendment protection is determined on a case-by-case basis. The U.S. Supreme Court has stated that the harm must be "objectively sufficiently serious." "Objectively" means based on facts or observation. In other words, an average person who learned about a prison condition under which you are suffering would likely think that the condition was serious and harmful. This could include both harm you experienced in the past and harm you might experience in the future. *Helling v. McKinney,* 509 U.S. 25 (1993). If you focus on future harm, you must show that conditions you are experiencing place you at a serious risk of future injury. For example, you could argue that second-hand smoke places you at risk of developing cancer.

You can assert (argue) an Eighth Amendment violation if you face a condition that poses a risk of serious harm to you, even if it is not a problem for everyone. For example, the U.S. Supreme Court held that a prison's practice of placing two people in the same cell (double-celling) was usually acceptable, but that double-celling in some situations could put someone at risk of serious harm (for example, if a prison knew that a cellmate had a history of violent assaults against other incarcerated people). Under particular circumstances, double-celling might be a condition that

violates the Eighth Amendment. ***Rhodes v. Chapman***, 452 U.S. 337, 347-49 (1981).

The U.S. Supreme Court has said that "basic human needs" are "'the minimum civilized measure of life's necessities.'" ***Farmer v Brennan,*** 511 U.S. 825, 834 (1994) (quoting ***Rhodes,*** 452 U.S. at 347). People who are in prison have a constitutional right to adequate food, water, sanitation, medical care, and to have other basic needs met.

a) Food

You have a right to food that is nutritious and prepared under clean conditions. ***Robles v. Coughlin,*** 725 F.2d 12, 15 (2d Cir. 1983). Prisons may serve whatever food they choose as long as the food complies with established nutritional requirements. As noted in Chapter 4.A above, you may have a right to food that complies with your religious dietary restrictions or medical needs.

Prisons must provide appropriate food for people whose health requires a specific diet, such as diabetes or celiac disease. Unfortunately, many people in prison have frustrating battles to get their required diets. If this happens to you, be sure to have documentation of your required diet from a medical professional. File a grievance if you do not receive the correct food and then follow-up. Over time, prison officials' failure to give you the right food could be considered a "denial of a basic human need." This is especially true if your inability to receive your required diet has serious health consequences.

Prison officials cannot deny you food to punish you for your behavior or for speaking up about your rights. To assert an Eighth Amendment violation, you usually must be denied several meals. One denial will most likely not be considered serious enough to show a violation of your constitutional rights. ***Foster v. Runnels,*** 554 F.3d 807 (9th Cir. 2009).

b) Exercise

Prisons must provide you with opportunities for exercise outside of your cell. ***Keenan v. Hall,*** 83 F.3d 1083, 1089 (9th Cir. 1996); ***Delaney v. DeTella,*** 256 F.3d 679, 687 (7th Cir. 2001). Exercise is important for your physical and mental health. Courts have not agreed on the minimum amount of time for exercise that the Constitution requires. The amount may be different depending on whether you are in the general population or in segregation, where your rights may be more limited. Denying you the ability to exercise, can at some point amount to an Eighth Amendment violation

c) Air Quality and Temperature

If the air quality in your prison poses a danger to your health, you may have Eighth Amendment grounds to challenge the lack of clean and safe air. For example, if you experience constant secondhand smoke or your prison contains a toxic insulation material like asbestos, these conditions could amount to a denial of the basic human need for safe and clean air. See ***Talal v. White,*** 403 F.3d 423 (6th Cir. 2005); ***Alvarado v. Litscher,*** 267 F.3d 648 (7th Cir. 2001); ***LaBounty v. Coughlin,*** 137 F.3d 68 (2d Cir. 1998).

The Eighth Amendment may also require that the prison provide you with basic protections against extreme heat or cold. ***Bibbs v. Early***, 541 F.3d 267 (5th Cir. 2008); ***Gaston v. Coughlin,*** 249 F.3d 156 (2d Cir. 2001). You have a right to bedding and clothing that is suitable for the temperature and conditions.

Many people are held in prisons in geographic locations that have extreme weather events such as heat waves. People without air conditioning or adequate heat in their cells may suffer during hot weather or extreme cold. Courts have in some cases found that these conditions violate the Eighth Amendment. This is the case at least for people who are sensitive to heat because of age or because they are on certain medications. ***See Ball v. LeBlanc,*** 792 F.3d 584, 596 (5th Cir. 2015); ***Woods v. Edwards,*** 51 F.3d 577, 582 (5th Cir. 1995). Other courts have been unwilling to say that suffering through extremely hot weather violates the Eighth Amendment for people who do not have special health conditions. ***Chandler v. Crosby,*** 379 F.3d 1278, 1296-97 (11th Cir. 2004); ***Woods v. Edwards,*** 51 F.3d 577, 581 (5th Cir. 1995).

Even if courts agree that extreme heat is a problem under the Eighth Amendment, they may be more likely to require prisons to help people cool off by providing fans and cold showers, rather than by installing air

conditioning. *Gates v. Cook,* 376 F.3d 323, 336, 339-40 (5th Cir. 2004). Courts' past unwillingness to address the problem of extreme heat does not mean you should stop challenging these conditions under the Eighth Amendment, however. This is particularly true as a global rise in temperatures may continue to make living conditions dangerous for incarcerated people.

d) Sanitation and Personal Hygiene

You have a right to clean and sanitary living conditions. This includes access to clean bathrooms, removal of trash from your living area, and a living space free of roaches, mice, and rats. *DeSpain v. Uphoff,* 264 F.3d 965 (10th Cir. 2001); *Gillis v. Litscher,* 468 F.3d 488 (7th Cir. 2006). You may have a right to basic personal items, too. One court, for example, held that access to a mattress, bedding, clothing, and soap are part of life's necessities. *Gillis,* 468 F.3d at 493. You may also be entitled to basic supplies such as toothbrushes, toothpaste, soap, sanitary napkins, razors, and cleaning products. However, courts do allow prisons to deprive people of some of these things within limits.

e) Medical Care

While in prison, you cannot obtain medical care on your own, so prisons must provide care for you. Courts have held that the Constitution requires "reasonably adequate" medical care for "serious medical needs." This includes emergency services, regular medical care, dental care, and mental health care. "Reasonably adequate" care means a basic level of medical treatment. It does not mean the same quality of care you might receive outside of prison. Prison medical staff must follow professional standards and the prison's own procedures. If prison staff do not follow these standards and procedures and are aware that you are being denied care for a serious medical need, you may have a claim under the Eighth Amendment. Be sure to document any denials of reasonable care.

What courts consider as objectively serious medical needs can vary from jurisdiction to jurisdiction. Courts are likely to consider whether your health problem has been diagnosed by a doctor as needing treatment, whether it causes you pain, and whether your problem interferes with your daily activities.

Prisons must give medical care to everyone, even if they cannot pay. Prisons can ask you for a small fee to see prison medical staff, but they cannot deny care if you are unable to pay. If you submit a "sick call" request, you may have to pay a fee from your prison bank account. This is frustrating, but it is important to request medical help when you need it since submitting a "sick call" request creates a record of your medical needs. If your requests are ignored, this record can help show that your medical needs were not adequately addressed.

If you have requested care and a prison doctor has refused to provide it, you may have a claim that the prison was "deliberately indifferent" to your medical needs in violation of the Eighth Amendment. (This requirement of "deliberate indifference" is discussed further in Section A.2 below.)

But, if the doctor says that the care was not needed based on the doctor's "professional judgment," courts often will conclude that the denial of care did not violate your rights, even if your health was harmed. However, a doctor's claim of "professional judgement" cannot justify ignoring your needs altogether or failing to give adequate care, especially for serious conditions. It also does not excuse prison staff if they delay or fail to follow medical treatment that has been ordered for you. In such cases, you may argue that the doctor or other prison staff were "deliberately indifferent" to your medical needs in violation of the Eighth Amendment.

f) Solitary Confinement

Scientific evidence shows that holding someone in solitary confinement causes psychological injury and great suffering. Even so, prisons force countless people to suffer this form of detention. Prisons adopt administrative policies for placing people in solitary, which prisons justify on the grounds of harm prevention, maintenance of order, and punishment for violating prison rules. Prisons also assign people to special housing (sometimes called "supermax" or administrative control units) that are designed for long-term solitary confinement. Courts are often unwilling to treat any of these forms of isolation as unconstitutional harm that violates the Eighth Amendment.

In general, courts will not set time limits on how long people can be kept in solitary or "segregation." However, some courts have set limits, based on the Eight Amendment, when conditions in solitary are particularly harsh or when the person in solitary has certain mental health issues. Some courts have said that long term solitary confinement is unconstitutional for juveniles (people under the age of 18). The Federal Bureau of Prisons also limits solitary confinement for juveniles.

People held in solitary have an Eighth Amendment right to at least some exercise, but there is no established right to any particular programs.

Federal and state laws and regulations also establish limits on solitary confinement. For federal prisons, those rules are found in BOP regulations. State laws and regulations may provide more limitations on solitary confinement than the U.S. Constitution. You should find out if your state has these laws and regulations.

g) Rehabilitative Programs

The Eighth Amendment does not require rehabilitation (therapy or treatment) programs for people in prison. *Women Prisoners of District of Columbia Dept. of Corrections v. District of Columbia,* 93 F.3d 910, 927 (D.C. Cir. 1996). In fact, prisons do not even have to provide drug and alcohol treatment unless treatment is a required part of a person's sentence. The Constitution requires more for juveniles and people with mental illness, and some states provide a right to programs or counseling. Treatment is often mandated for people convicted of sex offenses.

h) Other Conditions

When people in prison have challenged poor conditions such as lack of good lighting in prison cells, lack of fire safety systems, and unsafe buildings and cells, they have been successful. *Hoptowit v. Spellman,* 753 F.2d 779, 784 (9th Cir. 1985), *Brown v. Bargery,* 207 F.3d 863, 865-68 (6th Cir. 2000).

But these challenges do not always succeed, particularly if the court considers a harm to be non-serious. Keep in mind, though, that one harmful condition might be considered non-serious on its own but, when combined with other harmful conditions, may meet the standard of denying a human need. *Wilson v. Seiter,* 501 U.S. 294, 304 (1991). If you want to challenge the conditions in your prison, you should describe in your written complaint ***all*** the problems you are experiencing and their impact on you. *Palmer v. Johnson,* 193 F.3d 346, 353 (5th Cir. 1999) (stating that courts must consider the total impact of all the conditions together).

i) Protection from Violence by Others

Courts have held that you have a right to "reasonable safety" while you are in prison. This includes the right to be free from violence from correctional officers (addressed in Part B of this chapter below). It also includes the right to be free from harm inflicted by other people held at the prison. Prisons have an obligation to protect you from physical assault by others, including sexual assault. Prisons must take reasonable measures to protect you in response to danger.

Courts have held, however, that prison officials do not violate the Constitution simply by being careless in failing to protect you. To violate your Eighth Amendment rights, there must be "deliberate indifference" or "reckless disregard" for your safety. This means that the officials completely ignored your safety by failing to "act reasonably" in response to a known danger to you. The risk of harm must be "excessive." *Farmer v. Brennan,* 511 U.S. 825, 837 (1994).

2. Showing Deliberate Indifference

If you wish to challenge prison conditions based on the Eighth Amendment, you must first show that the condition or harm you complain of (for example, protection from violence by others or inadequate food) was "objectively" serious or cruel. This is the "objective" part of the Eighth Amendment test. A condition is considered unconstitutional if an average person would likely think that the condition was serious and harmful.

Next, you must show that prison officials ***actually knew*** that you were exposed to these harms or conditions but did nothing to fix the situation or respond reasonably. *Farmer v. Brennan,* 511 U.S. 825 (1994). This is known as the "subjective" part of the Eighth Amendment test. It takes into account the mental state or "subjective" state of mind of the prison officials. (Note that pretrial detainees do not have to show that officials actually knew of the harm, but only that they ***should have known***.)

You could show that an official acted unreasonably if the harm is so obvious that anyone would assume that the official must have been aware of it and intentionally ignored it. One way to prove awareness is by showing that you filed a grievance with the prison about the harm and nothing was done to fix it. As the Supreme Court stated in *Hudson v. Palmer,* 468 U.S. 517, 526–27 (1984), prison officials must "take reasonable measures to guarantee the safety of the inmates."

Courts do not always believe prison officials who say that they were not aware of an objectively serious condition. If circumstances or evidence suggests that prison officials actually knew, you can point to this to prove your claim.

B. Protections Against Force and Abuse by Prison Officials

You have a right to be free from "excessive force" while you are incarcerated. In theory, at least, this means that prison officials cannot subject you to violence. Officers might be permitted to use force to restore order or protect the safety of others, but even then, they are not supposed to use more force than necessary. Courts often, however, defer to prison officials when they are acting to stop prison violence.

If you experienced excessive force by prison officials, you may be able to bring a civil lawsuit against the officials who harmed you to seek money damages or an order to stop them from harming you in the future. Officers who harm incarcerated people can also be criminally prosecuted for violating the law. Such prosecutions occur rarely and only in extreme cases. The prison's internal affairs department or another government office would need to investigate first and refer the matter to a prosecutor's office. Prosecutors have discretion (a choice) when deciding whether to charge officers.

Excessive force could also violate a prison or jail policy on planned or unplanned "uses of force." For example, many prisons have written policies regarding when and how officers can enter your cell to remove you with force for any reason. This is sometimes called a "cell extraction"—one example of a planned use of force. Prisons may also have policies regarding unplanned uses of force, such as an officer using pepper spray to respond to a fight or other disruption at the prison. Prisons might place restrictions on how force is used in each of these examples, such as restricting officers from using pepper spray against people with certain known respiratory or other medical conditions.

Prisons can discipline officers who fail to follow policies, but it is rarely done.

An officer's use of excessive force might also violate your Eighth Amendment rights. The U.S. Supreme Court held in *Hudson v. McMillian,* 503 U.S. 1, 6 (1992), that in deciding whether a use of force is cruel and unusual punishment, courts should consider whether an officer used force "in good faith" to restore order or safety, or whether the officer used violence to "maliciously" or "sadistically" cause harm. "Good faith" means that the officer acted with the right motives. Acting "maliciously" or "sadistically" means that the officer intended to harm a person to punish them or make them suffer.

According to ***Hudson,*** courts should examine factors such as whether the officer used more force than was necessary, or whether the officer made any effort to soften or limit the severity of the force.

Courts use a different analysis for cases challenging prison officers' failure to protect someone. For example, if supervisors at a prison or jail failed to prevent an officer from harming you, courts will apply the "deliberate indifference" standard discussed in this chapter in Section A.2 above.

Sexual assault or sexual abuse of an incarcerated person by prison staff violates the Eighth Amendment. Courts evaluate these claims using the same approach as excessive force claims. But sexual assault is different from excessive force because it can never serve a valid purpose.

Federal appellate courts have held that an incarcerated person cannot consent to sexual activity with a corrections officer or member of the prison staff. The incarcerated person automatically faces coercion and their "consent" can never be voluntary. This means that any claim that an incarcerated person agreed to sexual activity does not excuse the behavior or change the constitutional analysis.

If you are harmed by a correctional officer, you should take steps to make a record of what happened to you. Then, you should file a grievance using the internal reporting system in your prison or jail. Try to do this as soon as possible after the incident and within the time period allowed by the reporting system. If the prison ignores your grievance and fails to respond, you should consider filing another grievance or filing an appeal. Keep a record or a copy of the grievances you file, and make notes about what you filed and the dates of filing. Keeping records and taking notes can document what happened to you and also support your claim that you filed grievances if the prison denies it. Also, as explained in Chapter 10.F, you are required by the Prison Litigation Reform Act ("PLRA") to file a grievance and to file all available grievance appeals on a timely basis before you can file suit in federal court.

Although filing a grievance can be helpful, you must still consider the risks of retaliation. Retaliation happens when officials take revenge on someone who reports misconduct. They might deny you services or privileges or harm you further. Retaliation is unlawful and can be a legal claim in addition to the original claim for misconduct. You have a right protected by the First Amendment to file prison grievances, so your constitutional rights would be violated if prison officials retaliate against you ***because*** you filed a grievance. You must evaluate the risks and benefits of trying to hold officers accountable for their wrongdoing.

If you file a grievance, consider asking the prison to preserve any available security (video) footage or other evidence of the incident. Sometimes prisons automatically record over or erase security footage after a period of time. The prison might not grant your request to preserve the footage, but it is still worth making the request. This helps create a record.

If you are injured by an official, you should also request that the prison medical staff evaluate you. Unfortunately, when correctional officers harm a person who is incarcerated, prisons can make it hard or impossible for the injured person to access medical treatment. Or, if the injured person is given treatment, the medical staff may minimize the injuries or hide the cause of the injuries in the medical record. It is still worth trying to document your injuries by filing a request for medical treatment. Most importantly, you deserve medical treatment for your injuries.

C. Constitutional Protections for Pretrial Detainees

The Eighth Amendment does not apply directly to people who are held pretrial because they have not been found guilty of a crime and are considered innocent under the law. Instead, the Fifth and Fourteenth Amendments' due process protections apply.

Due process protections against cruel and inhumane conditions in jail are "at least as great" as the protections of the Eighth Amendment. *City of Revere v. Massachusetts General Hospital,* 463 U.S. 239, 244

(1983). In fact, courts now generally hold that people held pretrial are entitled to greater protection than people who have been convicted when they assert challenges to their pretrial conditions or treatment. Instead of having to show "deliberate indifference," as do people who have been convicted, people held pretrial must only show that they experienced something "objectively unreasonable," like dangerous or unhealthy conditions or excessive force by an officer. Pretrial detainees do not have to show that prison officials actually knew of these problems and disregarded them; they only need to show that the problems existed and officials should have known about them.

The Supreme Court applied the "objective reasonableness" test when addressing use of force against people held pretrial. But the Supreme Court has not ruled on the test that applies when people held pretrial bring other kinds of claims, such as challenges to conditions of confinement or inadequate medical care. Some lower federal courts have used the "objective reasonableness" test for these types of claims, but others have used the "deliberate indifference" test. If you are held pre-trial and want to bring these types of claims, you should research which test is applied by the circuit court in your jurisdiction.

7 Protections for Youth: Eighth Amendment and State Constitutional Rights

If you are serving a life sentence or lengthy imprisonment for an offense you committed as a juvenile or late adolescent (during your late teens or early twenties), you may have the right to challenge your sentence under the Eighth Amendment to the U.S. Constitution and possibly under your state constitution.

A. The Supreme Court's Youth Sentencing Decisions

When it comes to sentencing, the U.S. Supreme Court has ruled that the Eighth Amendment's ban on cruel and unusual punishment requires that a sentence be "proportionate" to the crime or the characteristics of the person who committed the crime. "Proportionate" means that the sentence fits the crime and is not overly severe.

For example, the Supreme Court has held that punishing a person with death is "disproportionate" when the person did not kill anyone. The Court has also declared that some categories of people are less at fault than others for their crimes because of their vulnerabilities. This includes people under the age of 18 (juveniles) and people with intellectual disabilities. Juveniles are the focus of this chapter.

Over the last two decades, the Supreme Court has set constitutional limits on sentencing of juveniles. The Court has said that juveniles should be punished less severely than adults. It first adopted this reasoning in 2005 in the case of ***Roper v. Simmons,*** 543 U.S. 551 (2005), which held that sentencing juveniles to the death penalty violates the Eighth Amendment. The *Roper* decision led to other limits on severe sentences for juveniles. In ***Graham v. Florida,*** 560 U.S. 48 (2010), the Supreme Court held that life-without-parole is unconstitutional when imposed on juveniles convicted of crimes other than killing ("non-homicide" crimes).

Two years later, in ***Miller v. Alabama,*** 567 U.S. 460 (2012), the Supreme Court ruled that mandatory life-without-parole sentences for people under age 18 for homicide crimes violates the Eighth Amendment. It held that a judge cannot automatically impose a life sentence, but is required first to consider a juvenile's maturity, family and home environment, and the likelihood of rehabilitation. After reviewing these factors, however, the judge can still sentence the juvenile to life-without-parole. Further, a state is not required by the Eighth Amendment to provide parole or guarantee eventual freedom, but it must give a person convicted as a juvenile a meaningful opportunity to seek release if the person shows the possibility for rehabilitation.

In ***Miller,*** as in ***Graham and Roper,*** the Court relied on scientific evidence from experts in childhood brain development. The Court reasoned that juveniles cannot be blamed or punished to the same extent as adults because their brains are not yet fully developed. Juveniles are less able than adults to understand the impact of their actions or to control their behavior. They are more likely to act on impulse and take risks. They are influenced by other juveniles and by older adults, and they have less control than adults over their environment. The *Miller* Court also concluded that juveniles are more capable than adults of rehabilitation because they are not yet fully formed. The Court referred to these characteristics of juveniles as "mitigating" and the "hallmark" features of youth.

B. Putting *Miller* into Practice

States vary in how they put the *Miller* ruling into effect. Some states passed laws that prohibit judges from ordering lengthy mandatory minimum sentences for juveniles or sentences that do not allow for parole. Other states allow adults who were convicted as juveniles and are already serving a life sentence a chance to seek parole or to be resentenced if the sentencing judge did not ***take into account*** the features of youth identified in ***Miller.*** At the time of this Guide's publication in 2024, thirteen states and the District of Columbia have statutes that allow people sentenced to life as juveniles to be considered for release after serving a portion of their sentence.

If you are serving a life sentence for a crime you committed before age 18, you should find out whether you are entitled under *Miller* to parole consideration or resentencing. Many state public defenders' offices are pursuing resentencing petitions for people convicted as juveniles.

If you determine that you are entitled to parole consideration or resentencing, you should think about the evidence that will be important at a parole or resentencing proceeding. There are five factors from the *Miller* decision that courts consider at sentencing or re-sentencing. Judges may have some choice about how to weigh these factors, but they must consider the mitigating or hallmark features of youth, as follows:

1. The Juvenile's Age and Immaturity at the Time of the Crime

Brain science shows that juveniles generally have a hard time controlling their impulses and emotional reactions. This is due to their immaturity and less-developed brains. They tend to engage in behaviors that give them quick rewards in the short term, but they struggle to plan and do not appreciate long-term consequences. Before people reach their mid-twenties, their brains are not fully developed. This is particularly true of parts of the brain that manage judgment and weigh the risks of decisions. It is important for you to focus on your level of maturity at the time of your offense and whether your behavior showed poor decision-making skills or lack of impulse control at that time.

2. The Juvenile's Environment

A juvenile's family circumstances, home environment, education, and social background are important to evaluate. Poverty, abuse and neglect, early exposure to drug or alcohol abuse, and/or community violence may explain behaviors and poor choices as a young person. Children are powerless to control the environment they are born into. They cannot remove themselves from unhealthy situations or from violence.

It may be difficult for you to revisit traumatic experiences from childhood, but you should try to examine whether these factors in your own life contributed to the poor decision-making and mistakes you made as a young person. Addressing these factors may help the court or parole board better understand how your environment or family circumstances harmed your healthy development and impacted your behavior at the time of the crime. If possible, try to get help from an expert in childhood brain development and trauma.

3. The Circumstances of the Offense, Including the Role and the Influence of Peers

Young people often take risks and make poor choices to gain approval or acceptance. It is important to examine whether a peer (someone who was about the same age as you) or an older person influenced your actions or decisions at the time of the crime.

4. How Youth Disadvantages People In the Justice System

The Supreme Court's youth sentencing decisions recognize that juveniles face challenges in navigating the legal system. Juveniles often do not fully understand the trial and sentencing process, available legal defenses, or the nature and consequences of plea deals. They are less likely than adults to be able to assist their lawyers. You should consider whether your age impacted your ability to participate in your defense at trial or to communicate with your attorney or the court.

5. The Juvenile's Potential for Rehabilitation and Capacity for Change

Juveniles have a strong potential for change and rehabilitation. You should show that you have grown and are not the same person you were at the time of the crime. You can do this by pointing to your achievements during incarceration. Examples include avoiding disciplinary problems as you grew older, pursuing education, or completing substance abuse or behavioral programs. Judges may also consider certifications, job training, or development of personal skills. Letters of support, certificates, and other evidence of rehabilitation can be submitted to the court or parole board as evidence.

The Supreme Court in *Miller* left open the possibility that a person convicted of homicide as a juvenile might still serve a life-without-parole sentence. But a sentence that has been imposed without consideration

of these mitigating features of youth, which closes the door on rehabilitation, should be challenged as cruel and inconsistent with the Eighth Amendment.

Although *Miller* addressed homicide convictions and life-without-parole sentences, courts and parole boards have applied these same factors to young people sentenced for other crimes and sentenced to less than life in prison. Even if your crime was not a homicide, or if you did not receive a life-without-parole sentence, or if you were a young adult in your early twenties, you should consider describing mitigating factors and the brain science described above in requests for clemency, in any parole application, or in requests for resentencing. Parole and Reduction in Sentence Motions are discussed in Chapter 9.C.

C. Developments for Juveniles Under State Constitutions

State constitutions also place limits on death sentences, life-without-parole, and other lengthy sentences for crimes committed during youth. Some state supreme courts have interpreted their state constitutions to provide protection even broader than *Miller* to juveniles serving lengthy sentences.

As of the date of this Guide, courts in New Jersey, Washington, Michigan, and Massachusetts have extended *Miller's* reasoning, as described below:

- The New Jersey Supreme Court ruled that the New Jersey Constitution limits extreme sentences for juveniles. This is true even for sentences that are technically not life-without-parole, but which are still the "functional equivalent" of it (the person likely would never have a meaningful opportunity for release). In *State v. Zuber,* 227 N.J. 422 (2017), the Court held that these extremely long sentences still require consideration of the *Miller* factors.

- The New Jersey Supreme Court later ruled in *State v. Comer,* 249 N.J. 359 (2022) that a state law banning parole for 30 years for people convicted of murder was unconstitutional when applied to juveniles. After serving 20 years, juveniles sentenced under the murder statute are permitted to ask a court to review their sentence and parole bar (time they must serve before applying for parole).

- In 2021, the Washington Supreme Court held that mandatory life-without-parole sentences for juveniles aged 18-20 at the time of their crime violate the state constitution. *In re Monschke,* 482 P.3d 276, 28687 (Wash. 2021). The court reasoned that "no meaningful neurological bright line exists between ... age 17 on the one hand, and ages 19 and 20 on the other hand." Id.[6] at 326.

- The Michigan Supreme Court ruled that a state ban on mandatory life-without-parole sentences was not limited to people under 18. *People v. Parks,* 987 N.W.2d 161, 164 (Mich. 2022). The court reviewed the most recent juvenile brain science and determined that "there is no meaningful distinction" between 17- and 18-year-olds. Id. at 175.

- Massachusetts' highest court, the Supreme Judicial Court, ruled in 2024 that life-without-parole sentences for young people ages 18 to 20 violate the state constitution. Commonwealth v. Mattis, *Commonwealth v. Robinson,* 493 Mass. 216 (2024). The Court concluded that people ages 18, 19, and 20 are not substantially different from people younger than 18 with regard to their immaturity and still-developing brains. The same state constitutional limits also protect them from life-without-parole sentences.

If you were sentenced to a lengthy sentence as a juvenile or late adolescent in one of these states, be aware of these decisions and consider challenging the length of your sentence. If you are not in one of these states, you should also consider challenging your sentence under your state constitution. Use the same reasoning: that brain science and the decisions of the U.S. Supreme Court and courts around the country require your own courts to reconsider your case using the *Miller* factors. After this Guide's publication, there are likely to be even more legal developments in this area.

[6] "Id." is an abbreviation for the Latin word "idem," which means that you are citing the same source that you most recently cited.

8 Statutes that Protect Incarcerated People

In addition to constitutional provisions, there are many federal and state statutes that apply to people who are incarcerated. This section does not cover all of them, but touches on several important federal statutes.

A. The Religious Freedom Reformation Act and the Religious Land Use and Institutionalized Persons Act

Chapter 4 provided basic information on how the First Amendment to the U.S. Constitution protects incarcerated people's religious freedom. Two federal statutes go even further to protect the religious rights of incarcerated people: the Religious Freedom Restoration Act ("RFRA"), which applies to federal prisons, and the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), which governs state prisons and local jails. RFRA and RLUIPA require prison officials to meet a high standard before they can limit a person's religious rights and practice. As noted in Chapter 4, when evaluating whether a prison has violated a person's First Amendment rights in prison, courts ask whether the prison's restriction on religion "is reasonably related to" the prison's concerns with management or security. That approach is very favorable to prisons. It allows prison officials to restrict a person's religious practice as long as the officials can point to a valid reason for the restriction.

RFRA and RLUIPA replace the "reasonably related" standard with a standard that is less favorable to prisons: a "compelling interest" or "least restrictive means" standard. Under this standard, prisons cannot "substantially burden" a person's religious practice. Any restriction that does this is unlawful unless it serves a "compelling governmental interest." A "compelling" interest means that prisons must have more than just a valid reason for a policy. They must have a critically important reason. Prisons must also show that they can achieve their interest only through that policy and that other alternatives do not exist.

To see how RFRA and RLUIPA work, consider the following example. Suppose a prison policy prohibits people from keeping a Bible or Qur'an in a prison cell because prison officials believe these books are used to hide contraband. Under a First Amendment challenge to the policy, a court might accept that the prison has a valid reason for the policy and that the reason is "reasonably related" to the ban on holy books in prison cells. But, under a RFRA or RLUIPA challenge, a court might be more likely to find that the policy too heavily restricts incarcerated people's religious practice because it prevents them from reading holy books as they choose. The court might conclude that the ban is not the only way to prevent incarcerated people from hiding contraband and that the prison has alternatives, such as requiring people to submit all books for screening for contraband. This would allow the prison to carry out its goals without banning the Bible or Qur'an from cells.

This approach to religious liberty makes RFRA and RLUIPA potentially more helpful to people who are incarcerated than the First Amendment. If you are challenging a denial of religious liberty by a prison or jail, you should consider bringing claims under RFRA or RLUIPA (depending on whether you are in a federal or state prison or jail), as well as the First Amendment.

B. The Americans with Disabilities Act and the Rehabilitation Act of 1973

Two federal statutes protect the rights of incarcerated people from discrimination based on their disability: Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794(a)), and Title II of the Americans with Disabilities Act (42 U.S.C. § 12131, et seq.). The Rehabilitation Act applies to federal prisons and to state and local government agencies (including prisons and departments of correction) that receive federal funding. The Americans with Disabilities Act (the "ADA") applies to all state prisons and local jails, even if they are not federally funded.

Courts apply the ADA and Rehabilitation Act in similar ways, so if you are asserting a violation of your rights under one statute, you can rely on cases interpreting the other statute, too.

If you bring a claim asserting that a prison or jail violated the ADA or Rehabilitation Act, courts will ask three questions:

1) whether you are disabled, according to the definition of "disability" in the statute;

2) whether you are being denied access to a service or program because of your disability; and

3) whether the prison must modify its policies, practices, or procedures to make them accessible to you. (These changes are called "reasonable modifications" or "reasonable accommodations.")

The ADA defines disability as "a physical or mental impairment that substantially limits one or more of [an individual's] major life activities." 42 U.S.C. § 12102(1). People with physical disabilities, including hearing or vision problems, mental illness, certain diseases, and other conditions that limit their daily activities such as seeing, walking, or working will likely meet this definition. This is true even if medication, devices like wheelchairs, or other measures may lessen the disabling effect of a person's disability.

Title II of the ADA bars a prison from denying a person with disabilities the same services, programs, and activities that are provided to non-disabled people, as long as the disabled person is qualified for the services, programs, or activities. (42 U.S.C. § 12132). A person is qualified if they can meet the basic requirements for participation, even if the prison would have to change a policy, remove physical or communication barriers, or provide the person with aids and services (such as Braille or sign language interpreters).

For example, if a prison generally provides access to educational programs, the prison cannot deny you access to these programs just because you are deaf or hard of hearing, as long as you meet the basic requirements of the programs. The prison could be required to provide you with a reasonable modification, such as the aid of an interpreter, so that you can participate equally. On the other hand, if an educational program requires all participants to have a GED and you lack a GED, you may not be qualified.

You can seek several remedies under the ADA and Rehabilitation Act. First, under either statute you can seek a court order that directs the prison to provide you with access to programs, services, or activities. Second, under either statute you can seek a change in prison policies or practices. Third, you can seek money damages (financial compensation) from a state for violation of the Rehabilitation Act. Under the ADA, you can seek damages from a state for violations of the ADA that are also violations of the U.S. Constitution, such as conditions that amount to cruel and unusual punishment.

If you are in a state prison or jail, you may also seek a remedy in state court under state statutes that prohibit disability discrimination.

C. The Prison Rape Elimination Act

As noted above, whether you are held in a federal or state prison or local jail, you have the constitutional right to be free from sexual assault and abuse by anyone who works at the prison or by other incarcerated people. Congress and the Department of Justice took further steps to safeguard people from sexual abuse through additional laws and policies. The Prison Rape Elimination Act ("PREA"), a federal statute enacted in 2003, aims to prevent sexual abuse in prisons and jails, increase reporting of sexual abuse, and improve prison and jail investigations of these crimes. U.S. Department of Justice regulations passed in 2013 set standards that govern how prisons and jails must implement the PREA. 28 CFR 115.5 et seq. (BOP policies further addressing the standards can be found in BOP Program Statement 5324.11.)

The PREA and the regulations focus on actions that prisons and jails must take to help eliminate sexual violence. Prisons must ensure that people can easily report abuse without fear of retaliation or other harm, and they must conduct thorough investigations of sexual abuse allegations. The PREA does not create any new legal rights that people can enforce by filing a lawsuit (known as a "private right of action").

The PREA prohibits prisons from imposing a time limit on when a person can submit a grievance to report sexual abuse or violence. Prisons and jails often set deadlines for making allegations through the grievance process, but under the PREA, it is never too late to make an allegation about sexual assault. Prisons and jails must investigate allegations no matter when the alleged crimes occurred.

To comply with the PREA, prisons and jails must:

1) provide at least two ways for you to report abuse within a prison;

2) allow you to report abuse to an ***outside*** office or to a person who is not part of the prison;

3) allow you to report abuse anonymously (meaning that you do not have to share your name); and

4) allow someone else to report the abuse on your behalf.

Prison and jails must designate a PREA coordinator, who is responsible for making sure the facility follows these and all other PREA requirements.

PREA regulations further require prisons and jails to investigate sexual abuse allegations and to carefully document what they do in each investigation. Victims are entitled to prompt emergency medical treatment and crisis intervention services. The prison must consider an allegation of sexual abuse as substantiated (proven) if it is supported by a "preponderance of the evidence." This standard means that it is more likely than not, or greater than 50% likely, that an allegation is true.[7]

Finally, the PREA requires prisons and jails to adopt policies to prevent retaliation against someone who reports sexual abuse or cooperates with investigations. The PREA regulations include many other requirements, such as rules related to prison staffing, pat down and strip searches, and protections for transgender people. Prison and jails are required by the PREA to take these issues seriously.

If you want more information about the PREA, Appendix D includes further resources.

[7] The "preponderance of the evidence" standard is lower than both the "beyond a reasonable doubt" standard that applies to criminal trials and the "clear and convincing" standard that applies in other criminal and civil lawsuits.

9 Appeals and Post-Conviction Relief

A. Appealing Your Conviction ("Direct Review")

If you were convicted of a crime in a federal court, you can appeal to the Court of Appeals in your circuit. If you were convicted in a state court, you can appeal to the mid-level appellate court below the state's highest court. These appeals are called "direct appeals" or "direct review." All of the documents, evidence and decisions of the trial court become the "record" that the appellate court will use to decide the issues that you raise on appeal.

You should be aware that only specific errors made by the trial judge can be appealed. An appeal is not a new trial, although sometimes winning an appeal can result in a second chance at presenting a case before the trial court.

If your case is in federal court and your first appeal is denied, you have 90 days to file a cert petition asking the U.S. Supreme Court to grant you a "writ of certiorari." If you have not filed a petition by the end of the 90-day deadline, you will have "exhausted" your appeals and your federal conviction will be considered final. Note that you do not have a right to have your cert petition heard. Appeals to the Supreme Court are "discretionary," and the Court chooses to hear very few cases each year.

If you are in state court and your first state court appeal is denied and you wish to appeal again, the next appeal is to the state supreme court. If you complete these direct appeals without having your conviction overturned, you will have exhausted your appeals your state conviction is considered final.

Once your federal or state conviction is considered final, your ability to challenge your conviction is limited. Any additional legal challenges are known as "collateral attacks" or requests for "post-conviction relief." Post-conviction relief is available only if you meet certain very specific conditions. (These are discussed further in Chapter 9.)

In addition to the direct appeal process for appealing a conviction, a person who is incarcerated might also appeal from a final decision in a civil case in which they are the plaintiff. An appeal might also be brought to challenge a final decision of an agency such as a parole board.

The next section describes the different standards appellate courts use when they review all of these different types of cases on appeal.

B. Standards of Review

When an appellate court reviews the decision of a trial court, it applies one standard to the trial court's ***factual*** conclusions and applies a different standard to its ***legal*** conclusions. Factual conclusions are the trial court's job, so the appellate court will give "deference" to the trial court. This deference means that the appellate court will accept the factual findings of the trial court and will almost never consider new evidence, allow for new witnesses, or make new factual findings.

If the appellate court is being asked to review an error made by the trial court that relates to its legal conclusions, however, then the appellate court does not have to defer to the trial court's interpretation. The appellate court can analyze all legal questions itself without giving deference.

Appellate courts use a variety of standards of review depending on the issues being appealed:

1. De Novo Review

When an appellate court reviews a trial court's ***legal*** decisions, it uses a "de novo" (or from-the-beginning) review. This means that the appellate court does not defer to the trial court and decides the legal issues for itself, without automatically following the trial court's reasoning. When you appeal a decision, consider carefully whether the errors that you are appealing relate to ***legal*** issues and if so, argue that de novo review applies to the issue. An appellate court is less likely to give the trial court's decision deference.

2. Clear Error

When an appellate court reviews a trial court's *factual* determinations, it uses a "clear error" standard of review. This means that the appellate court gives a lot of deference to the trial court and will overturn the trial court's decision only when it is sure that the trial court made a clear mistake. Otherwise, the appellate court will uphold the factual determinations by the trial court. This deferential standard of review makes it difficult to challenge a trial court's factual determinations.

3. Abuse of Discretion

When an appellate court reviews decisions by trial courts or agencies that are within the trial court's or agency's "discretion" (judgment), the appellate court may use an "abuse of discretion" standard of review. Under this standard, the appellate court will typically uphold the trial court's or agency's decision unless the decision was unreasonable, irrational, or arbitrary (random and without any justification). This is slightly less deferential than the clear error standard of review. For example, if you bring an appeal based on the way a trial court applied the Federal Rules of Civil Procedure, the appellate court will typically use the abuse of discretion standard. Or, if you bring an appeal of an agency decision, such as a parole board's decision to deny parole, the appellate court may also use an abuse of discretion standard of review.

4. Substantial Evidence/Reasonableness

When an appellate court reviews agency decisions, it may use a "substantial evidence/reasonableness" standard of review to determine if there is enough evidence to support the decision, such that the decision, such that the decision can be considered reasonable. Agency decisions that are not supported by "substantial evidence" are considered arbitrary and unreasonable.

An appellate court may also evaluate whether jury verdicts in trial courts are supported by sufficient evidence, and they may use a similar "substantial evidence" standard. The specific standard that an appellate court will use for evaluating jury determinations on appeal depends upon whether you are federal or state court, which state your trial took place, and whether you are appealing the verdict of a jury in a civil or criminal case. Be sure to research the standard that is likely to apply to your appeal.

5. Arbitrary and Capricious

This standard of review applies primarily when an appellate court reviews an agency decision. The court evaluates whether there is a rational connection between the facts and the agency's explanation or justification for its decision. If an agency totally fails to explain or justify its decision, the appellate court might find its decision to be "arbitrary and capricious." An agency that fails to follow its own policies or statements might also be found by an appellate court to be acting arbitrarily.

6. Harmless Error

When an appellate court reviews a trial court decision, it may conclude that certain errors, defects, or irregularities that occurred during the trial did not harm the "substantial rights" (important rights that merit legal protection) of the person appealing and are therefore "harmless errors." The appellate court will disregard harmless errors without providing any remedy if the court finds that the error was already corrected, was not serious enough to affect the outcome of the trial, or was not sufficiently prejudicial (harmful) to require reversal or other remedy.

7. Plain Error

Typically, if an appealable issue was not noted and preserved in the record (for example, by an objection), you will not be allowed to appeal that issue. However, if you believe your trial court made an extremely obvious error that affects your substantial rights, you may still try to appeal. If the appellate court agrees to review your issue, it will use the very strict "plain error" standard. This standard is hard to meet and rarely results in a trial court's decision being overturned. Your appeal should explain all the reasons why you believe the trial court was mistaken.

It is critically important to bring up any mistakes you think the trial court makes during your trial. This means that you or your lawyer must object immediately to issues or errors you are concerned about. This "preserves" your objections. This may be done either orally (if a transcript of the proceeding is being made) or in

writing. Briefs, motions, or letters to the court should explain the reasons why you believe the court was mistaken. As explained above in the "plain error" standard of review, if an appealable issue was not noted and preserved in the record, then in most cases you will not be allowed to appeal the issue.

C. State Post-Conviction Relief

The following sections of Chapter 9 provide basic information about the limited pathways to challenge your conviction once your direct appeal is over and your conviction is final. This is known as a request for "post-conviction relief" and includes requests for "habeas corpus" in federal court. These sections also address relief after a conviction, which a person might seek from state parole boards and through federal reduction in sentence motions, also known as "compassionate release." Chapter 9 does not, however, describe all the important legal rules that apply to requests for post-conviction relief, such as the strict filing deadlines that vary by state. Rather, it provides an overview of these legal pathways so that you can seek more information as necessary.

Once the direct appeal process is exhausted (finished) and a conviction is final, it is harder to challenge the sentence. Courts that hear state post-conviction requests generally consider only certain kinds of claims. Two common post-conviction claims are:

1. Newly Discovered Evidence

Newly discovered evidence is typically a valid reason for state post-conviction relief. Newly discovered evidence is evidence that could not have been presented during a trial because no one knew about it or it was not yet available. A good example is when a key witness changes their story or someone else confesses after the trial. You generally have to show that it was not your fault that this evidence was not available at trial.

If you have newly discovered evidence, you must show that the evidence would have made a difference to the outcome of your trial if it had been available. In other words, the evidence must cast doubt on your conviction because it likely would have changed the mind of the jury.

If newly discovered evidence simply adds to the evidence that was already considered by the jury, the court considering your post-conviction request might say that the new evidence is merely "cumulative." This means that it's just more of the same type of evidence that was considered at the trial. Courts sometimes reason that if a jury already heard and rejected similar information, more of the same kind of evidence would not likely change the outcome.

Therefore, you should show that the new evidence is especially important or unique and that, if the jury had known about it, there is a good chance the jury would have looked at your case differently.

2. Ineffective Assistance of Counsel

Courts have held that the Sixth Amendment entitles defendants to an attorney (or "counsel") who does an "effective" job in defending them. They may be entitled to a new trial if their attorney fails to meet this basic requirement during their trial. The right to effective assistance of counsel also applies to people who are bringing a first "appeal as of right." See ***Evitts v. Lucey***, 469 U.S. 387 (1985). An appeal as of right means the person can appeal without having to convince the court to take the case.

You can request post-conviction relief if you believe your attorney did a poor job handling your criminal trial or appeal and this affected the outcome of your case. Your attorney's errors must have been significant enough for a court to conclude that you were denied your constitutional right to effective assistance of counsel.

In the case of ***Strickland v. Washington***, 466 U.S. 668 (1984), the U.S. Supreme Court identified two things that you must prove in an ineffective assistance of counsel case:

1) that your attorney's performance was deficient, meaning that it was so bad that it fell below what a reasonably skilled attorney would do; and

2) if it were not for your attorney's deficient performance, the result of the trial would have been different.

The attorney's bad performance must have been "objectively" unreasonable. This means not just that you wish the attorney had done something differently. Rather, it means that most people would view the attorney's performance as below the standard expected of a reasonably skilled attorney. If your attorney fails to investigate your case, never talks to you, or ignores evidence tending to show you were innocent, a strong case could be made for ineffective assistance of counsel under the Sixth Amendment. If, on the other hand, your attorney made more routine mistakes or simply chose the wrong strategy, this would not likely be viewed as ineffective assistance of counsel.

There are some established rules about what attorneys must do to serve their clients effectively. For example, attorneys must inform their clients about how a plea deal will affect their immigration status. In ***Padilla v. Kentucky,*** 559 U.S. 356 (2010), an attorney told his client that he did not have to worry about his immigration status in accepting a plea deal because he had been in the U.S. for so long. But the law was clear that the client pleading guilty to the drug charge at issue would result in the client's automatic deportation. The ***Padilla*** Court found that a reasonably skilled attorney would have advised the client that he was subject to automatic deportation or would have referred his client to an immigration law expert. In this case, the lawyer's poor performance violated the client's Sixth Amendment right to effective assistance of counsel.

The second thing you must show under the ***Strickland v. Washington*** test is that you were harmed or "prejudiced" by your attorney's bad performance. This means that the attorney's errors led to a guilty verdict or other negative outcome in your trial. If your attorney had performed effectively, the outcome of your trial would have been different.

For example, in the ***Padilla*** case mentioned above, the Supreme Court sent the case back to the lower court to address whether the client was prejudiced by the attorney's failure to properly advise him on the immigration consequences of pleading guilty. The state court later found that the attorney's mistakes were prejudicial because "Padilla demonstrated that if he had been properly informed of the immigration consequences of his guilty plea, he would have insisted on going to trial and that his decision would have been rational under the circumstances." ***Padilla v. Commonwealth,*** 381 S.W.3d 322, 330 (Ky. Ct. of App. 2012).

In a death penalty case, ***Rompilla v. Beard,*** 545 U.S. 374 (2005), the Supreme Court held that the failure of defense attorneys to examine the file of their client's prior convictions was both deficient and prejudicial under ***Strickland.*** The Court reasoned that if the attorneys had reviewed the file, they could have used the evidence in the file to argue mitigating circumstances that might well have changed the jury's decision to impose the death penalty.

Despite these examples, showing prejudice under ***Strickland*** is difficult. Courts often rule that even if attorneys were more effective, their better performance would not likely have changed the jury's mind or altered how their clients were sentenced.

These are just two examples of claims for post-conviction relief. You should find out what type of claims for post-conviction relief your state permits.

D. Understanding Habeas Corpus

If you are in federal prison, your conviction is final, and you have exhausted your direct appeals, you may file a "writ of habeas corpus" – better known as a "habeas petition." If you are in state prison, your conviction is final, and you have exhausted both your direct appeals and any state post-conviction process available to you, you may similarly file a habeas petition. This petition requests a federal court to review any aspect of your arrest, trial, or sentence that you believe violated the U.S. Constitution or other federal law.

The term "habeas corpus" is a Latin phrase that means "produce the body." In earlier times, this was a request from a person in prison for a court to order prison officials to bring the person physically to court and explain the legal basis for their imprisonment. Today, a habeas petition is still a way a person can challenge the legal basis for their imprisonment.

Federal law places limits on when a habeas petition may be used to challenge a conviction. If you are in federal prison, you must file a habeas petition within

one year of your conviction becoming final—after you have exhausted your appeals. If you are in state prison, you must also file your habeas petition within one year of your state conviction becoming final. However, if you properly filed a petition for state post-conviction relief, that filing tolls (pauses) the one-year deadline until the state court issues a decision.

Note that before you can bring a habeas petition, you must have asserted all arguments relating to violation of your federal or constitutional rights in your direct appeals. If you left out any arguments, courts are likely to say that you "waived" (gave up) those arguments and cannot make them on a subsequent appeal. This is known as a "procedural default."

1. Filing a Habeas Petition When You Are In Federal Prison

28 U.S.C. § 2255 governs habeas petitions filed by people in federal prisons to challenge their sentences. After you file your first petition under 28 U.S.C. § 2255 (or "2255 petition") in district court, you must ask the Court of Appeals in your circuit for permission to file a successive (or second) 2255 petition. You should be aware of a 2023 Supreme Court ruling, *Jones v. Hendrix*, 599 U.S. 465 (2023) that severely limits your ability to file a second 2255 petition. In the *Jones* case, an incarcerated person argued that they should benefit from a change in ***caselaw*** since the time of their conviction; as a result of the change, the conduct they were convicted of no longer was considered a crime. But the Supreme Court in *Jones* decided that the person could not file a second 2255 petition in this situation.

You can, however, file a 2255 petition if the change in law came from a ***new statute*** passed by Congress or a state legislature.

2. Filing a Habeas Petition When You Are In State Prison

If you are serving a sentence in state prison, you must first file a state post-conviction petition. This will be governed by state laws or rules. Subsequently, you can file a habeas petition in federal court under 28 U.S.C. § 2254, normally in the federal district court where your prison is located.

Section 2254 requires you to exhaust all appeals (or "remedies") available in state court before you can file a federal habeas petition. You can file the federal habeas petition only:

1) if you now assert that there was a violation of federal law or your federal constitutional rights; ***and***

2) if you previously asserted in your state court appeal that there was a violation of federal law or your federal constitutional rights.

If the state court has ruled against you in your direct appeal and your state habeas petition, it will be very hard to win a federal habeas petition. This is because federal law usually requires federal habeas courts to defer to state court decisions and not to overrule them.

There are exceptions under Section 2254, which make a federal habeas petition available, when:

1) a state court misinterpreted or misapplied clearly established "federal law, as determined by the Supreme Court of the United States;" ***or***

2) the state court decision was an "unreasonable determination of the facts in light of the evidence presented in the State court proceeding."

It is complicated to determine whether one or both of these exceptions apply. But, meeting one of these exceptions is necessary for you successfully to challenge your conviction through a federal habeas petition.

If your federal habeas petition is dismissed, it may be possible to appeal, but only after the district court or the Court of Appeals for your circuit grants you a "certificate of appealability." A certificate of appealability is granted if you make a "substantial showing of the denial of a constitutional right." This means that you must provide strong evidence that your constitutional rights were denied.

This is only a short summary of the complex subject of habeas corpus. We hope it gives you an idea of how the process works and the difficulties to overcome when seeking post-conviction relief in this way.

E. Parole and Reductions in Sentence (Compassionate Release)

You may have other post-conviction rights relating to parole, sentence reduction (or "commutation") and early release. If you are serving a state sentence, state law will govern your eligibility for parole or early release. There is no parole in the federal system, but some people serving federal sentences may be eligible for early release under 18 U.S.C. § 3582(c)(1)(A). This is a federal law that allows for sentence reductions in some circumstances after a sentence has become final, resulting in resentencing and early release.

1. Types of Sentences and Parole

Parole is the early release of a person serving a criminal sentence either through "mandatory" or "discretionary" parole. Mandatory parole means the deduction of "good time" credits from your total sentence. Discretionary parole is when you go before the parole board after you become eligible for parole, and they decide whether or not you can be released.

Once you are released on parole, you can serve the rest of your sentence outside of prison, subject to certain conditions. The release is "supervised." This means that the DOC or state parole board will place restrictions on you. These often include restrictions on where you can live, periodic drug testing, restrictions on your leaving the state, and required check-ins with a parole officer. These conditions continue until you reach what is sometimes called your "max date." This is the end date of your sentence. At this point, you may be released from parole. However, if you violate a condition of your parole before your max date, your parole can be revoked and you can be required to complete your sentence in prison.

The U.S. Supreme Court ruled in *Greenholtz v. Inmates of Nebraska Penal Complex,* 442 U.S. 1 (1979) that there is no right to parole under the U.S. Constitution. However, the Court recognized that some state statutes establish a due process interest in parole where language in the state statute governing parole creates an expectation of release. For example, if a state statute says people "***shall*** be released" after a certain number of years unless they are likely to re-offend, this statute may create a liberty interest in parole protected by due process. If a statute instead says that a person "***may*** be released" and the decision as to release is left up to the discretion of the parole board, the statute may not establish a due process interest in parole. Each state has its own rules about who is eligible for parole, when they are eligible, and what standards determine when a person should be granted parole.

If you are seeking parole, it is important for you to look at your state's statutes and any regulations. Find out whether you have an "indeterminate" or a "determinate" (also known as a "flat") sentence.

An indeterminate sentence is for a range of time, rather than a fixed time period. The amount of time you serve is based on your behavior and the steps you take towards rehabilitation. With an indeterminate sentence, there is a maximum amount of time you will serve and a minimum amount of time before you are eligible for parole. Once you have served the minimum amount of time, you are eligible to appear before a parole board. There, you can explain that you are ready for release under the legal standards that apply. A state law might require a parole board to release you once you reach your parole eligibility date unless the board has reason to believe that you are likely to commit another crime. Or, the law might require a board to decide whether you have been rehabilitated. Parole boards are supposed to look at your growth and rehabilitation and not backward at the crime. But in practice, parole boards often focus on the crime and your conduct long ago.

In contrast, a "determinate" or "flat" sentence is for a fixed number of years, such as a 5-year term. You may still be eligible for early release, but this is likely to happen through mandatory parole. Mandatory parole does not involve a parole board. Instead, time is removed from the end of your sentence based on your good behavior. This is often called "good time credit." The rules about calculating good time credit vary from state to state and are found in state laws or regulations.

2. The Parole Application Process

If you have an indeterminate sentence, you are eligible for parole once you have reached your "parole eligibility date." In most states, an official in your prison will reach out to you to start this process shortly before this date arrives.

Parole boards generally focus on some or all of the following factors, which may be found in state statutes or regulations:

a) Good Behavior

It is important to show good behavior in prison. If you have a record of past disciplinary violations, show that your behavior has improved. If your disciplinary problems occurred mostly during the early years of your incarceration when you were younger or adjusting to prison, note that you have grown and changed.

b) Participation in Rehabilitation Programs

It helps a parole application to show that you have taken part in programs available to you. Examples are drug treatment, counseling, education, work training, and religious programs. Not everyone has access to these programs and they are not a requirement of parole, but the more you can show your rehabilitation the better.

c) Release Plan

It is helpful to show that you have a place to live when you are released, as well as access to support systems and plans for obtaining employment.

d) Remorse and Insight

Most parole boards want to see you show remorse (regret) and take responsibility for your past actions. It is important also to show "insight"--that you understand what led to your actions and the impact of your actions on victims. Try to show specific ways that you have changed your thinking or behavior so that you are unlikely to make the same mistakes again. Use examples, since stories can be memorable and help the parole board understand.

e) Age-Crime Curve

If you are now much older than when you committed your crime, try to provide scientific studies or other evidence that show people are less likely to commit crimes as they get older. This is called the "age-crime curve" and is supported by scientific data. A good example of a court's discussion of this evidence in a parole case is *Acoli v. New Jersey State Parole Board*, 250 N.J. 431, 469 (2022). The New Jersey Supreme Court in that case declared: "Studies have shown that as individuals age, their propensity to commit crime decreases and, in particular, that elderly individuals released from prison tend to recidivate at extremely low rates."

In order to discuss these factors in your parole application, write a statement and include information from your prison record. Also ask for letters from work supervisors at the prison, teachers, religious leaders, family members, and/or others who know you, who can explain how you have been rehabilitated.

If you appear before a parole board for a hearing to be considered for release, do your best to take responsibility and express remorse. The board may try to focus on the facts of the crime. Try not to argue about with the parole board if you can avoid it. Rather, acknowledge what is true about your crime and your mistakes and focus on how you are a different person today. Use examples and stories to show that you are sorry and have changed. Respond calmly and try not to interrupt no matter what kind of questions you receive.

If the parole board denies your application, you may be able to appeal the denial. State rules and cases will determine the grounds on which you can appeal. Examples of grounds for appeal are that the board failed to consider all relevant factors or evidence presented to it, or that the board failed to explain why it made its decision.

In most states, an appeal must first be made to an administrative body such as the full parole board, an administrative law judge, or another administrative body. You will likely have to pursue all possible administrative appeals before you can appeal to a state court. Once you receive a "final agency decision" from the administrative body, you may be able to appeal to a court. You should consult the rules and cases in your state to understand the appeals process and any deadlines.

3. Federal Sentence Reductions Under 18 U.S.C. § 3582(c)(1)(A) (also known as Compassionate Release)

If you are serving a federal prison sentence, it is important to know about a change in the law that occurred in 2018: the First Step Act. This federal statute expanded opportunities for sentence reductions through a process often called "compassionate release."

Before the First Step Act, only the federal Bureau of Prisons (BOP) had the authority, under 18 U.S.C. § 3582(c)(1)(A), to ask federal courts to reduce someone's sentence for "extraordinary and compelling reasons." The BOP almost never did so. Even though the language of the statute was broad, sentence reduction motions were generally only granted for people who were terminally ill.

The First Step Act changed this. Now, if you are in federal prison, you have the right to request a sentence reduction as long as you first make your request to the BOP. Even if the BOP does not agree to ask the court to reduce your sentence, you can ask a federal judge directly to consider your application. During the COVID pandemic, federal judges granted more than 4,000 applications, most of them after the BOP rejected relief.

The U.S. Sentencing Commission, a group that issues guidelines about federal sentences, sets the standards for determining "extraordinary and compelling" reasons for sentence reductions. The standards can be found in the U.S. Sentencing Guidelines at U.S.S.G. § 1B1.13. In November 2023, the Sentencing Commission amended the Guidelines to describe additional circumstances that could be considered "extraordinary and compelling reasons" for a reduced sentence under 18 U.S.C. § 3582(c)(1)(A). The amended Guidelines now include reasons based on:

- medical conditions, such as long-term conditions that a prison is failing to treat properly;
- age or frailty;
- family circumstances, such as needing to take care of children and parents;
- abuse by prison guards;
- unusually long sentences when a person has already served over 10 years; and
- other factors that are similarly serious.

As of the date of this Guide*'s* publication, there have not been many cases decided under the new 2023 Guidelines. But you can get an idea of how courts might apply the Guidelines by looking at cases decided under the old law where courts reduced sentences for reasons that are now clearly contained in the new Guidelines.

For example, courts sometimes granted release to people whose crimes were committed when they were juveniles or young adults. These courts recognized that the *Miller* case and related law (see Chapter 7) were not in effect at the time these people received long sentences. One such case is ***Bellamy v. United States,*** 474 F. Supp.3d. 777, 786 (E.D. Va. 2020), which held that the defendant's age of 21 at the time of offense was not enough on its own to justify a sentence reduction, but that it was a compelling reason when considered alongside other factors. These other factors included the length of the sentence and the difference between the defendant's sentence and the sentence he would receive if he were to commit

the same crime today. Similarly, the court in ***United States v. Ramsay***, 538 F. Supp. 3d 407 (S.D.N.Y. 2021) reduced a life sentence to 30 years for a defendant who committed his offenses just before his 19th birthday.

Courts have also granted sentence reduction to people who were convicted under a harsh law that later was changed to be less harsh. For example, a federal law, 18 U.S.C. § 924(c), prohibits possessing or using a firearm during a drug trafficking crime or a crime of violence. Before the First Step Act of 2018, courts interpreted 18 U.S.C. § 924(c) to require separate, consecutive 25-year sentences for every conviction in a given case. This is referred to as "stacking" and could lead to extremely long sentences.

The First Step Act clarified that the consecutive 25-year stacking provision should apply only when a person had a prior conviction for the same crime. This clarification did not automatically help people already serving long sentences under the old law, but some courts considered the revised view on stacking to be an "extraordinary and compelling" reason to grant a reduction in sentence. See ***United States v. Yvette Wade,*** Crim. No. 99-257, 2020 WL 1864906 (C.D. Cal. Apr. 13, 2020) and ***United States v. Watts,*** Crim. No. 92-767, 2023 WL 35029 (E.D.N.Y. Jan. 23, 2023).

In cases involving stacking, courts may also consider a defendant's young age at the time of the offense as a reason to reduce a sentence. In ***United States v. McCoy,*** 981 F.3d 271, 286 (4th Cir. 2020), the court granted a sentence reduction based on the changes to 18 U.S.C. § 924(c) partly because the defendants were 19 to 24 years old at the time of their offense. Not all courts, however, recognize the change in 18 U.S.C. § Section 924(c) as a reason to grant sentence reduction.

Most of the cases granting sentence reduction since the 2018 First Step Act went into effect were granted during the COVID public health crisis, which provided extra motivation to grant relief. It remains to be seen how courts will interpret the 2023 Guidelines and how they will use their discretion to grant sentence reductions.

Further resources and contact information regarding sentence reductions under 18 U.S.C. § 3582(c)(1)(A) are listed in Appendix F. For help accessing local resources and sample documents and to ask for representation by an attorney, contact the Office of the Federal Public Defender in the district where you were convicted and sentenced.

PART 3

Advocating for Yourself: Practical Advice for People Who Are Incarcerated

Overview

This section contains advice on how to use the information you learn here and in your legal research to advocate for (argue in favor of) yourself. You may need to advocate for yourself if you are trying to persuade a judge to rule in your favor or if you are filing a grievance with a prison official.

Although it is always better to have the help of an attorney, you may not be able to afford an attorney or get access to free legal services. If so, you must rely on yourself. This is not unusual and is called "proceeding pro se." If you start out proceeding pro se, sometimes a court will later assign you "pro bono counsel." Pro bono counsel is an attorney who works for you for free. The attorney is either not being paid at all or is paid through public funds or a non-profit organization or law school clinic.

Getting relief in court once you are incarcerated is difficult. You should be cautious about anyone charging you a lot of money and guaranteeing success. Do not be afraid to ask lawyers you are thinking of hiring to give you examples of cases they won. If you can, ask family members to investigate the names of potential lawyers offering to represent you.

If you choose to do legal work on behalf of others who are incarcerated, it is important to note that practicing law without a license is illegal in many states. Non-attorneys can help draft complaints and “motions” (applications made to a court or judge requesting a ruling or an order in favor of the applicant). But non-attorneys cannot represent (act as an attorney for) a pro se plaintiff in court and cannot sign papers filed with the court on behalf of a pro se plaintiff. If you are helping someone else with their court case, the pro se plaintiff must sign all papers.

If you do legal work for yourself or for others, you should try to understand the relevant laws and regulations as much as possible. Try to seek guidance from legal professionals.

10 Procedures for Challenging Conditions of Confinement and Violations of Your Rights in Prison

A. Types of Claims

If you believe that prison conditions or the way you are being treated have caused you harm or have violated your constitutional or other legal rights, you may bring a lawsuit for relief. Such a lawsuit is separate from appealing your conviction.

1. Tort Claims

One type of lawsuit is a "tort" claim. A tort is a wrongful act that causes harm, such as a personal injury. People who are incarcerated may bring a claim that a prison official committed a "tort" against them. In this type of claim, you will assert that an officer's negligent (unreasonably careless) act caused you injury.

If you are in state prison, you will bring your tort claim in state court. If you are in federal prison you will rely on a federal statute known as the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 1346(b) and § 2671 *et seq.* The FTCA requires that before you file a tort claim, you notify the government agency that was responsible for the injury you sustained and the money damages you plan to seek. This is called a "notice of claim." It must be delivered to the agency within two years of the injury.

Many states have their own tort claims acts, which also require that you file a notice of claim within a certain time from the date of your injury. It is important to research your state's requirements if you are considering filing a tort case. If you fail to file a notice of claim within the deadline, your lawsuit could be dismissed.

2. Constitutional Claims

If you are in state prison and you believe a state prison official violated federal law or your federal constitutional rights, you may bring a claim in federal court under 42 U.S.C § Section 1983 (often called a "Section 1983" claim). Some states also have laws similar to Section 1983 for violations of rights protected by the state constitution and state laws. It is important to remember that before you file a Section 1983 claim, you must first exhaust all requirements of your prison for grievances and appeals of grievances.

If you are in federal prison and you believe that a federal officer violated federal law or your federal constitutional rights, you will bring a lawsuit called a "*Bivens* action." This is named for a case, ***Bivens v. Six Unknown Named Agents,*** 403 U.S. 388 (1971), where an individual was permitted to sue federal officers for violations of his Fourth Amendment rights. The *Bivens* case established that you have a right to sue federal officials for violations of your constitutional rights.

3. Statutory Claims

Most federal statutes that apply to people in prison provide a specific process for you to challenge violations of your rights (also called a "private right of action"). For example, the Americans with Disabilities Act (ADA), which prevents discrimination against people with disabilities, provides a specific way to enforce your rights against federal or state officials. The Religious Land Use and Institutionalized Persons Act (RLUIPA), which protects your right to exercise your religion, provides another way to enforce your rights against federal or state officials.

If you are in state prison and wish to bring a claim under a federal statute that does not have a private right of action, you can use a Section 1983 claim to enforce your rights.

B. Jurisdiction, Venue, and Statutes of Limitations

1. Jurisdiction

One of the first questions to consider when preparing a lawsuit is whether to file the lawsuit in federal or state court. The authority of a court to hear a given case is called "jurisdiction."

Federal courts have jurisdiction only over lawsuit involving federal law, the federal Constitution, and certain disputes between parties from different states.

Lawsuits involving state law are generally heard by state courts unless they are connected to federal law or the Constitution. State courts hear lawsuits involving state statutes, state constitutional claims, and other common law claims such as contract claims or torts.

2. Venue

Whether you are bringing a tort claim, constitutional claim, or statutory claim, you will also need to consider the location of the federal or state court that can hear your lawsuit. This is called the "venue." For a federal lawsuit, you must file in with the court that has a connection to you, the prison official who injured you, or the event that caused your injury. The rules that cover proper venue for federal claims can be found in the Federal Rules of Civil Procedure. The rules that cover proper venue for state claims can be found in the state court rules of civil procedure or state "court rules."

3. Statutes of Limitation

You should also consider whether your case must be filed by a certain deadline. This deadline is called the "statute of limitations." The statute of limitations can be different for different kinds of legal claims.

For example, the RLUIPA has a four-year statute of limitations. The ADA does not specify a statute of limitations, so courts generally will look to the law of the state where the ADA action arose and apply the deadline that applies in similar state law cases. Section 1983 also does not set a statute of limitations, so courts have ruled that the deadline follows state law deadlines for similar kinds of claims. You will need to research what statute of limitations applies to your case.

You do not want to wait until the end of the statute of limitations to file your lawsuit. This is because, as time passes, information about the harm you suffered can become old and evidence that supports your claim can become less available.

Be sure to file your case within the deadline and not miss the chance to enforce your rights.

C. Preparing a Complaint and Summons

Once you know what type of claim you plan to bring and where you are going to file your lawsuit, the next step is to prepare a "complaint." A complaint is the initial document or "pleading" that presents facts to the court to show that your legal rights have been violated and you are entitled to a remedy. "Pleadings" refers to the complaint and the defendant's "answer" (response) to the complaint, which are filed in court.

Federal district courts and many state courts have forms on their websites that show you how to prepare a complaint. A complaint requires a "caption" on the first page. The caption identifies the court where the suit is being brought and the names of the "parties" involved. You are one of the parties. Since you are filing the complaint, you are called the "plaintiff." The person or government officials that you are bringing the claim against are the "defendants." If you are bringing your lawsuit against more than one defendant, the rules we describe here should be followed for each defendant.

Your complaint should include:

1) An explanation of why the court has jurisdiction over your claim.

2) An explanation of why the court is the proper venue for your claim.

3) A factual description of what happened and the harm you suffered:

   - what the defendant did or failed to do that caused you harm;
   - the dates when the defendant's misconduct happened;

- the names of individuals who participated in the misconduct;
- the location where the misconduct happened;
- the connection between the misconduct and your claim in your lawsuit (for example, that the prison guard's violence toward you violated your Eighth Amendment rights because it was done maliciously);
- any harm you suffered from the misconduct and whether you received medical treatment;
- how the defendant violated your constitutional rights or other legal rights;
- what "remedy" (relief) you are seeking from the court for the harm or violation of your rights (for example, money damages or "injunctive relief," which is a court order to force the defendant to do or stop doing something to correct the situation). Be sure to research what remedies the court has the power to order in your kind of lawsuit. Include your signature, your full name typed or printed, your address, and your phone number at the end of the complaint.

D. Service of the Complaint and Summons

Once you have prepared your complaint, the next step is completing and filing a document called a "summons" for each defendant. A summons is an official notice to a defendant that there is a lawsuit against them. The summons is filed with the court at the same time as the complaint.

You should contact the clerk where you plan to file. The clerk is the person in charge of the business of the court, who can explain how and where to file your complaint and summons.

After filing, your lawsuit is assigned a case or "docket" number. The clerk's office will notify you of the docket number and other important information.

You must provide the summons and a copy of the complaint to the defendants. This is referred to as "service." If you are filing in state court, you should consult your state court rules about service and review any local pro se guides that may be available. Alternatively, you can speak with the clerk of the state court about how to serve the defendants.

The rules of service require you to give a copy of the complaint and summons to the defendants within a set amount of time. If you are filing a federal lawsuit, Rule 4 of the Federal Rules of Civil Procedure tells you how to serve defendants, including government agencies, and officials. If you are aware that the other party is represented by a lawyer, you must serve their lawyer. Sometimes court rules might require you to serve more than one copy.

The state court might give you special instructions on service. For example, it might issue an order directing you to serve the defendants by certified mail. Certified mail is a way to mail things through the U.S. postal service that provides you with a receipt, tracking history, and proof of delivery. Certified mail costs more than regular U.S. mail.

You may make a request to the court to be excused from paying court filing fees because of your inability to pay. In federal court, this is referred to as proceeding "in forma pauperis." State courts may use the same terminology or refer to this as proceeding as "an indigent" (a person living in poverty) or simply as a "fee waiver." If you are in federal court and your request to proceed in forma pauperis is granted, the court will take care of serving the summons on the defendant. If your request is denied or you did not file a request, you will be responsible for filing, serving the summons, and following the instructions in Federal Rule of Civil Procedure 4. In state court, you will need to follow the state rules for serving a summons. Proceeding in forma pauperis is described more in the next section on the Prison Litigation Reform Act.

After the summons and complaint are served on the defendants, you must file with the clerk the section of the summons called the "proof of service." After the

defendants have been served, the defendants must file an "answer" to the complaint. However, the defendants might instead file a motion that seeks to dismiss your complaint. If that happens, you will need to file an "opposition" (response) to the motion.

The clerk of the court can advise you about the steps that follow after service of process is completed and as your lawsuit proceeds. Any motions or other filings you make with the court will also have to be served on all defendants.

E. Discovery

Once the lawsuit is docketed (assigned a case number by the court), you are entitled to information from the defendant about the issues in your case. You can ask for this information through requests for information called "discovery." The purpose of discovery is to make sure that both parties (you and the defendant) have access to information to prepare your case or defense.

The primary forms of discovery are:

- written requests for specific documents in the possession of the other party (called "requests for production of documents" or "document requests");
- written questions (called "interrogatories"); and
- an opportunity to ask questions of the other party or witnesses under oath in the presence of a court reporter (called a "deposition").

Depositions can be an expensive. The party requesting a deposition needs to hire a court reporter to record everything that is said during the deposition. Court reporters charge for their time and also for creating a written transcript of the deposition.

The court rules that apply to your lawsuit will set out the rules and deadlines for these discovery requests. The rules will include limits on how many discovery requests you can make. Discovery is typically requested and exchanged between the parties without the involvement of the court.

Discovery rules typically allow you to ask for information directly relevant to your case or information that can lead you to directly relevant information. But you cannot ask for so many documents or for so much information that the judge considers you to be harassing or burdening the defendant. You should ask for what you reasonably think you need to make your case. If the defendant objects, and you and the defendant cannot resolve the issue, a judge may need to get involved to decide what discovery should be allowed.

The defendant can also submit discovery requests to you. You will have deadlines to respond to discovery requests and must make your best efforts to share the information requested.

Note that you do not have to give the defendant any information related to communications you have had with your attorneys. Communications between attorneys and clients are generally considered "privileged," and do not need to be shared in response to discovery requests. But you still have to respond to a request for these communications by identifying the documents or information that you are ***not*** sharing. You can do this by explaining that the requested documents or information exists, but the content cannot be shared because it is protected by "attorney client privilege." The defendants owe you the same type of response if they withhold documents. Or information on the basis that the content is protected by attorney client privilege.

F. The Prison Litigation Reform Act

The Prison Litigation Reform Act ("PLRA") is a federal law enacted by Congress in 1996 to decrease the number of lawsuits brought by people in federal prison. The PLRA imposes obstacles that make it hard for incarcerated people to file lawsuits in federal court. It does not apply to lawsuits filed in state court. This section summarizes some of the most important hurdles that the PLRA poses for incarcerated people.

1. Filing Fees

A person who files a lawsuit is normally required to pay certain filing fees to the court. These can be hundreds of dollars for each filing. A person who files a lawsuit is normally required to pay certain filing fees to the court. These can be hundreds of dollars for each filing. Before the PLRA, people in prison could bring lawsuits in forma pauperis, which excused people who are indigent (poor) from having to pay the filing fees. Since the PLRA became law in 1996, people in prison are required to pay all court fees, even when they are indigent. The filing fees must be paid in full, but may be paid in installments.

If you are indigent, you should still request the ability to proceed in forma pauperis because this prevents you from having to pay filing fees up front. Because of the PLRA, you will still have to pay all of the fees, but you can spread out the payments. Proceeding in forma pauperis also gives you benefits such as help with service of the complaint and summons and exemption from certain other costs like the fee for obtaining transcripts that you will need for appeals. Filing fees for appeals, however, still must be paid.

Ask the clerk of the federal district court where you are filing your case for an application and information on proceeding in forma pauperis. You will probably need to provide information about your prison account, including a certified copy of your prison account statement in your application.

The PLRA has a very harsh "three strikes" rule, 28 U.S.C § 1915(g), which penalizes you if you filed three or more lawsuits that were dismissed by the court for being "frivolous" (not serious) or "malicious" (to harass for an improper purpose), or for failing to state a proper reason for the court to give relief. There is an exception if you are in imminent (immediate) danger of physical injury. After three such dismissals, you can never bring a lawsuit in forma pauperis in the future.

If you are penalized by the three strikes rule and do not meet the imminent danger exception, you must pay all filing fees up front. If you don't have the funds up front, your lawsuit will be dismissed and you will still owe a debt for the filing fees to the court. You will be required to pay as you earn money in your prison account, even though your lawsuit is over and never went anywhere. To avoid this harsh result, make sure that any lawsuit you file in federal court alleges (states) facts that clearly specify a legal right and a violation of law.

Many states now have laws that are similar to the PLRA. You should research whether people without funds can get filing fees waived in your state court. If it is not difficult and your claim can be brought in state court, state court might be a better option for you than federal court.

2. Dismissal

The PLRA imposes special rules on complaints filed by people who are incarcerated. A federal court must dismiss a case if:

- the court considers the complaint to be "frivolous" or "malicious;"
- the complaint fails to "state a claim upon which relief may be granted"—which means either that the complaint does not describe facts that are an actual legal violation or does not state all the elements of a legal claim; or
- the complaint seeks money damages from a defendant who is "immune" or protected by law from having to pay such damages.

The court has the power under the PLRA to dismiss a lawsuit even when a defendant does not file a motion arguing that the lawsuit should be dismissed. The court is not required to give an incarcerated plaintiff notice or any opportunity to respond before the lawsuit is dismissed.

3. Exhaustion of Administrative Remedies

The PLRA bars people who are incarcerated from filing lawsuits that challenge prison conditions under 42 U.S.C § 1983 until all available administrative remedies are exhausted. 42 U.S.C. § 1997e(a). This means that you must follow your prison's or jail's grievance

procedures before filing a lawsuit. You must meet all timing deadlines and complete any available appeals. If you do not do this, prison officials will try to dismiss your federal lawsuit under the PLRA.

If you are concerned that the PLRA's exhaustion requirement will pose a problem for your lawsuit because you filed an administrative appeal too late or did not appeal, you should also research whether you can file in state court. Some states may be less demanding about exhaustion than the PLRA.

If you are considering challenging a violation of your rights in court, follow the grievance system at your prison or jail. Be sure to file and document your concerns as much as you can. If you think you missed a deadline to appeal, appeal anyway and explain the reasons for your mistake and why your appeal should be considered. Document as much as possible your efforts to address your concerns.

4. Limitation on Recovery for Mental or Emotional Harm

The PLRA bars incarcerated people from filing lawsuits for "mental or emotional injury suffered while in custody without a prior showing of physical injury." 42 U.S.C. § 1997e(e). This rule means that claims of injury that do not include physical injury will be dismissed.

Some courts have recognized that denial of constitutional rights like First Amendment rights are not merely "mental or emotional" injuries and therefore are not barred by the PLRA. Other courts, however, have treated claims about denial of rights such as First Amendment rights, loss of liberty, and inadequate living conditions as merely "mental or emotional." These courts have ruled that such claims are barred by the PLRA, unless a plaintiff shows physical injury.

If you wish to bring such a claim, make clear in your complaint that your injuries are not merely mental or emotional. Stress that you are seeking damages for the loss of your constitutionally protected liberty and rights.

11 Doing Legal Work

A. General Advice

It can be challenging to represent yourself in court so take time to prepare and understand the process. If you plan to bring a lawsuit in federal court to challenge the conditions of your confinement or to claim a violation of your rights, you should get familiar with the Federal Rules of Civil Procedure and the PLRA described in Chapter 10.F. These rules apply to civil cases in federal court.

State courts also have rules that govern civil state court cases. If you are in state court, try to get a copy of the rules that apply to you. These may be available in your prison or jail law library and on court websites.

Both federal and state court systems provide pro se guides that include very helpful information. Pro se means that you are representing yourself, without the help of an attorney. As a pro se plaintiff, you are allowed to receive help from non-attorneys (such as jailhouse lawyers) to draft complaints, motions, and pleadings. But non-attorneys cannot represent you in court. You must sign all papers filed with the court.

Look for pro se guides created by court staff to find out how to file a case and how to follow the rules of the legal system. These guides are often posted on court websites. You can also contact the clerk's office of the court where you are filing and ask them to mail you a copy.

As you prepare your case, consider the following additional tips:

1. Do Thorough Legal Research

You should research the relevant laws and regulations that apply to your lawsuit and prior case law that has dealt with similar issues. More information about legal research is provided in the section that follows.

2. Use Legal Templates

Many state and federal courts provide legal "templates" (examples) of documents such as complaints and motions. Templates can be a helpful starting point and can save you time and effort. This Guide also offers a template for a *Motion for Modification of Sentence* (compassionate release) in Appendix F.

3. Understand the Requirements for Filing

Make sure you understand the requirements for filing documents in court. These can include deadlines, filing fees and rules about page limits and formatting documents. Filing fees are addressed further in Chapter 10.E on the Prison Litigation Reform Act.

4. Be Aware of the Rules of Service

As discussed in Chapter 10.D, "service" refers to giving a copy of your legal filing to the party you are suing. Generally, when you file a legal document with the court, you should give (serve) a copy of the same document to the other party or their lawyer and include a "proof of service" with the document you file in the court. Chapter 10.D provides more guidance on service and on proceeding in forma pauperis to avoid paying filing fees. Court rules and pro se guides also will provide information about service.

5. Be Organized

Keep all your documents and correspondence organized. Always keep copies of the documents that you file or receive from the court. It is a good idea to keep receipts and other documents that list and account for your property.

If your lawsuit relates to your property, such as prison officials losing your personal belongings when you are transferred or during a search, it will be important to prove that you own these items in order to challenge the loss.

6. Communicate Clearly

When you write to the court or communicate with the opposing party, be specific and clear in your writing.

Avoid using complex language or legal terms that may be difficult to understand. Trying to sound like a lawyer isn't necessary.

7. Be Prepared for Court Appearances

If you will be appearing in court, prepare by reviewing your case, practicing your arguments, and organizing any evidence or exhibits you plan to present.

8. Get Help From Legal Resources

If possible, get help from legal resources such as the ones listed in Appendices A, as well as pro bono attorneys and legal aid organizations.

Note that the federal court system keeps a database of national federal court forms to use in litigation. These forms can be used in any federal court and are searchable by name or category. For example, in the Civil Forms section, you can find a sample Petition for Writ of Habeas Corpus. This database is available at: https://www.uscourts.gov/services-forms/forms.

B. Legal Research

1. Using Precedent

When you prepare your case, you may need to do legal research. You may be able to access online legal resources from your law library.

As discussed in Chapter 3, courts decide cases based on "precedents," which are earlier decisions made by courts. To make your argument strong, find cases that raise similar issues as your lawsuit that have been decided by a court in the same way you want the court to rule in your case. Describe how the facts in these precedents are similar or identical to the facts in your lawsuit.

You should also find court cases that ***do not*** help your argument. Describe how the facts in these cases are different from the facts in your lawsuit and why the court should rule differently in your lawsuit. This is called "distinguishing" your case from unhelpful precedents. This is important because the other party or your judge might use these precedents to argue against you.

As explained in Chapter 3, when you research court decisions, take note of which ones will be binding on your court and which will be merely persuasive authority.

2. Citation

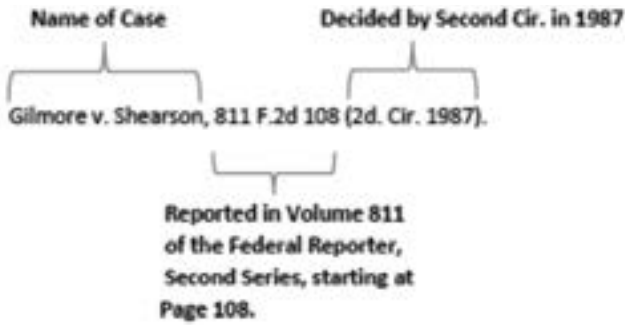
When you cite a case in a written filing, include the case name and its citation. An example of a citation from a case that many people know is ***Brown v. Board of Education of Topeka,*** 347 U.S. 483 (1954). A citation tells you how to find a case. A full citation should include the name of the parties (***Brown and the Board of Education of Topeka***), where the case is published (the U.S. Reporter), what court heard it (the U.S. Supreme Court), and in what year (1954).

Cases are published in "reporters," which are books that collect cases in multiple volumes, either from one state (a ***local*** reporter) or from multiple states (a ***regional*** reporter). Every state case has two possible citations—either to the local reporter (for example, ***State v. Reed,*** 133 N.J. 237 (1993)) or to the regional reporter (for example, the same case is also ***State v. Reed,*** 627 A.2d 630 (N.J. 1993)). For either type of reporter, the number before the name of the reporter is the volume number and the number following the case name is the page that the case starts on. For a case cited from a regional reporter, the specific court that heard the case and the year, in parentheses, follow the name of the reporter. For a case from a local reporter, only the year is necessary, in parentheses.

Looking at the sample citations of ***State v. Reed,*** 133 N.J. 237 (1993) and ***State v. Reed,*** 627 A.2d 630 (N.J. 1993), this New Jersey Supreme Court case can be found in both volume 133 of the New Jersey Reporter, starting on page 237, and in volume 627 of the Atlantic Reporter's second series, starting on page 630.

Always consult your court's style guide. Although Bluebook is considered a standard citation style guide, some courts prefer citation in certain styles or to specific reporters. For example, a state court may prefer that when you cite decisions from that state's courts, you use the local reporter rather than the regional reporter. This practice is followed by the Bluebook.

Federal courts generally follow "Bluebook" style. At the top of the next page is an example of a federal case with an explanation of the citation:



This Guide follows the Bluebook for federal cases and state reporters for state cases. For more information on how to write citations and a list of common abbreviations, see Appendix G.

When citing a case in either federal or state court, pay attention to whether the case is ***published*** or ***unpublished***. Often courts will note at the top of a decision near the case name whether or not the decision is published. You can always cite published decisions, but it is important to know your court's rules about citing unpublished decisions. Sometimes, courts will allow you to cite an unpublished decision as persuasive authority, as long as you explain that it is unpublished and is not binding. Court rules may require you to provide a copy of the unpublished decision with your court filing.

You should cite only cases that have not been overruled or invalidated by cases that were decided later. These cases are considered to be "good law." Sometimes only parts of a case are invalidated by a later court decision, but other parts of the case remain good law. Other times, an entire case is invalidated by a later court decision and should not be cited.

To determine if a case is still good law, you can use books or an online research tool called Shepard's. When you check to see if a case is still good law or has been overruled by a later case, it is called *shepardizing* the case. The Shepard's report will also include a list of every court decision that refers to the case you are researching. Court decisions that refer to the case you are researching may help you find other relevant caselaw.

3. How to Read a Case

When judges rule on cases, they write a description of the case facts, the law they are applying, and the rationale (or reasoning) they used to reach their decision. When you first begin reading a case, it may be hard to understand. Keep trying and use the following tips.

4. The Summary or Syllabus

When you look up a case, you will sometimes find a paragraph under the case name called a "summary" or "syllabus," which summarizes the decision or "holding." The summary or syllabus focuses on the most important parts of the decision and can help you understand the case, but do not cite the summary or syllabus in your legal filing.

a) The Facts

After any summary or syllabus, you will see the name of the judge or judges who decided the case in capital letters, and the names of the attorneys involved in the case. Below these names is the official opinion (the facts, the decision and the reasoning of the court). Most judges start out an opinion by stating the facts. Read the facts carefully. You will need to use them to show how the case is similar to or different from your case.

b) Legal Reasoning

Legal reasoning makes up most of the decision. The court will discuss the relevant legal principles (for example, constitutional law, statutes, or regulations) and explain general principles or rulings from prior cases that relate to these legal principles. The court will apply the reasoning of other cases to the facts in the new case they are now deciding. It is often helpful to reread the legal reasoning a few times to understand what the court is saying.

c) The Holding

The decision in a case is known as the "holding." The court will review the relevant facts and legal arguments, apply the law to those facts, and provide its decision about that issue. Once you understand the holding, you can decide whether or not the case will help you.

d) A Useful Tip for Legal Research

When you find a helpful case, look to see if the court in that case cited other cases to support its legal reasoning. Those other cases may help you, too.

12 Going to Court

A. Show Respect

Always show respect to the judge and everyone else in the courtroom. Avoid behavior or language that may provoke a negative reaction from the judge. Don't argue with the other party's lawyer or talk when the judge is talking.

B. The Judge

Refer to the judge as "Your Honor" or "Judge." If you are unsure about something such as how you should act in court, do not be afraid to ask for help. For example, ask the court staff where you should sit if no one explains this. If the judge asks you to speak and you are unsure whether you should stand up, you should ask: "Your Honor, should I stand or stay seated?" You should stand up with everyone else when the judge enters or leaves the courtroom.

C. Courtroom Conduct

When you are in court, sit up straight and face forward. If the judge starts speaking to you, stand up and wait for the judge to finish speaking before you respond. Always follow the judge's directions. Only speak when told to do so or after you respectfully ask a question if you need to clarify something. If you need to give the judge a document, hold it out and a court officer will take it and give it to the judge. Do not go near the judge or anyone else in the courtroom unless instructed to do so. Lawyers and everyone else in the courtroom must also follow these rules.

Speak clearly and at a normal volume and speed so that everyone in the courtroom can understand you. Try to stay calm and do not react if you think the judge is not on your side. Don't try to read the judge's mind. If you are in court because the court is holding a hearing on a motion or a status conference (a court meeting to discuss the status of the case or its schedule), both parties may have the chance to tell the judge their arguments. If the other party or their lawyer says things that you disagree with, do not interrupt or show a reaction. Wait until the other party or lawyer is finished and then ask the judge if you can have a chance to respond. When you do, respectfully explain what was wrong or inaccurate. Also, do not interrupt the other party or lawyer when they are stating their position, questioning witnesses, or making an opening or closing statement. Wait your turn to ask questions, note any objections, or make your argument.

If you practice being respectful, it can make the experience in court easier and more effective. You can rehearse in front of a mirror, with friends, or in any setting where you can get confidence and improve your presentation skills.

D. Focus on the Outcome You Want

Be clear with the judge about what you are asking for. If you are asking the court to order the government to do something, make that clear. If you are asking for an extension to file something, be clear about how much time you need. You should limit your arguments to the legal issues that are currently before the court. Even if you are having other problems or grievances, it is best not to talk about them unless the court asks or unless they relate to the legal issues before the court.

E. Documents and Writing Materials

Make sure to bring all documents and evidence with you to court. Also bring extra paper and pens or pencils to take notes. Write down any important dates, deadlines, and instructions that the judge tells you in court.

A Appendix A: Dictionary of Legal Terms

This legal dictionary contains legal terms that appear in the Guide, as well as other legal words that are commonly used in the practice of criminal law and which you may see in your research and in legal documents.

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28 U.S.C. 1331: A statute that allows a person incarcerated in a federal prison to file a complaint against a federal officer and request compensation for loss or injury.

28 U.S.C. 2241: A statute that allows a person incarcerated in a state or federal prison to petition for a writ of habeas corpus to challenge denial of bail, implementation of a sentence, computation of a sentence, revocation of sentencing credits, or revocation of probation or parole.

28 U.S.C. 2254: A statute that allows a person incarcerated in a state prison to petition for a writ of habeas corpus on the ground that the person is in custody in violation of the Constitution or laws or treaties of the United States. (Generally, the person (petitioner) must exhaust all available state remedies before filing this petition.)

28 U.S.C. 2255: A statute that allows a person incarcerated in a federal prison to petition for a writ of habeas corpus to challenge a sentence for reasons that include (1) that the sentence violates the Constitution or U.S. laws; (2) that the sentence exceeds the maximum sentence permissible; or (3) that the court that imposed the sentence lacked jurisdiction.

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a): A statute that protects the rights of disabled people in federal prisons and state and local prisons and jails that receive federal funding.

Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131, et seq.: A statute that protects the rights of disabled incarcerated people in state prisons and local jails, even if they are not federally funded.

42 U.S.C. 1983: A statute that gives people the right to bring a lawsuit if they believe their federal constitutional or statutory rights have been violated by state or local officials.

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Abuse of discretion: A standard of review that requires that an appellate court reviewing a lower court or agency decision may not overturn the decision unless the lower court or agency acted arbitrarily or unreasonably.

Action: A lawsuit or controversy that is brought before a court.

Adjudication: The act of making an official decision about who is right in a legal case or dispute.

Administrative agencies: Federal, state, or local government agencies created by legislation to administer laws about specific areas such as taxes, transportation, and labor.

Administrative exhaustion: A legal requirement that a person file a grievance or a complaint with a prison administration ***before*** filing a legal claim regarding the grievance or complaint with a court.

Administrative process: The process or procedures used by administrative agencies to make decisions.

Admissible evidence: Evidence that can be properly introduced in a civil or criminal trial in accordance with official rules of evidence.

Adversarial proceeding: A proceeding, such as a court case, where there are opposing parties ("adversaries") such as a plaintiff and a defendant.

Adversarial system: The structure of U.S. criminal trial courts that sets the prosecution against the defense. In theory, justice will prevail when the most effective side (between these adversaries) convinces a jury or judge that its position is the correct one.

Adverse party: The party on the opposite side of the litigation.
The opposing party.

Advocate: As a verb, to argue. As a noun, an attorney or lawyer.

Affiant: The person who makes and subscribes (signs) an affidavit.

Affidavit: A written declaration of facts, confirmed by oath of the person making it before a person with authority to administer the oath.

Affirm: To confirm or uphold. When an appellate court states that it "affirmed" the decision of the lower court, it means that it agreed with it and upheld it.

Affirmation: A formal declaration of an affidavit as true. This can be a substitute for an oath in certain cases.

Alien: A foreign-born person who has not qualified as a citizen of the country. This term is still used in many legal codes although it can be considered demeaning (hurtful).

Allegation: A statement of the issues that a person intends to prove in court. Pleadings will contain written allegations.

Amendment: An official change, addition, deletion, or edit made to a legal document. For example, there are 27 amendments to the U.S. Constitution, which are sections that were added after the Constitution was enacted.

Analogy: a comparison based on the similarity of two things. For example: "My case is analogous to her case because we both acted in self-defense."

Annotated codes: Publications that combine state or federal statutes with summaries of cases that have interpreted the statutes.

Annotations: Notes, case summaries, or commentaries following statutes that help to interpret the statute.

Answer: A formal, written statement by the defendant in a lawsuit that answers each allegation contained in the Complaint (the document filed by the plaintiff that begins the lawsuit).

Appeal: A proceeding brought to a higher court to review a lower court decision.

Appeal as of right: An appeal that an appellate court must review because procedural rules require it.

Appearance: The act of coming into court as a party to a lawsuit, either in person or through an attorney.

Appellate court: A court having jurisdiction to hear appeals and review a trial court's procedure or decision.

Appellee: The party who won at the trial court, against whom the losing party takes an appeal. An appellee may also be referred to as a "respondent."

Appendix: Supplementary (additional) materials or a record considered by a lower court that is submitted to the appellate court along with a brief. An appendix is usually placed at the end of a document.

Arbitrary and capricious: An appellate standard of review, often applied to administrative agency decisions, which requires that a decision that was not reasoned or rational must be reversed.

Attorney General: The chief law officer and legal counsel of a state government, usually appointed by the state's governor.

Authority (or Authorities): Sources of law that have either binding or persuasive weight. Can also be used to refer to someone having the official power to act for another person or legal institution (for example, a warden is a prison authority).

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Bailiff: An officer of the court responsible for keeping order, maintaining appropriate courtroom decorum, and providing oversight of juries.

Bench: The seat occupied by the judge. "The bench" can also refer to the judge or court itself.

Bench trial: A trial without a jury, in which a judge decides the facts. Also known as a "court trial."

Bench warrant: An order issued by a judge for the arrest of a person.

Beyond a reasonable doubt: The standard in a criminal case requiring that the jury decide to a very high certainty that the prosecution proved every element of a crime. This standard of proof does not require that the prosecution establish ***absolute*** certainty by eliminating all doubt about the crime, but rather that the evidence is so strong that an ordinary person has no reasonable doubt about the crime.

Bill of particulars: A statement of the details of a charge made against a defendant.

Bill of Rights: The first ten Amendments of the U.S. Constitution, which state the fundamental rights of citizens.

Binding - or - **Binding authority:** A law on a particular legal issue that is controlling, meaning that it must be followed.

Bivens action: A lawsuit brought against federal officers for violations of federal constitutional rights. (Named for the case that created the action, *Bivens v. Six Unknown Named Agents,* 403 U.S. 388 (1971)).

Bluebook: A book that provides a standard system of legal citation: the rules that most courts and lawyers follow when citing cases, statutes, and other legal authorities.

Breach: The breaking or violating of a law, right, or duty, either by an action or a failure to act. Often used to refer to the failure of one party to carry out a requirement of a contract.

Brief: A written argument by an attorney arguing a case, which includes a summary of the facts of the case, pertinent laws, and an argument as to how the law applies to the facts. Also called a "memorandum of law."

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Calendar: A list of cases scheduled for hearing in court.

Capacity: Having legal authority or mental ability. Being of sound mind (sane).

Caption: Heading or introductory part of a pleading that lists: (1) the names of the parties and who they are in the case, whether plaintiff or defendant, appellant or appellee, petitioner or respondent, or government or defendant; (2) the case/docket number; and (3) the court where the case is currently located.

Case: An action, cause, suit, or controversy that is brought before a court of justice.

Caselaw – or – case law: Law based on written judicial (court) decisions from earlier cases.

Cause: A lawsuit, litigation, or action, civil or criminal, brought before a court of justice.

Cause of action: Facts that give a person the right to relief (a favorable judgment) in court.

Certification: An attestation (promise) that an official document meets a specific standard. For example, a certification that a copy of a document is a true and correct copy of the original.

Certiorari: A court order agreeing to review a lower court decision. If an appellate court grants a writ of certiorari, it agrees to take the appeal (sometimes referred to as "granting cert.") This word is most commonly associated with the U.S. Supreme Court. (See also "petition for certiorari.")

Challenge: An objection. For example, at a hearing in a criminal case an attorney can challenge a particular person being put on the jury.

Chambers: A judge's private office. A hearing "in chambers" takes place in the judge's office, outside of the presence of the jury and the public.

Change of venue: A movement of a lawsuit or criminal trial from one place to another place for trial. See also, "venue."

Charge to the jury: The judge's instructions to the jury concerning the law that applies to the facts of the case on trial.

Chief judge: the head judge who presides over a court, when there are several judges in the court system.

Circuit: The judicial region or division in which a federal appeals court is located.

Circumstantial evidence: Evidence based on inference (reasoning), rather than on actual observation or knowledge.

Citation: An order issued by a court commanding the person named in the order to appear at the time and place stated. A citation can also refer to a written reference to a legal authority (such as a precedent) in a brief or other legal document.

Citing: The act of referring or giving credit to a legal authority, such as a previous decision.

Civil action: An action brought to enforce or protect civil or private rights, such as a tort action brought by an individual who has been harmed by the negligence of a prison official. A civil action is in contrast to a criminal proceeding, which is brought by the government to enforce criminal laws.

Civil law: (1) A legal system based on a body of law entirely codified in a code (in contrast to the U.S. "common law" system); (2) laws dealing with civil or private rights (in contrast to criminal laws).

Civil liberties: Freedoms guaranteed in the Bill of Rights of the U.S. Constitution that protect individuals from government intrusion.

Civil procedure. The rules and processes that govern how courts handle civil cases, including pleadings, discovery, the preparation for trial, the rules of evidence and trial conduct, and the procedure for pursuing appeals.

Claim: A legal demand by a person for something that they believe they have a right to. For example, a person can make a claim that prison conditions are unconstitutional by providing evidence that officials have done nothing to fix a harmful situation. In a complaint, a plaintiff may assert several different legal claims.

Class action: A lawsuit about a problem (for example, a polluted water supply) brought by one or more persons on behalf of a larger group (a "class") affected by the problem.

Clear and convincing evidence: Standard of proof commonly used in civil lawsuits and in regulatory (administrative) agency cases. It is a standard less demanding than proof "beyond a reasonable doubt," but more than the proof required by a "preponderance of the evidence" standard. The standard of proof in a type of case governs the amount of proof that must be offered for the plaintiff to win the case.

Clear error: A standard of appellate review that requires an appellate court to uphold a lower court or agency's decision, unless it is clear that a mistake was made at the lower level.

Clemency or Executive clemency: Act of mercy by the U.S. president or a state governor to lessen the consequences (usually, the prison sentence) of a criminal conviction. Also referred to as a commutation or pardon.

Clerk of Court: The administrator or chief clerical officer of a court who exercises power in the court. (Note: Never confuse the Clerk of Court with a "file clerk.")

Closing argument: The closing statement by an attorney to the judge or jury after all parties have concluded their presentation of evidence.

Code: A comprehensive compilation of laws. A criminal code contains the penal (criminal) laws of a jurisdiction. Most jurisdictions have now codified a substantial part of their laws, meaning that they have compiled their laws in written form. All jurisdictions record each new law in a volume of "session laws" (or "statutes at large," for federal laws). For example, "Public Law 91-112" refers to the 112th law passed by the 91st Congress of the United States.

Code of Federal Regulations - or - "CFR": An annual publication that contains the full collection of federal administrative agency regulations.

Code of Professional Responsibility: The rules of conduct that govern lawyers.

Collateral attack: A lawsuit brought to challenge the validity of a previous court decision by bringing a new case, rather than by appealing the decision.

Commit (a person): To send a person to a prison, reformatory, or psychiatric hospital by a court order.

Common law: The system of law in the United States, which is based on judicial decisions (creating precedents) rather than a body of law entirely codified in a code. (See Civil law, in contrast.)

Commutation: The reduction of a sentence, such as from death to life imprisonment.

Compassionate release: A form of post-conviction relief, recently expanded by the First Step Act (18 U.S.C. §3582(c)(1)(A)) that allows people in federal prison to be released early from prison for certain "extraordinary and compelling reasons." Many states also have compassionate release provisions that are typically limited to people who are terminally ill or suffering from other serious medical issues.

Compelling governmental interest: A state interest that serves a critically important function and that cannot be satisfied in any less restrictive manner.

Competent to stand trial: A finding by a court that a defendant is mentally competent to stand trial. This often means the defendant has the ability to consult with an attorney with a reasonable degree of understanding and to have a rational and factual understanding of the proceedings.

Complainant: The party who sues (files a complaint) in court for legal compensation. (See also, "plaintiff.")

Complaint: The legal document filed in court by the plaintiff, which begins a civil lawsuit. A complaint sets out the facts and the legal claims in the case and requests action by the court.

Concurrence: An opinion of a judge that agrees with the outcome of the majority (binding) opinion, but expresses different reasons. (Also called a Concurring Opinion.) A concurrence is not considered a precedent, but it may be persuasive.

Concurrent sentences: Sentences imposed against a person convicted of two or more violations, which the person serves at the same time, rather than one after the other.

Consecutive sentences: Sentences imposed against a person convicted of two or more violations, where the person serves the sentences one after the other (generally, for a far longer time than for concurrent sentences).

Constitution: The supreme and fundamental law of a country or state, which establishes, organizes, and defines the scope of government.

Constitutional law: Law set forth in the constitution and judicial decisions interpreting the constitution.

Conviction: A judgment of guilt against a criminal defendant.

Counsel: A legal adviser; a term used to refer attorneys in a case. (Not the same as "council," which means a group or a meeting.)

Counterclaim: A claim made by the defendant against the plaintiff in a civil lawsuit, which "counters" (opposes) the plaintiff's lawsuit or adds the defendant's own claims against the plaintiff.

Court: The government body responsible for interpreting and applying the law to resolve legal disputes.

Court-appointed attorney: An attorney appointed by the court to represent a defendant, usually for criminal charges and without the defendant having to pay for the representation.

Court costs: The fees, such as filing fees, charged for bringing or defending a lawsuit, other than attorney fees. In some jurisdictions, in civil cases, the judge may require the losing party to reimburse the prevailing (winning) party for its court costs.

Court of last resort: The highest court in the jurisdiction—typically, a state's supreme court or the U.S. Supreme Court.

Court of original jurisdiction: A court where a party initiates a lawsuit and the court hears it; a trial court.

Court reporter: A person who transcribes by shorthand or stenography the testimony during court proceedings, a deposition, or other trial-related proceeding.

Court rules: Regulations governing practice and procedure in courts.

Cruel and unusual punishment: Punishment that violates the Eighth Amendment because the suffering or pain it inflicts is excessive or unnecessary. Punishment may be cruel and unusual because it is disproportionate (too much) compared to the crime or to the characteristics of the people punished (for example, children).

Culpability: Blame; responsibility for being wrong.

Cumulative evidence: Evidence that proves or adds to a point that has been established already by other evidence.

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Damages: Money awarded by a court to a person injured by another.

De novo: A Latin phrase describing an appellate standard of review, under which a reviewing court gives no deference to the lower court or agency decision and instead evaluates the question again.

Decision: The opinion of a court.

Declaratory judgment - or - **declaratory relief:** A remedy ordered by a court when a plaintiff has asked for a declaration (statement) from the court about the rights and legal relationship of the parties.

Decree: An order of the court.

Default: Failure of defendant to appear in court and answer the summons and complaint. A failure to comply with a legal duty, often one contained in a contract.

Default judgment: A judgment against a party who fails to appear in court or respond to charges.

Defendant: The person who is sued in a civil lawsuit, or the person charged criminally by the government in a criminal case.

Defense: Evidence and arguments offered by a defendant and his or her attorney to show why the defendant should not be held liable for a criminal charge.

Deference - or - **Deferential:** Showing respect for somebody or something. A standard of review such as "clear error," which requires a reviewing court to respect the lower court's ruling, is considered "deferential," and the lower court's ruling will usually be upheld.

Degree: The level of seriousness of an offense. In many states, for example, murder is divided into three categories: first, second, and third-degree murder. Each category refers to the different circumstances of the murder and impacts the penalties the accused may face.

Deliberate indifference: Ignoring a risk of harm, despite being aware of it.

Deposition: Testimony of a witness or a party taken under oath outside the courtroom.

Determinate sentence - or - **flat sentence:** A sentence in which a person must serve a specific number of years.

Direct appeal - or - **direct review:** Appeal of a criminal conviction that is made directly to a higher court, which focuses on errors that occurred during the trial proceedings. (See, in contrast, collateral attack.)

Direct examination: The initial questioning of a witness by the party who called the witness. The purpose is to present testimony relevant to the issues in dispute.

Discovery: The procedures that enable each side in litigation to obtain evidence about the case from the opposing side using methods such as requests for information or documents.

Dismissal: An order from a court to end a lawsuit without imposing liability on the defendant (for example, because the claims cannot be proved).

Distinguishing: Showing how something is different.

Distinguishing cases: Describing how facts in earlier cases are different from the facts in your case

Docket: A listing of all pleadings filed in a case, or a list or calendar of cases to be tried in court in a certain timeframe.

Double jeopardy: Putting a person on trial more than once for the same crime. The Fifth Amendment to the U.S. Constitution prohibits double jeopardy.

Due process of law: The limits on laws and legal proceedings that ensure that a person is treated with fairness and justice; also, the administration of a legal proceeding according to established rules and principles meant to protect the legal rights of the individual.

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En banc: All the judges of a court sitting together. Appellate courts can consist of a dozen or more judges, but normally they hear cases in panels of three judges. "En banc" refers to a hearing or rehearing by all the judges on the court.

Enact: To make into law.

Enjoin: To direct a person to stop a specific act by court order (called an "injunction").

Establishment Clause: A provision of the First Amendment to the U.S. Constitution that prohibits the government from favoring specific religious beliefs and practices over other religious beliefs and practices.

Evidence: Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case for one side or the other.

Ex parte: A Latin term meaning on behalf of only one party, without notice to any other party. For example, a request by police to ask a judge for a search warrant is made "ex parte," since neither the police nor the court notifies the person who is subject to the search about the request for a warrant before it is executed (carried out).

Ex parte proceeding: A Latin term referring to a judicial proceeding brought for the benefit of one party only, without notice to or challenge by any other party.

Excessive force: Unreasonable or unnecessary force or violence used by a governmental official.

Exculpatory: The kind of evidence, statements, or testimony that clears or excuses a defendant of guilt or wrongdoing.

Exhaustion: The rule that a person must try all available administrative appeals before appealing to a court.

Exhibit: A document or other item introduced as evidence during a trial or hearing.

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Federal: Relating to the national government of the United States.

Felony: A serious crime such as murder, burglary, or arson. (See, in contrast, a misdemeanor.) In the United States, punishment for a felony often includes imprisonment, and the length of time is defined in the federal code or each state's penal code.

Filing an appearance: The act of an attorney filing a document with a court to tell the court and the other party (or parties) that the attorney is representing a certain party.

First impression: The first time a court considers or makes a decision about a particular question of law that previously had not been addressed or decided.

Free Exercise Clause: A provision in the First Amendment to the U.S. Constitution, which prohibits the government from infringing upon (limiting) people's religious practices.

Freedom of speech: The constitutional right of a person to express their opinions and ideas without governmental limitation.

Frivolous: Without any basis in the law. Lacking validity or seriousness.

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General jurisdiction: A court's authority to hear any type of criminal or civil case.

Good time credits: Incentives for good behavior, which reduce sentenced time in prison and can amount to one-third to one-half of a maximum sentence.

Grand jury: A jury that hears evidence presented by a prosecutor in certain criminal matters and decides whether to issue a formal indictment.

Grievance: A written complaint and request for prison staff to address an incarcerated person's rights or needs. The complaint can involve the incarcerated person's medical needs, mistreatment, the prison's failures to follow procedures, or other problems.

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Habeas corpus: A court proceeding in which a person challenges the legal basis of their imprisonment, based on a Latin phrase meaning "produce the body."

Harmless error: An error committed during a trial that either the court corrected or is not serious enough to affect the outcome of a trial and therefore not sufficiently harmful (prejudicial) to require reversal on appeal.

Hearing: A formal proceeding where an authority hears evidence and then decides issues of law or fact. Legislatures also hold hearings when considering whether to adopt legislation or take other action.

Hearsay: An out-of-court statement made by a person who is not testifying at a hearing, which is offered in evidence by a party during the hearing to prove the truth of what is asserted in the statement.

Held: Decided or ruled.

Holding: A ruling on a question that has been presented to a court.

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Immunity - or - **immune:** A legal rule that protects a person or entity from liability or punishments for actions that are wrong and otherwise could be punished.

In forma pauperis (IFP): A Latin term that refers to a person living in poverty being permitted to bring their lawsuit without paying court fees.

Indeterminate sentence: A prison sentence where the convicted person's release date is uncertain and not guaranteed. Typically, a person with an indeterminant sentence may be eligible for parole after a number of years, but the actual amount of time a person serves is left up to a parole board.

Indictment: A written accusation by a grand jury charging a person with a crime.

Indigent: A person living in poverty who is unable to afford the costs and fees associated with pursuing a lawsuit in court. This person may be able to obtain a fee waiver (called "proceeding in forma pauperis" in federal court).

Infra: "Below" in Latin, referring to something that appears later in a document.

Injunction - or - **injunctive relief:** A court order to force the defendant to do or to stop doing something.

Interlocutory: Intermediate, meaning during the course of a case, and before the matter is final.

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Judgment: The final and official decision made by a court regarding the parties' rights and liabilities.

Judicial branch: The branch of government consisting of the courts, which have the power to interpret and apply the law.

Jurisdiction: The power of a court to hear and try a given case. Also, the geographic area in which a court has power or the types of cases a court has power to hear.

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(West) Key Number System: A classification system, developed by West Publishing Company, that organizes legal cases by topic, which allows legal researchers to find cases that are relevant to their own case. So, for example, if you have a case that contains a key number on a helpful topic, you can use the key number to find additional cases from any jurisdiction on the same topic.

Legislation: Laws enacted (made official) by the legislative branch of government.

Legislative branch: The branch of government consisting of individuals elected by the people and representing the people, whose job it is to enact laws.

Legislative intent: The goals of a legislature in enacting a statute, which are sometimes documented (written down) in the record of legislative hearings. Courts often look at the legislative intent when making decisions based on a particular statute.

Legitimate governmental interest: A valid and rational reason for the government to enact a specific law.

Liable: Legally responsible.

Liberty interest: An individual right or freedom that is considered so important and fundamental that it deserves legal protection and cannot be taken away without fair procedures under the Due Process Clause of the U.S. Constitution.

Life-without-parole: A prison sentence imposed on a person, for which they will remain in prison for the rest of their life without the chance to be released (paroled).

Litigant: A party to a lawsuit.

Litigation: The process of resolving a dispute in a court of law.

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Magistrate - or - **magistrate judge:** A judicial officer who exercises some of the functions of a judge. The federal courts rely on magistrate judges to handle a range of matters such as arraignments, discovery disputes, and motions.

Malice: The intention of doing a wrongful act without just cause or legal excuse.

Malicious: Done with malice, without just cause or excuse.

Mandatory: required or commanded by authority.

Max date: The end date of a criminal sentence when a person is released from confinement or parole.

Meaningful opportunity to be heard: An actual chance to make arguments, raise concerns, and have your situation considered by the judge or other authority who is deciding your case.

Minor: A person under the age of majority or legal competence, typically under age 18.

Miranda warning - or - **Miranda rule:** A legal requirement that police inform a suspect in custody of the suspect's constitutional rights before being questioned. Named after the U.S. Supreme Court case of *Miranda v. Arizona,* 384 U.S. 436 (1966).

Misdemeanor: A minor crime; an offense punishable by incarceration, usually in a local jail, typically limited to one year or less.

Mistrial: an invalid trial caused by a fundamental error or inability of jurors to agree on a verdict. When a mistrial is declared, the trial must start again with the selection of the jury.

Mitigating: Reducing the seriousness of something. For example, young age is a "mitigating factor" that reduces the blame we assign for an illegal act.

Motion: An application made to a court or judge requesting a ruling or order in favor of the person making the request.

Motion in limine: A Latin phrase referring to a motion made to a court requesting that the court not allow the presentation of possibly prejudicial (damaging) evidence.

Motive: A person's reason for committing a crime.

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Negligence: Failure to use the care that a reasonable person would use under similar circumstances.

Nonjury trial: A trial held before a judge, but without a jury.

Notary public: A public officer authorized to administer oaths and attest to and certify legal documents.

Notice: Formal notification to a party that is sued in a civil case of the fact that the lawsuit has been filed. Also, any form of notification that is required by law or agreement.

Notice and opportunity to be heard: The basic elements of due process of law, which require that the government cannot take away life, liberty, or property from any person without sufficient procedures to protect the person's rights.

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Objection: A statement opposing some aspect of a judicial or other legal proceeding. A judge will either "sustain" (allow) or "overrule" (deny) an objection.

Objective: Based on facts or conditions that can be observed by a neutral party (in contrast to "subjective," which is based on understanding or feelings). Not influenced by individual perceptions, emotions or personal prejudices.

Opinion: A judge's written explanation of a legal decision.

Oral argument: The spoken presentation of a case before a court, especially an appellate court.

Order: A direction, instruction, or command by a judge, often put in writing.

Overrule: To rule against or reject. For example, an appellate court may overrule a lower court's decision.

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Parole: An incarcerated person's early, supervised release from prison with certain conditions.

Party: A participant in a lawsuit or other legal proceeding who has an interest in the outcome.

Per curiam: A Latin term that means "By the Court," which refers to an opinion delivered by an entire court (group of judges), rather than a single judge.

Personal jurisdiction: The court's jurisdiction (power) over the parties in a particular matter, as determined by the facts in evidence. For example, a court can exercise personal jurisdiction over a defendant because of the defendant's physical presence in a state.

Persuasive authority or persuasive decision: A decision or law that carries weight with a court, but is not binding on the court or required to be followed by the court.

Petition for certiorari: A petition asking an appellate court to review the decision of a lower court. The U.S. Supreme Court will typically hear a case only if a party successfully petitions it for certiorari.

Petitioner: A person who appeals a judgment of a lower court. In courts such as the U.S. Supreme Court, a party who appeals a judgment or decision of a lower court is called a "petitioner." In other courts, this party is called an "appellant."

Plain error: A standard of review that allows an appellate court to review a decision that is particularly at odds with the law. This standard generally only applies when refusing the appeal would result in injustice. A person seeking this review must be able to prove (1) that there was a clear error (2) that affected the person's rights in a substantial way, and (3) that seriously affects the fairness of the judicial proceedings.

Plaintiff: The person who starts a civil lawsuit.

Plea: The first pleading by a criminal defendant; the defendant's declaration in court of guilty or not guilty; the defendant's answer to the charges made in the indictment or information.

Plea agreement - or - **plea negotiation:** Process where the accused person and the prosecutor in a criminal case agree to end the case, with the accused usually pleading guilty to a lesser offense or to some counts of an indictment in return for a reduction in the sentence. A judge then either accepts or rejects the plea and the terms of the agreement.

Pleading: The written complaint, answer, and any counterclaims containing statements of fact and law that are filed with the court by the parties in a legal proceeding. Pleadings generally outlines a party's allegations, claims, denials, and/or defenses.

Post-conviction relief: The procedures and options available to overturn a conviction, modify a sentence, or restore civil rights once a conviction is final (direct appeals are exhausted).

Precedent: A published court decision and its reasoning in one case that later courts must recognize as authority and use in deciding similar cases. It is important for a defendant to cite precedents that apply to their case in order to persuade a judge to decide in their favor.

Preempt - or - **preemption:** The idea that, when two laws conflict, the law of higher authority and weight will be used, rather than the law of lower authority and weight. Constitutional law requires that when a federal law conflicts with a state law, the federal law preempts the state law because federal law is supreme (as established by the U.S. Constitution's Supremacy Clause).

Prejudice: Harm to one's legal rights caused by some action or judgment. Also, dismissal of a lawsuit "with prejudice" means that the lawsuit cannot be re-litigated in the future. Dismissal "without prejudice" means that a new lawsuit can be filed again on the same grounds as the original lawsuit.

Preponderance of the evidence: The general standard of proof in civil cases meaning more probable than not (more than 50%). (See, in contrast, "Beyond a reasonable doubt.")

Preserve: To keep or maintain. In a trial, a record for appeal is "preserved" when a party makes oral or written objections when the party believes the court has made a mistake.

Prima facie case: A Latin phrase referring to a case supported by the minimum amount of evidence necessary to continue in the judicial process. For example, a prosecutor makes a "prima facie case" if he presents some evidence for every element of a crime.

Primary authority: In legal research, law that binds the courts, government, and individuals. Examples are constitutions, codes, statutes, ordinances, and case law-based sources.

Private right of action: The right of an individual or organization to bring a lawsuit against another party for violating legal rights or obligations.

Pro bono: A Latin phrase referring to free legal services provided by an attorney, organization or clinic to people who are indigent (poor) or for a public cause.

Pro se: A Latin phrase referring to an individual who represents themselves in a court proceeding without the help of an attorney. The individual appears in court "pro se."

Probation: Conditional freedom granted to an adult or juvenile who has been found by a court to have offended, as long as the person meets certain conditions of behavior.

Procedural: Relating to the judicial and legal process. For example, "procedural law" refers to the laws by which court proceedings are conducted. In contrast, "substantive law" (in criminal cases) refers to the laws that determine how crimes are charged and punished.

Procedural default: Failure to follow the correct legal steps or procedures in a case, which can prevent certain arguments or the whole case from being brought later. For example, federal habeas corpus petitions require a person to assert all arguments relating to violation of federal or constitutional rights in the direct appeals and state post-conviction proceedings. If the person left out any arguments, the person is considered to have made a procedural default and will have therefore have given up or "waived" those arguments.

Procedural due process: The constitutional guarantee that the government will follow fair procedures before it interferes with or takes away life, liberty or property.

Proportionate: An Eighth Amendment sentencing principle, which holds that the severity of a criminal punishment cannot be overly harsh when compared to the type of crime committed and the characteristics of the person being punished.

Prosecutor: An attorney representing the government in a criminal case who decides who, when, and what to prosecute.

Public defender: A publicly paid attorney who represents indigent (poor) people accused of a crime.

Published case: A court case certified for publication in a series of books known as "reporters."

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Quash: To annul, cancel, or void. A court may quash an indictment, a summons, or a subpoena.

Question of fact: An issue that involves the facts (in contrast to the law), which is typically left to a jury to decide.

Question of law: An issue that involves an application or interpretation of the law (in contrast to the facts), which is usually left for a judge to decide.

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Reasonable accommodation - or - **reasonable modification:** Changes or adjustments made to accommodate a person with a disability.

Reckless: Acting in a way that creates a substantial and unjustifiable risk of harm and then disregarding that risk.

Record: All of the documents and evidence plus transcripts of oral proceedings in a case.

Redress: To provide someone with a remedy (such as compensation) for a problem. To remove the cause of a problem.

Rehabilitation: A change of behavior to reduce the likelihood of reoffending by addressing the underlying issues that contributed to a person's criminal behavior. Rehabilitation may require taking responsibility for past mistakes, overcoming issues like addiction or mental health problems, and developing skills to lead a productive life after release.

Rehearing: A new hearing of a civil or criminal case by the same court in which the case was originally heard.

Regulations: Rules enacted by an administrative agency that often interpret or provide more detail than the statutes enforced by the agency.

Remand: To send a dispute back to the court or administrative body which originally heard it. Typically, an appellate court will remand a case to a lower court with specific instructions for the lower court to follow.

Remedy: A legal right to recovery for a wrong that was committed or to prevent future injury. Remedies ordered by a court can include money compensation, an order directing someone to behave differently, or a declaration of someone's rights.

Reply: The response by a party to allegations raised in a pleading by the other party. A reply brief is typically the third brief filed on a topic and responds to the other party's opposition brief.

Reporters: Books containing published court decisions that are considered important precedent.

Request for production of documents: A type of "discovery" in a lawsuit in which one party asks the other party to provide specific documents.

Respondent: The person against whom an appeal is taken. In the U.S. Supreme Court, a party who responds to an appeal of a judgment or decision of a lower court is called a "respondent." In most other courts, this person is called an "appellee."

Restatement of law: A set of articles on legal subjects that inform judges and attorneys about general principles of common law.

Retaliation: Acts of revenge taken in response to a person speaking up, voicing a complaint, or pursuing their legal rights. Unlawful retaliation, for example, is if a prison official retaliates against someone who reports that official's misconduct. Retaliation is an unlawful practice under many statutes and can be considered a legal injury in and of itself.

Reverse: The action of a higher court setting aside or overturning a lower court decision.

Reversible error: An error during a trial or hearing that is harmful enough to justify reversing the judgment of the court that conducted the trial or hearing.

Rules of evidence: Standards that govern whether a court admits evidence in a civil or criminal case.

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Sentence: The punishment ordered by a court after a defendant is found guilty of a crime. A sentence can include incarceration or government supervision (probation).

Service of process: The delivery of documents such as writs, pleadings, briefs, summonses, and subpoenas by giving them to the party named in the document.

Settlement: An agreement between the parties to a lawsuit to end the lawsuit. Typically, the defendant agrees to take some action or pay something in exchange for the plaintiff dismissing the lawsuit.

Shepard's: Books that compile caselaw and show whether decisions by lower courts have been reversed by higher court decisions or superseded (replaced) by statutes enacted after the lower court decisions. Legal researchers check specific decisions using Shepards to determine whether the decisions are still "good law" and therefore useful to cite in an argument to the court.

Shepardizing: Using Shepard's books or online methods to determine if a decision (a case) is still "good law" that can be relied upon and has not been reversed by another decision or statute.

Sovereign: As a noun, a person or state that has independent and supreme authority. As an adjective, the characteristic of supreme authority.

Split sentence: A sentence in which part of the time is served in confinement followed by a period of probation.

Standard of proof: The level or type of proof needed for a party to win a case. For example, "beyond a reasonable doubt" is the standard of proof required in a criminal case, and "by a preponderance of the evidence" is the standard of proof required in a civil case.

Standard of review: The amount of deference (respect) an appellate court gives when reviewing the decision of a lower court.

Standing: The legal right to bring a lawsuit.

Stare decisis: A Latin phrase meaning "to stand by things decided." The idea of stare decisis is that courts should decide cases in the same way that past courts have decided similar cases.

Statute: A law passed by a legislature and signed into law by the President (federal statutes) or by a state Governor (state statutes).

Statute of limitations: A law establishing a time limit for prosecuting a crime based on the date when the crime occurred, or for bringing a civil lawsuit based on when the injury or damage happened or was discovered. After the "statute of limitations" has expired on a criminal or civil lawsuit, the lawsuit cannot be pursued in court.

Statutory: Relating to or involving laws passed by legislatures.

Stay: An order from a court to pause or stop all or part of a case or judgement.

Stipulation: An agreement between opposing parties in a lawsuit about some point in their case. A stipulation made in a case is binding on both parties.

Subjective: Influenced by individual perceptions, emotions, or personal prejudices, in contrast to something that is "objective," which is based on facts or conditions that can be observed.

Subpoena: An order commanding a person to appear before a court to give testimony or provide evidence.

Successive: Following in order; next in line.

Summary judgment: A judgment made in a case based on the pleadings and evidence that are in the record, without any need for a trial. Summary judgment may be ordered by a court when parties do not dispute the facts of the case and the law entitles one party to judgment in its favor.

Summons: Notice to a defendant that there is a lawsuit against them. A summons may be used to start a case.

Supervision - or - **supervised release:** A period of probation after release from prison (instead of incarceration or parole). Supervised release is for a specific time period, under conditions imposed by a state parole board or Department of Corrections.

Suppress: To stop or prevent from being seen. For example, a court may suppress the use of evidence at trial because the police or a party obtained it illegally.

Supremacy Clause: A part of the U.S. Constitution that states that the U.S. Constitution and federal laws are "supreme" over (or override) state constitutions and laws. *See* U.S. CONST. art. VI, cl. 2.

Syllabus: A summary of the case that appears in a printed opinion before the judicial analysis, which briefly states the facts and the holding of the case.

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Template: A document with a preset format used as a model and starting point for people crafting a new similar document.

Transcript: A written, word-for-word record of what someone said. A transcript usually refers to a record of a trial, hearing, or other proceeding that is transcribed by a stenographer (also called a court reporter) from a recording or from shorthand.

Trial brief: A written document prepared for and used by an attorney at trial. It contains the issues for the trial, a summary of the evidence for presentation, and case and statutory authority to substantiate the attorney's position at trial.

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United States Attorney: An attorney appointed by the President to prosecute federal crimes and defend the government in civil suits. Each of the federal districts of the U.S. court system has a U.S. Attorney. Assistant U.S. Attorneys are the prosecutors who work for the U.S. Attorneys.

United States Attorney General: The chief law enforcement officer in the federal government, appointed by the President of the United States. The Attorney General is the head of the Department of Justice.

United States Congress: The national legislature for the United States, which is composed of the United States Senate and the United States House of Representatives.

United States Court of Appeals: Federal courts that hear appeals from the federal district courts, bankruptcy courts, and tax courts.

United States District Courts: Federal trial courts that hear both civil and criminal cases.

United States Magistrate Judges: Federal judges appointed to assist U.S. District Court judges by handling first appearances of criminal defendants, bail hearings, and other pretrial administrative duties.

United States Reports: The official reporter (published book) of the U.S. Supreme Court.

United States Solicitor General: A federal attorney appointed by the President to argue the position of the United States in cases before the U.S. Supreme Court.

United States Supreme Court: The highest court in the U.S., which has ultimate appellate jurisdiction over federal cases and state cases that involve issues of federal law.

Unpublished case: A court case that has not been certified for publication and is not authoritative (not able to be cited as precedent) by anyone other than the parties in that case.

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Vacate: To set aside, declare void, or nullify a judgment.

Venue: The specific court where a case can be filed, which must have a connection to the claim (for example, the injury or action) at issue.

Verdict: The decision of the court or jury at the end of a criminal or civil case.

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Waiver: The intentional giving up of a legal right.

Willfully: Intentionally or purposefully.

Witness: Someone who gives testimony about something they saw or know.

Writ: A formal document, a request to a court, or a court's written order.

B Appendix B: Pro Se Resources

If you represent yourself in court without a lawyer, you are called a "pro se" litigant. Even with a strong case, it can be hard for pro se litigants in court. There are many rules and procedures governing what can be filed and how, which vary in different courts. About two-thirds of cases filed pro se in the federal courts are from incarcerated people.

Fortunately, courts understand the disadvantage pro se litigants face and try to accommodate them. The U.S. Supreme Court said that pro se pleadings should be held to a less strict standard than pleadings drafted by lawyers. See *Erickson v. Pardus, 551 U.S. 89, 94 (2007).*

In addition, courts make guides for pro se litigants available on their websites. If you are thinking of representing yourself, you should check your court's website. Some federal district courts publish their own handbook for pro se individuals that explain the process of filing, local rules, and important information about the court. They will also include sample forms. If a court has a handbook, there will probably be a tab on the court's website titled "Pro Se Help." If a court does not publish a guide, it may still have a collection of forms available.

If you are having trouble finding pro se resources on your court's website, you should call the court's clerk and ask if any resources are available. Here are some additional resources (listed in alphabetical order) to help you find an attorney or represent yourself.

American Civil Liberties Union (ACLU) – National Prison Project

Address: 25 Broad Street, 18th Floor
New York, NY 10004
Tel: 212-549-2500
Website: www.aclu.org

The ACLU National Prison Project is dedicated to ensuring that U.S. prisons, jails, and other places of detention comply with the Constitution, domestic law, and international human rights principles. You can also write for information on local ACLU affiliates or look for affiliates on the ACLU's website.

Center for Constitutional Rights

Address: Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
Tel: 212-614-6464
Website: www.ccrjustice.org

The Center for Constitutional Rights is a civil rights organization that brings impact litigation to protect constitutional rights.

Center on Wrongful Convictions

Address: Northwestern Pritzker School of Law
375 East Chicago Avenue
Chicago, IL 60611
Tel: 312.503.2391
Website: cwc.law.northwestern.edu

The Center on Wrongful Convictions is an organization that focuses on identifying and exonerating wrongly convicted people with claims of actual innocence. If you meet their criteria of actual innocence and a completed trial and sentence, you can ask for assistance by sending them a letter.

Centurion

Address: 1000 Herrontown Rd.
Princeton, NJ 08540
Tel: (609) 921-0334
Email: info@centurion.org

Centurion is a national non-profit organization that works to vindicate and free people in prison who are innocent and have been unjustly sentenced to either death or life in prison without parole. Centurion focuses on murder and rape cases. It does not consider child abuse/sex cases, unless physical evidence can be scientifically tested to prove innocence, and it does not consider accidental death or self-defense cases. To have a case considered, write a short letter outlining the facts of your case. Do not include documents or transcripts. Centurion states that they read and respond to all letters within approximately 6-8 weeks.

Disciplinary Self-Help Litigation Manual
By Daniel E. Manville

The Disciplinary Self-Help Litigation Manual, Second Edition, by Dan Manville, is the third in a series of books by Prison Legal News Publishing. It is designed to inform prisoners of their rights when faced with the consequences of a disciplinary hearing.

Incarceration and the Law: Cases and Materials (2020)
By Schlanger, et al.

This is a casebook for law students and is expensive to buy, but the associated website, https://incarcerationlaw.com/, includes links to useful judicial opinions and statutes, sample court filings, and articles that discuss many issues relevant to jailhouse law.

Equal Justice Initiative

Address: 122 Commerce Street
Montgomery, AL 36104
Tel: 334-269-1803
Website: www.eji.org

The Equal Justice Initiative (EJI) is an organization that provides legal representation to indigent defendants and prisoners who have been denied fair and just treatment in the legal system. It litigates on behalf of condemned prisoners, juvenile offenders, people wrongly convicted or charged with violent crimes, poor people denied effective representation, and others whose trials are marked by racial bias or prosecutorial misconduct. EJI mostly works with people incarcerated in Southern states.

Georgetown Law Journal Annual Review of Criminal Procedure

Address: Georgetown Law Office of Journal Administration - ARCP
600 New Jersey Avenue NW
Washington, DC 20001-2075
Tel: 202-662-9457
Website: https://www.law.georgetown.edu/georgetown-law-journal/arcp/
Email: lawcriminalprocedure@georgetown.edu

The Annual Review of Criminal Procedure (ARCP) is a publication (one issue per year) that has a comprehensive, concise overview of all criminal procedures and recent case-law decisions in the United States Supreme Court and each of the 12 Federal Circuit Courts.

A $25 discounted price is available for orders sent directly to correctional facilities. Otherwise, $85 is the standard price. ARCP offers complimentary copies of older editions to incarcerated people who can provide proof of need. Write to the Office of Journal Administration-ARCP or ask a loved one to request the discounted order form and ask for an older edition to be mailed to you.

Make checks and money orders payable to: *Georgetown Law Journals-ARCP.* VISA/Mastercard payments are accepted via fax at 845-267-3478. Refunds are not available for discount orders. Orders are shipped USPS, so please allow up to 4-6 weeks for delivery. Tax must be included if shipping to DC (5.75%), VA (5.0%), MD (6%), NY (7.0%), TN (7% state & 2.25% local). Do not send a money order or check without an order form.

Georgetown University Law Library

Address: Georgetown University Law Library
111 G Street, N.W.
Washington, D.C. 20001

Georgetown University Law Library has copies of primary U.S. laws, including U.S. federal and state court opinions and material from U.S. federal and state compiled statutes, regulations, and constitutions. The library has a 50-sheet page limit. It can only provide a single copy of current, unannotated versions of primary law and only if available through free online sources. Requests for primary law documents must be specific. The library cannot provide entire codes or any other large documents in 50-sheet increments.

Incarcerated people should type letters or print clearly and legibly, listing specific law citations on separate lines and putting identifying information (name, identification number, and full mailing address for routine/general mail) on every page of correspondence. Let the library know if there are limitations on the number of pages that you may receive. Items will be prioritized according to the order in which they are listed in the request. Do not include personal information, general questions, or research requests. Do not enclose legal or personal documents or materials. The library is unable to open correspondence marked as "legal mail" or otherwise noted as a privileged or confidential communication.

Harvard Prison Legal Assistance Project

Address: 6 Everett Street, Suite 5107
Cambridge, MA 02138
General Inquiries: 617-495-3969
Prisoners' Hotline: 617-495-3127
Website: https://clinics.law.harvard.edu/plap/

The Prison Legal Assistance Project (PLAP) is a student practice organization at Harvard Law School in which students represent people incarcerated in Massachusetts prisons.

PLAP student attorneys represent clients charged with violating prison regulations at disciplinary hearings and those facing parole revocation or rescission and second-degree life sentence hearings before the Massachusetts Parole Board. Student attorneys also provide inmates with assistance in matters ranging from civil rights violations to confiscated property. PLAP does not handle criminal or civil court cases and cannot assist people incarcerated outside the state of Massachusetts.

How to Justice

Address: How to Justice
11 South 12th Street
Richmond, VA 23219
Website: www.howtojustice.org

How to Justice is a non-profit organization that provides answers to questions about your rights in prison. It also maintains a list of resources on its website.

The Innocence Project

Address: Intake Department
40 Worth Street, Suite 701
New York, NY 10013
Tel: 212-364-5340
Website: info@innocenceproject.org
Email: press@innocenceproject.org

The Innocence Project is an organization that works to free the innocent, prevent wrongful convictions, and create fair, compassionate, and equitable systems of justice for everyone. It accepts post-conviction cases where there is physical evidence that may prove actual innocence with DNA testing.

All case submissions and follow-up correspondence are handled by mail or overnight delivery services only. No inquiries or submission should be sent by email or over the phone. These are the guidelines for submitting a case:

- The trial must have been completed, an appeal taken place, and you are serving a sentence.
- There is physical evidence that, if subjected to DNA testing, will prove that you are innocent. This means physical evidence was collected — for example blood, bodily fluids, clothing, hair — and if that evidence can be found and tested, the test will prove that you could not have committed the crime. You must have been convicted of a crime. The Innocence Project does not review claims where the applicant was wrongfully suspected, arrested or charged, but not convicted.
- The crime occurred in the United States, but not in: Arizona, California, Illinois, Michigan, or Ohio. Our intake is currently closed to these states. Please write to the local innocence organizations in those states for assistance.

No other documents should be submitted for initial review.

For information on how to submit a case, see: www.innocenceproject.org/submit-case/

A list of innocence projects by state is included at the end of this Appendix.

Jailhouse Lawyer's Handbook

A free booklet for people in prison who wish to file a federal lawsuit addressing poor conditions in prison or abuse by prison staff. The latest edition is the 6th, revised 2021. A copy can be ordered online.

Address: Center for Constitutional Rights
666 Broadway, 7th Fl
New York, NY 10012
Website: www.jailhouselaw.org

A Jailhouse Lawyer's Manual (14th Edition)

Address: A Jailhouse Lawyer's Manual
435 West 116th Street
New York, NY 10027
Tel: 212-854-1601
Website: jlm.law.columbia.edu
Email: jlm.board.mail@gmail.com

A Jailhouse Lawyer's Manual (JLM) is a handbook of legal rights and procedures designed for use by people in prison. The JLM can be used to address specific problems related to treatment in prison or

to attack unfair convictions or sentences. For people in prison and their family members, the JLM cost (as of this printing) is $30. The cost of the Immigration & Consular Access Supplement is $15. First class shipping is included in the price.

Lewisburg Prison Project

Address: Lewisburg Prison Project
P.O. Box 128
Lewisburg, PA 17837-0128
Tel: 570-523-1104
Email: info@lewisburgprisonproject.org

Lewisburg Prison Project offers a free list of low-cost legal bulletins related to prisoner rights.

Muslim Legal Fund of America / Constitutional Law Center for Muslims in America

Address: 833 E Arapaho Rd., Suite 209
Richardson, TX 75081
Tel: 972-331-9021
Website: www.clcma.org

A charitable law firm providing free legal services to Muslims facing challenges to constitutional civil rights and liberties in America, including difficulties with religious accommodations.

NAACP Legal Defense & Educational Fund Inc.

Address: NAACP Legal Defense & Educational Fund Inc.
40 Rector St, 5
Tel: 212-965-2200
Website: www.naacpldf.org

NAACP Legal Defense & Educational Fund is a non-profit law firm that deals only with cases of obvious race discrimination, as well as a small number of death penalty and life-without-parole cases.

New England Innocence Project

Address: Intake Team
New England Innocence Project
1035 Cambridge St., Suite 28A
Cambridge, MA 02141
Tel: 617-945-0762
E-mail: intake@newenglandinnocence.org

New England Innocence Project (NEIP) is a social justice non-profit that works to correct and prevent wrongful convictions and fight injustice in the criminal legal system in Massachusetts, Connecticut, Maine, New Hampshire, Rhode Island, and Vermont. NEIP provides free forensic testing, investigation, experts, and an experienced legal team to exonerate the innocent. It also provides exoneree support through the peer-led Exoneree Network, as well as education and advocacy for legislative and judicial reforms to prevent future tragedies. To request help, send a letter, e-mail, or call requesting assistance.

Prison Activist Resource Center

Address: PO Box 70447
Oakland, CA 94612
Website: www.prisonactivist.org

Prison Activist Resource Center produces a free website and directory of resources for incarcerated people, including local organizations that help with representation. Request a copy of the directory by letter.

Prison Legal News

Address: P.O. Box 1151
Lake Worth, FL 33460
Tel: 561-360-2523
Website: www.prisonlegalnews.org

Prison Legal News is a monthly prison-related magazine that covers court decisions affecting prisoner rights and conditions of confinement. ($30 per year for incarcerated people). Write for a catalog.

Prisoners Legal Services

Address: 10 Winthrop Sq., 3rd Fl.
Boston, MA 02110
Tel: 617-482-2773
Website: https://plsma.org

People in state prison can call *9004# or 877-249-1342
People in county jail can call 617-482-4124
Families can call 800-882-1413
Hours: Open Mondays, 1-4 p.m.

Prisoners Legal Services (PLS) is an organization that offers legal assistance to inmates in cases relating to their civil rights, such as prison conditions, medical care, brutality cases and AIDS in prison, providing telephone information, advice, and self-help manuals.

Prisoners' Self-Help Litigation Manual
by Daniel Manville

Prisoners' Self Help Litigation Manual, fourth edition, is an indispensable guide for prisoners and prisoner advocates seeking to understand the rights guaranteed to prisoners by law and how to protect those rights. Clear, comprehensive, practical advice provides prisoners with everything they need to know on conditions of confinement, civil liberties in prison, procedural due process, the legal system, how to litigate, conducting effective legal research, and writing legal documents.

Transgender Law Center

Address: PO Box 70976
Oakland, CA 94612

Website: https://transgenderlawcenter.org/resources/prisons

You can request the following resources:

- policies issued by specific state Departments of Correction and the federal Bureau of Prisons
- guides to navigating grievance processes and filing lawsuits
- know-your-rights guides for transgender and LGBT people
- model policies developed by LGBT advocacy organizations
- statements from medical professional associations on the necessity of transition-related health care
- medical information about transition-related health care
- case law from previous lawsuits filed by transgender people in prison
- reentry resources
- resource lists of other organizations

U.S. Innocence Projects

These listings were current as of May 2024. New projects may be formed while others may close their doors, so some entries on this list may go out of date. For those of you who are accessing the Guide online, the websites of most organizations are hyperlinked.

Nationwide

If your state does not have an organization that pursues claims of innocence, please try these organizations that operate nationwide:

Centurion, Inc.
Attn: Case Development Manager
1000 Herrontown Road
Princeton, NJ 08540
Website: https://centurion.org

The Exoneration Project
Exoneration Project Intake
311 N. Aberdeen Street, 3rd Floor
Chicago, IL 60607
Website: https://www.exonerationproject.org/what-we-do/request-help

The Innocence Project
(For all states except Arizona, California, Illinois, Michigan, or Ohio)
Benjamin N. Cardozo Law School
Yeshiva University
Intake Department
40 Worth St., Suite 701
New York, NY 10013
Website: https://innocenceproject.org

By State

Alabama

Equal Justice Initiative
122 Commerce Street
Montgomery, AL 36104
Email: contact_us@eji.org
Website: https://eji.org/issues/wrongful-convictions

Alaska

Alaska Innocence Project
P.O. Box 201656
Anchorage, AK 99520-1656
Website: https://www.alaskainnocenceproject.org

Arizona

AZ Justice Project, Inc.
4001 N. 3rd Street, Suite 401
Phoenix, AZ 85012
Website: https://azjusticeproject.org

University of Arizona Innocence Project
1145 N. Mountain Ave.
Tucson, AZ 85719
Website: https://law.arizona.edu/academics/clinics/university-arizona-innocence-project

Arkansas

Midwest Innocence Project (AR, IA, KS, MO, NE)
300 E 39th St.
Kansas City, MO 64111
Email: intake@themip.org
Website: https://themip.org

California

California Innocence Advocates
5318 E 2nd St. #999
Long Beach, CA 90803
Email: Info@calinnocence.org
Website: https://www.calinnocence.org

The Innocence Center
6549 Mission Gorge Road, #379
San Diego, CA 92120
Email: info@theinnocencecenter.org
Website: https://theinnocencecenter.org

Innocence OC
Associated with UC Irvine School of Law
301 Forest Ave.
Laguna Beach CA 92651
Tel: 949-376-5730
Website: https://innocenceoc.org

Los Angeles Innocence Project
1800 Paseo Rancho Castilla
Los Angeles, CA 90032
Email: admin@innocencela.org
Website: https://www.innocencela.org

Loyola Law School Project for the Innocent
919 Albany Street
Los Angeles, CA 91101
Email: projectfortheinnocent@lls.edu
Website: https://www.lls.edu/academics/experientiallearning/clinics/projectfortheinnocent

Northern California Innocence Project
500 El Camino Real
Santa Clara, CA 95053
Website: https://ncip.org

Colorado

Korey Wise Innocence Project
University of Colorado
Law School Clinical Education
Wolf Law Building: 404 UCB
Boulder, CO 80309
Email: koreywiseinnocence@colorado.edu
Website: https://www.colorado.edu/outreach/korey-wise-innocence-project

Connecticut

The Connecticut Innocence Project/Post-Conviction Unit
State of Connecticut
Division of Public Defender Services
55 Farmington Ave, 8th Floor
Hartford, CT 06105
Website: https://portal.ct.gov/ocpd/innocence-project/connecticut-innocence-project

New England Innocence Project (CT, ME, MA, NH, RI, VT)
Intake Team
1035 Cambridge St., Suite 28A
Cambridge, MA 02141
Tel: 617-945-0762
Email: intake@newenglandinnocence.org
Website: https://www.newenglandinnocence.org

Delaware

Innocence Project Delaware
4601 Concord Pike
Wilmington, DE 19803
Website: https://www.innocencede.org

District of Columbia

Mid-Atlantic Innocence Project (DC, MD, VA)
1413 K Street NW, Suite 1100
Washington, DC 20005
Email: info@exonerate.org
Website: https://exonerate.org

Florida

Innocence Project of Florida
1100 E. Park Ave.
Tallahassee, FL 32301
Website: https://www.floridainnocence.org

Miami Law Innocence Clinic
1311 Miller Drive, Suite 8312
Coral Gables, FL 33146
Tel: 305-284-8115
Email: miamiinnocence@law.miami.edu
Website: https://www.law.miami.edu/academics/experiential-learning/clinics

Georgia

Georgia Innocence Project
50 Hurt Plaza, Suite 350
Decatur, GA 30033
Tel: 404-373-4433
Email: gip@georgiainnocence.org
Website: https://www.georgiainnocenceproject.org

Hawaii

Hawai'i Innocence Project
William S. Richardson School of Law
2515 Dole Street, Suite 255
Honolulu, HI 96822
Email: innocenceprojecthawaii@gmail.com
or: contacthip@hawaiiinnocenceproject.org
Website: https://www.hawaiiinnocenceproject.org

Idaho

Individuals in Idaho should contact one of the nationwide organizations at the beginning of this list.

Illinois

Center on Wrongful Convictions
Northwestern Pritzker School of Law
375 East Chicago Avenue
Chicago, IL 60611-3069
Website: https://cwc.law.northwestern.edu

Illinois Innocence Project
Center for State Policy and Leadership University of Illinois at Springfield
One University Plaza, MS PAC 409
Springfield, IL 62703-5407
Tel: 217-206-6569
Email: iip@uis.edu
Website: https://www.uis.edu/illinoisinnocenceproject

Indiana

Indiana State Public Defender
One North Capitol, Suite 800
Indianapolis, Indiana 46204
Website: https://www.in.gov/courts/defender/about

Notre Dame Law School
Exoneration Justice Clinic
806 Howard Street, Suite 111
South Bend, IN 46617
Email: ndejc@nd.ed
Website: https://exoneration.nd.edu

Iowa

Midwest Innocence Project (AR, IA, KS, MO, NE)
300 E 39th St.
Kansas City, MO 64111
Email: intake@themip.org
Website: https://themip.org

Kansas

Midwest Innocence Project (AR, IA, KS, MO, NE)
300 E 39th St.
Kansas City, MO 64111
Email: intake@themip.org
Website: https://themip.org

Paul E. Wilson Project for Innocence and Post-Conviction Remedies
KU School of Law
Green Hall, Room 409
1535 W. 15th Street
Lawrence, KS 66045
Website: https://law.ku.edu/academics/hands-on-learning/clinics/project-innocence

Kentucky

Kentucky Innocence Project
5 Mill Creek Park
Frankfort, KY 40601
Email: info@kentuckyinnocenceproject.org
Website: https://www.kentuckyinnocenceproject.org

Louisiana

Innocence Project New Orleans
Case Manager
Innocence Project New Orleans
4051 Ulloa Street
New Orleans, LA 70119
Website: https://ip-no.org

If you are the Louisiana State Penitentiary at Angola, ask an Inmate Counsel Substitute for an application form.

Maine

New England Innocence Project (CT, ME, MA, NH, RI, VT)
Intake Team
1035 Cambridge St., Suite 28A
Cambridge, MA 02141
Tel: 617-945-0762
Email: intake@newenglandinnocence.org
Website: https://www.newenglandinnocence.org

Maryland

Mid-Atlantic Innocence Project (DC, MD, VA)
1413 K Street NW, Suite 1100
Washington, DC 20005
Email: info@exonerate.org
Website: https://exonerate.org

Massachusetts

Boston College Innocence Program
Professor Sharon L. Beckman, Director
Boston College Law School
885 Centre St.
Newton, MA 02459
Website: https://www.bc.edu/bc-web/schools/law/academics-faculty/experiential-learning/innocence-program.html

New England Innocence Project (CT, ME, MA, NH, RI, VT)
Intake Team
1035 Cambridge St., Suite 28A
Cambridge, MA 02141
Tel: 617-945-0762
Email: intake@newenglandinnocence.org
Website: https://www.newenglandinnocence.org

Committee for Public Counsel Services Innocence Program
75 Federal Street, 6th Floor
Boston, MA 02110
Website: https://www.publiccounsel.net/pc/innocence-program

Michigan

Cooley Innocence Project
Cooley Law School
300 S. Capitol Ave., P.O. Box 13038
Lansing, MI 48933
Email: innocence@cooley.edu
Tel: 517-371-5140
Website: https://www.cooley.edu/academics/experiential-learning/innocence-project

Michigan Innocence Clinic
University of Michigan Law School
625 South State Street
Ann Arbor, MI 48109
Tel: 734-763-9353
Email: jmsimmon@umich.edu
Website: https://michigan.law.umich.edu/academics/experiential-learning/clinics/michigan-innocence-clinic-0

Minnesota

Great North Innocence Project (MN, ND, SD)
229 19th Avenue South, Suite 285
Minneapolis, MN 55455
Tel: 612.624.4779
Website: https://www.greatnorthinnocenceproject.org

Mississippi

George C. Cochrane Innocence Project
University of Mississippi School of Law
P.O. Box 1848
University, MS 38677
Website: https://law.olemiss.edu/cochran-innocence-project

Missouri

Midwest Innocence Project (AR, IA, KS, MO, NE)
300 E 39th St.
Kansas City, MO 64111
Email: intake@themip.org
Website: https://themip.org

Montana

Montana Innocence Project
P.O. Box 7607
Missoula, MT 59807
Tel: 406-243-6698
Website: https://mtinnocenceproject.org

Nebraska

Midwest Innocence Project (AR, IA, KS, MO, NE)
300 E 39th St.
Kansas City, MO 64111
Email: intake@themip.org
Website: https://themip.org

Nevada

Rocky Mountain Innocence Center (NV, UT, WY)
358 South 700 East, B235
Salt Lake City, UT 84102
Tel: 801-355-1888
Email: contact@rminnocence.org
Website: https://rminnocence.org

New Hampshire

New England Innocence Project (CT, ME, MA, NH, RI, VT)
Intake Team
1035 Cambridge St., Suite 28A
Cambridge, MA 02141
Tel: 617-945-0762
Email: intake@newenglandinnocence.org
Website: https://www.newenglandinnocence.org

New Jersey

The Last Resort Exoneration Project
Lesley C. Risinger, Director
Seton Hall University School of Law
One Newark Center
Newark, NJ 07102
Tel: 973-642-8087
Email: lesley.risinger@shu.edu
Website: https://law.shu.edu/exoneration-project/index.html

The New Jersey Innocence Project
Rutgers Law School
217 N. 5th Street
Camden, NJ 08102
Website: https://law.rutgers.edu/information-for/get-legal-help/new-jersey-innocence-project

New Mexico

New Mexico Innocence and Justice Project
P.O. Box 36719
Albuquerque, NM 87176
Email: info@nmijp.org
Website: https://nmijp.org

New York

Innocence Project at Benjamin N. Cardozo Law School – Yeshiva University
40 Worth St., Suite 701
New York, NY 10013
Website: https://innocenceproject.org

Reinvestigation Project
Office of the Appellate Defender
11 Park Place, 16th Floor
New York, NY 10007
Website: https://oadnyc.org/reinvestigation-project

The Exoneration Initiative
233 Broadway, Suite 2370
New York, NY 10279
Fax 212-965-9375
Email: info@exi.org
Website: https://www.exonerationinitiative.org

North Carolina

North Carolina Center on Actual Innocence
PO Box 52446
Shannon Plaza Station
Durham, NC 27717
Tel: 919-489-3268
Email: admin@nccai.org
Website: https://www.nccai.org

Wrongful Convictions Clinic
Duke Law Innocence Project
The Duke Center for Criminal Justice and Professional Responsibility
Duke University School of Law
Innocence Project
210 Science Drive
Box 90362
Durham, NC 27708-0362
Websites: https://law.duke.edu/ccjpr/innocence and https://law.duke.edu/wrongfulconvictions

North Dakota

Great North Innocence Project (MN, ND, SD)
229 19th Avenue South
Suite 285 Minneapolis, MN 55455
Tel: 612.624.4779
Website: https://www.greatnorthinnocenceproject.org

Ohio

Ohio Innocence Project at University of Cincinnati College of Law
P.O. Box 210040
Cincinnati, OH 45221
Website: https://law.uc.edu/real-world-learning/centers/ohio-innocence-project-at-cincinnati-law.html

Office of the Ohio Public Defender, Wrongful Conviction Project
250 East Broad Street, Suite 1400
Columbus, OH 43215
Website: https://opd.ohio.gov/law-library/innocence/Wrongful-Conviction-Project

Oklahoma

Oklahoma Innocence Project
OCU School of Law
800 N. Harvey Ave.
Oklahoma City, OK 73102
Email: innocence@okcu.edu
Website: https://okinnocence.org/

Oregon

Oregon Innocence Project
PO Box 5248
Portland, Oregon 97208
Tel: 503-944-2270
Website: https://ojrc.info/oregon-innocence-project

Pennsylvania

Pennsylvania Innocence Project
Temple University Beasley School of Law
1515 Market Street, Suite 300
Philadelphia, PA 19102
Tel: 215-204-4255
Email: innocenceprojectpa@temple.edu
Website: https://painnocence.org/legal-services

Puerto Rico

Juan Carlos Vélez Santana PRoyecto Inocencia de Puerto Rico Universidad Interamericana de Puerto Rico
PO Box 70351
San Juan, Puerto Rico 00936-9352
Tel: (787) 751-1912, Ext. 2021
Email: PRoyectoinocencia@juris.inter.edu|
Website: https://www.derecho.inter.edu/nuestra-facultad/proyectos-institucionales/proyecto-inocencia

Rhode Island

New England Innocence Project (CT, ME, MA, NH, RI, VT)
Intake Team
1035 Cambridge St., Suite 28A
Cambridge, MA 02141
Tel: 617-945-0762
Email: intake@newenglandinnocence.org
Website: https://www.newenglandinnocence.org

South Carolina

Palmetto Innocence Project
P.O. Box 11623
Columbia, SC 29201
Website: https://palmettoinnocence.org/

South Dakota

Great North Innocence Project (MN, ND, SD)
229 19th Avenue South Suite 285
Minneapolis, MN 55455
Tel: 612.624.4779
Website: https://www.greatnorthinnocenceproject.org

Tennessee

Tennessee Innocence Project
700 Craighead Street, Suite 300
Nashville, TN 37204
Website: https://www.tninnocence.org

Texas

Innocence Project of Texas
300 Burnett St., Suite 160
Fort Worth, TX 76102
Website: https://innocencetexas.org

Texas Center for Actual Innocence
University of Texas School of Law
727 East Dean Keeton Street
Austin, TX 78705
Website: https://law.utexas.edu/clinics/actual-innocence/contact

Texas Innocence Network
University of Houston Law Center
100 Law Center
Houston, Texas 77204-6060
Website: https://texasinnocencenetwork.com/

Thurgood Marshall School of Law Innocence Project
3100 Cleburne Street
Houston, TX 77004
Website: https://www.tsulaw.edu/centers/ECI/TMSL_Innocence_Project.html

Utah

Rocky Mountain Innocence Center (NV, UT, WY)
358 South 700 East, B235
Salt Lake City, UT 84102
Tel: 801-355-1888
Email: contact@rminnocence.org
Website: https://rminnocence.org

Vermont

New England Innocence Project (CT, ME, MA, NH, RI, VT)
Intake Team
1035 Cambridge St., Suite 28A
Cambridge, MA 02141
Tel: 617-945-0762
Email: intake@newenglandinnocence.org
Website: https://www.newenglandinnocence.org

Virginia

Mid-Atlantic Innocence Project (DC, MD, VA)
1413 K Street NW, Suite 1100
Washington, DC 20005
Email: info@exonerate.org
Website: https://exonerate.org

Innocence Project at UVA School of Law
580 Massie Road
Charlottesville, VA 22903
Website: https://innocenceprojectuva.org

Washington

Washington Innocence Project
PO Box 85869
Seattle, WA 98145
Tel: (206) 636-9479
Website: https://wainnocenceproject.org

West Virginia

West Virginia Innocence Project
West Virginia University
College of Law
P.O. Box 6130
Morgantown, WV 26506
Website: https://wvinnocenceproject.law.wvu.edu/

Wisconsin

Wisconsin Innocence Project
Frank J. Remington Center
University of Wisconsin Law School
975 Bascom Mall
Madison, WI 53706-1399
Website: https://www.law.wisc.edu/fjr/clinicals/ip/index.html

Wyoming

Rocky Mountain Innocence Center (NV, UT, WY)
358 South 700 East, B235
Salt Lake City, UT 84102
Tel: 801-355-1888
Email: contact@rminnocence.org
Website: https://rminnocence.org/

C Appendix C: Relevant Selections from the United States Constitution

Note: This is not the full U.S. Constitution. It includes only selected parts of Articles I, III, and VI of the Constitution itself, followed by the First, Second, Fourth, Fifth, Sixth, Seventh, Eighth, Eleventh, Thirteenth, Fourteenth, and Fifteenth Amendments, which are the portions of the Constitution that are most relevant to the subjects covered in the Guide***.***

ARTICLE I

Section IX, Clause II

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

ARTICLE III

Section II, Clause I

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the united states shall be a party;—to controversies between two or more states;— between a state and citizens of another state,—between citizens of different states,—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

ARTICLE III

Section II, Clause III

The trial of all crimes, except in cases of impeachment, shall be by jury: and such trials shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

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.

SECOND AMENDMENT

A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

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.

FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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 defense.

SEVENTH AMENDMENT

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States than according to the rules of the common law.

EIGHTH AMENDMENT

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

ELEVENTH AMENDMENT

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

THIRTEENTH AMENDMENT

Section 1

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2

Congress shall have power to enforce this article by appropriate legislation.

FOURTEENTH AMENDMENT

Section 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.

Section 2

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any

State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

FIFTEENTH AMENDMENT

Section 1

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2

The Congress shall have power to enforce this article by appropriate legislation.

D Appendix D: Prison Rape Elimination Act Resource Guide (PREA)

This appendix provides information about the Prison Rape Elimination Act ("PREA") and should help you find important PREA resources. As discussed in Chapter 8 of this Guide, PREA is a federal statute designed to prevent sexual violence in prisons. Although PREA is a federal statute, it applies to state and federal prisons. If a state fails to follow PREA, the federal government can withhold certain funds from that state. PREA defines prisons broadly, covering "any confinement facility," including prisons, detention jails, juvenile facilities, and police lockups. Despite PREA's large national reach, it can often be difficult to navigate because there are so many jurisdictional and facility-specific variations in the rules it creates.

Despite the local variety, if you or someone you know needs more PREA related resources, consider contacting one of the following organizations.

Just Detention International (JDI)

JDI, according to its mission statement, is a "health and human rights organization that seeks to end sexual abuse in all forms of detention." JDI publishes "The Resource Guide for Survivors of Sexual Abuse Behind Bars," a state-by-state guide that provides links to counseling, government and legal resources related to PREA. If you browse the guide, you will find it includes resources for all fifty (50) states and for people involved in federal facilities. For your reference, here is a convenient link to the guide: https://justdetention.org/resources/survivor-resources/find-local-services/

JDI also accepts confidential "legal mail" from survivors in detention. JDI's website states that they respond to every survivor who writes to them. But JDI will not provide legal representation or counseling for survivors. If you wish to obtain legal representation or counseling services, refer to JDI's Guide for Survivors of Sexual Abuse Behind Bars to find resources in your area. If you wish to contact JDI directly you can send a letter to:

Cynthia Totten, Attorney at Law
CA Attorney Reg. #199266
3250 Wilshire Blvd., Suite 1630
Los Angeles, CA 90010

RAINN (Rape, Abuse & Incest National Network)

RAINN is an organization that aims to prevent sexual violence, help survivors, and ensure perpetrators are brought to justice. According to its website, RAINN partners with over 1,000 local sexual assault service providers around the country. RAINN created and operates the National Sexual Assault Hotline, a confidential 24/7 hotline that may be useful in moments of crisis:

RAINN National Sexual Assault Hotline
1-800-656-HOPE (1-800-656-4673)

Gay, Lesbian, Bisexual, and Transgender National Help Center (LGBT National Help Center)

The LGBT National Help Center provides support, community connection, and resources via its telephone hotline. All its volunteers identify as part of the LGBTQIA+ community and all calls to the hotline are confidential and free. The hotline's number and hours are as follows:

LGBT National Hotline: 888-843-4564

LGBT National Hotline Hours:

Mon-Fri: 1 PM – 9 PM/Pacific Time
4 PM – Midnight/Eastern time

Sat: 9 am-2PM/Pacific time
12:00 noon – 5 PM/Eastern time

E Appendix E: Which Circuit Are You In?

Below is a list of each U.S. state and territory with its abbreviation and the name of its Federal Circuit Court of Appeals.

Alabama (AL)..... 11th Circuit
Alaska (AK) ..... 9th Circuit
Arizona (AK) ..... 9th Circuit
Arkansas (AR) ..... 8th Circuit
California (CA)..... 9th Circuit
Colorado (CO) ..... 10th Circuit
Connecticut (CT) ..... 2nd Circuit
Delaware (DE)..... 3rd Circuit
Florida (FL) ..... 11th Circuit
Georgia (GA)..... 11th Circuit
Hawaii (HI) ..... 9th Circuit
Idaho (ID)..... 9th Circuit
Illinois (IL)..... 7th Circuit
Indiana (IN)..... 7th Circuit
Iowa (IA)..... 8th Circuit
Kansas (KS) ..... 10th Circuit
Kentucky (KY)..... 6th Circuit
Louisiana (LA)..... 5th Circuit
Maine (ME) ..... 1st Circuit
Maryland (MD)..... 4th Circuit
Massachusetts (MA) ..... 1st Circuit
Michigan (MI)..... 6th Circuit
Minnesota (MN)..... 8th Circuit
Mississippi (MS)..... 5th Circuit
Missouri (MO) ..... 8th Circuit
Montana (MT) ..... 9th Circuit
Nebraska (NE)..... 8th Circuit
Nevada (NV)..... 9th Circuit
New Hampshire (NH)..... 1st Circuit
New Jersey (NJ)..... 3rd Circuit
New Mexico (NM) ..... 10th Circuit
New York (NY) ..... 2nd Circuit
North Carolina (NC) ..... 4th Circuit
North Dakota (ND)..... 8th Circuit
Ohio (OH)..... 6th Circuit
Oklahoma (OK)..... 10th Circuit
Oregon (OR) ..... 9th Circuit
Pennsylvania (PA)..... 3rd Circuit
Rhode Island (RI) ..... 1st Circuit
South Carolina (SC) ..... 4th Circuit
South Dakota (SD)..... 8th Circuit
Tennessee (TN)..... 6th Circuit
Texas (TX) ..... 5th Circuit
Utah (UT) ..... 10th Circuit
Vermont (VT)..... 2nd Circuit
Virginia (VA) ..... 4th Circuit
Washington (WA) ..... 9th Circuit
West Virginia (WV) ..... 4th Circuit
Wisconsin (WI) ..... 7th Circuit
Wyoming (WY)..... 10th Circuit
Washington, D.C. (DC)..... D.C. Circuit
Panama Canal Zone ..... 5th Circuit
Guam (GU) ..... 9th Circuit
Northern Mariana (MP) ..... 9th Circuit
Puerto Rico (PR)..... 1st Circuit
Virgin Islands (VI)..... 3rd Circuit

F Appendix F: Federal Sentence Reduction/Compassionate Release Resource Guide

FAMM - Families for Justice Reform

Address: 1100 H Street NW, Suite 1000
Washington, D.C. 20005
Tel: 202-822-6700

FAMM's state by state to Clemency and Compassionate Release: https://famm.org/our-work/second-chances/compassionate-release-your-states-laws/

FAMM runs a federal compassionate release clearinghouse. Individuals seeking federal sentence reduction/compassionate release can write to FAMM at research@famm.org and ask for an intake survey. This will enable FAMM to assess whether the individuals meet the required criteria for compassionate relief and, if so, can be matched ***with*** pro bono counsel to take their cases.

Washington Lawyers' Committee for Civil Rights and Urban Affairs

Address: 700 14th St NW, Suite 400
Washington, DC 20005
Client line (collect calls accepted): 202-775-0323
Tel: 202-319-1000
Fax: 202-319-1010
Website: www.washlaw.org

BOP Grievance Guide: A Guide to Administrative Remedy Requests at Federal Prisons: https://www.washlaw.org/wp-content/uploads/2023/07/2021.06.11-BOP-Grievance-Guide.pdf

American Civil Liberties Union's Know Your Rights guide for people in prison: https://www.aclu.org/know-your-rights/prisoners-rights

The U.S. Sentencing Commission Policy Statement §1B1.13

Grounds for a Reduction in Sentence

The following are "extraordinary and compelling" reasons that may qualify an individual to petition the sentencing court for a reduced sentence:

Medical circumstances (b)(1)

- A terminal illness (a serious and advanced illness with an end-of-life trajectory).
- Applies to individuals who cannot adequately care for themselves (dressing, bathing, feeding) in a carceral environment because of a:
  - serious physical or medical condition, or
  - serious functional or cognitive impairment, or,
  - deteriorating physical or mental health because of aging
- Inadequate medical care
  - This provision covers individuals who are suffering from a medical condition and require, but are not receiving, long-term or specialized care, putting them at risk of serious deterioration or death.
- Public health crisis
  - There is an ongoing infectious disease outbreak that is likely to affect the individual who is at an increased risk of a severe complication if exposed to the infectious disease, and the risk of exposure cannot be diminished in an adequate amount of time.

Age of the individual (b)(2)

- This applies to individuals who: (1) are at least 65 years old; (2) are experiencing physical or mental

health issues because of the aging process; and (3) have served the lesser of 10 years or 75% of their sentence.

Family circumstances (b)(3) applies when:

- An individual has minor children (under 18 years old) and the primary caregiver of those children has died or is unable to care for the children.
- An individual has a child who is 18 years or older, who is incapable of self-care due to a physical or mental disability and the primary caregiver has died or is unable to care for them.
- The incarcerated person's spouse becomes incapacitated and there is no one else who can care for the defendant's spouse.
- The incarcerated person's parent becomes incapacitated and the incarcerated person is the only individual who can be a caregiver for the parent.

Victims of abuse (b)(4)

- This provision covers individuals who are survivors of sexual abuse by prison personnel, as well as survivors of physical abuse by prison personnel. If the individual suffered physical abuse, that abuse must result in "serious bodily injury" as defined in the Guidelines at §1B1.1. If the individual endured sexual abuse, the abuse must have involved a sexual act (penetrative, genital contact). In both cases, the misconduct must be established by a finding in a civil, criminal, or administrative proceeding, unless those proceedings are unduly delayed or the individual is facing imminent danger.

Other reasons (b)(5)

- The Director of the Bureau of Prisons always has had broad discretion to identify reasons other than those described by the policy statement for a sentence reduction. The new provision provides a more limited authority. It gives the BOP Director and judges the discretion to identify unlisted extraordinary and compelling reasons. The other reason(s), however, must be similar in gravity to the ones expressly listed above in (b)(1)-(b)(4): terminal illness, serious medical condition, advanced age, extreme family circumstance, and sexual or physical abuse.

Unusually long sentences (b)(6)

- This provision gives judges discretion, after full consideration of the prisoner's individualized circumstances, to determine whether a change in the law that would result in a lower sentence today could be a ground for sentence reduction. The person must have served at least ten years of an unusually long sentence, and there must be a gross disparity between the sentence being served and the one that would be imposed today. (Changes to the guidelines that are not made retroactive cannot be considered a change in the law for purposes of this ground.)

A few additional notes:

- Rehabilitation of an individual certainly can be part of an argument for a reduced sentence. But rehabilitation alone cannot be the basis for a reduced sentence. An argument based on an individual's rehabilitation must be made in combination with other circumstances.
- Even though an extraordinary and compelling circumstance may have been anticipated or foreseen at the time of sentencing, it can still be considered by a court under a reduction in sentence motion. For example, if an individual had breast cancer at the time of sentencing, but files a reduction in sentence request three years into her term of imprisonment because it has advanced, the judge could still consider her motion.

Template for *Motion for Modification of Sentence*

The template starting on the next page is for a *Motion for Modification of Sentence* in federal court. Please note:

- Words or sentences set in brackets and italics such as *[summarize charges and then describe in more detail]* are not part of the template. Rather, they are intended to guide you in preparing your document.
- The § symbol is used to refer to a section. If you cannot create this symbol, instead use the word "Sec." for a single section or "Secs." for multiple sections.
- The ¶ symbol is used to refer to a paragraph. If you cannot create this symbol, instead use the word "Para."

IN THE UNITED STATES DISTRICT COURT

FOR THE [*Name of the court, such as "Southern District of New York"***]**

UNITED STATES OF AMERICA, Plaintiff, vs. JOHN SMITH, Defendant.	Criminal Action Case No. _____

MOTION FOR MODIFICATION OF SENTENCE PURSUANT TO 18 U.S.C. § 3582(c)(1)(A)

"Extraordinary and compelling reasons" warrant the modification of John Smith's sentence pursuant to 18 U.S.C. §3582(c)(1)(A) and U.S.S.G. §1B1.13. Having served over 20 years in prison for a [*describe*] offense, Mr. Smith, now [*age*] years old, seeks a reduction in sentence based on the following extraordinary and compelling reasons: (1) "age of the defendant," based on his age, length of sentence served, and the serious deterioration of his health due to the aging process; (2) his "unusually long sentence," based on the fact that Mr. Smith would not receive a mandatory life sentence if sentenced today for the same offenses; and (3) "other reasons," which include his age, length of sentence served, individual aspects of his case, and his demonstrated rehabilitation. *See* U.S.S.G. §1B1.13(b)(2); (b)(6); (b)(5). In addition, the reduction of Mr. Smith's sentence to "time served" is consistent with the sentencing factors of 18 U.S.C. §3553(a).

I. Factual Background

On June 1, 2003, Mr. Smith was charged with [*summarize charges and then describe in more detail and attach relevant documents as exhibits*]. Mr. Smith proceeded to trial, and on January 7, 2004, the jury found him guilty of both counts of the indictment. *See* Jury Verdict, Doc. 55 (Jan. 7, 2004). On March 7, 2004, the court

sentenced Mr. Smith to life in prison. *See* Judgment, Doc. 63 (Jan. 7, 2004). At the time of Mr. Smith's sentencing, a life sentence was mandatory pursuant to 21 U.S.C. §841(b)(1)(A).

As of June 10, 2024, Mr. Smith has served an actual [*number*] months in prison. *See* Exhibit 2, BOP Records, Sentence Monitoring Computation Data. Including good time credit, Mr. Smith has served a sentence of approximately [*number*] months.

A. Mr. Smith suffers from many serious medical conditions as a result of aging.

Mr. Smith is now 65 years old and over the last several years, his health has deteriorated substantially. *See* Exhibit 3, BOP Medical Records at 1-28. [*Describe in detail the health conditions, their impact on your daily life, and the risks they pose (such as a risk of falling). Describe any relevant information from physicians. Attach all relevant documents*.]

B. Mr. Smith demonstrates remarkable and consistent rehabilitation.

Despite the challenges posed by his health and the aging process, Mr. Smith has demonstrated exceptional rehabilitation that is apparent in every aspect of his life. [*Provide relevant details, describe any disciplinary violations, work history, programs completed, and degrees earned and attach documents*.] Mr. Smith has a strong release plan that will provide him financial, medical, and emotional support. [*Describe your plan for housing and meeting other costs, as well as support systems such as family members who can help*.]

II. Mr. Smith has Properly Exhausted his Administrative Remedies

*[Describe the process you have followed and the outcome. For example:] "*On [date], Mr. Smith submitted a Request for a Reduction in Sentence to the Warden of Beaumont USP. See Exhibit 9, Declaration of _____ at ¶ 3 (Letter to Warden attached). The Bureau of Prisons confirmed receipt of this request on [date]. See id. at ¶ 4. As of today's date, over 30 days have elapsed and neither counsel nor Mr. Smith have received a response. See id. at ¶ 5; see also 18 U.S.C. §3852(c)(1)(A).)

III. There are Extraordinary and Compelling Reasons Warranting a Reduction in Mr. Smith's Sentence

Pursuant to 18 U.S.C. §3582(c)(1)(A), a district court may reduce a defendant's sentence if the Court finds that (1) "extraordinary and compelling reasons warrant such a reduction;" (2) the reduction is

"consistent with applicable policy statements issued by the Sentencing Commission;" and (3) the sentencing factors set forth in section 3553(a), to the extent they are applicable, support such a reduction. 18 U.S.C. §3582(c)(1)(A).

Effective November 1, 2023, the newly amended policy statement of the Sentencing Commission identifies several categories of circumstances that comprise "extraordinary and compelling reasons." *See* U.S.S.G. § 1B1.13(b); *see also United States v. Bryant*, 996 F.3d 1243, 1255 (11th Cir. 2021) In this case, there are "extraordinary and compelling reasons" that warrant a reduction in Mr. Smith's sentence. [*Explain why you qualify using these categories*.]

A. Mr. Smith demonstrates extraordinary and compelling reasons based on the category "Age of the Defendant."

To demonstrate "extraordinary and compelling reasons" under the "Age of the Defendant" category, a defendant must show: (i) that he is at least 65 years of age; (ii) that he is experiencing a serious deterioration of physical or mental health due to the aging process; and (iii) that he has served either 10 years or 75% of his sentence, whichever is less. *See* U.S.S.G. §1B.1.13(b)(2).

[*Describe how your situation meets these requirements. Cite similar legal cases. Attach any relevant documents*.]

B. Mr. Smith demonstrates extraordinary and compelling reasons based on the category "Unusually Long Sentence."

[*Describe how your situation meets these requirements and attach documents*.]

If sentenced today for the same offenses, Mr. Smith would only face a mandatory minimum of [*number*] years. [*Explain; cite similar legal cases.*]

C. Mr. Smith demonstrates extraordinary and compelling reasons based on "Other Reasons."

Under the newly amended policy statement at §1B1.13, the category of "Other Reasons" also includes "extraordinary and compelling reasons" warranting a reduction in sentence. *See* U.S.S.G. §1B1.13(b)(5). In this category, the defendant deserves relief based on…. [*Describe any relevant factors in your case such as age, deteriorating health, length of sentence served, a co-defendant's shorter sentence, the use of enhancements in sentencing, and rehabilitation. Cite similar legal cases.*]

IV. Mr. Smith Does Not Pose a Danger to any Person or the Community

In assessing whether a reduction of sentence is justified under 18 U.S.C. §3852(c)(1)(A), the Court must also determine that the defendant is not a danger to the safety of any other person or to the community. *See* U.S.S.G. §1B1.13(a)(2). This determination is guided by the factors set forth in 18 U.S.C. §3142(g). These factors include the nature and circumstances of the offense, the history and characteristics of the defendant, and the nature of the danger that may be posed to the community upon the defendant's release. *See* 18 U.S.C. §3142(g).

Mr. Smith would not be a danger to society if released. [*Explain the unlikelihood of your reoffending, the support you will have outside, and provide relevant details*.]

V. Mr. Smith's Release is Consistent with the Factors of 18 U.S.C. § 3553(a)

If the Court finds that "extraordinary and compelling reasons" justify the modification of Mr. Smith's sentence, the Court must also consider the sentencing factors of 18 U.S.C. §3553(a) in determining the appropriate term of imprisonment. *See* 18 U.S.C. §3852(c)(1)(A). These factors include Mr. Smith's personal history and characteristics, the nature of his offense, and the need for the sentence to reflect the seriousness of the offense and provide just punishment. *See* 18 U.S.C. §3553(a). In this case, consideration of these factors supports the immediate release of Mr. Smith.

[*Explain your rehabilitation and the sufficiency of the punishment you have received, and provide relevant details. Cite similar legal cases.*]

VI. Conclusion

The First Step Act was passed "to promote rehabilitation of prisoners and unwind decades of mass incarceration." *United States v. Brown,* 411 F. Supp. 3d 446, 448 (S.D. Iowa 2019) (citing Cong. Research Serv., R45558, The First Step Act of 2018: An Overview 1 (2019)). The reduction of Mr. Smith's sentence would address both of these goals. It would acknowledge and give value to Mr. Smith's efforts of personal growth, and it would release an individual who is currently serving a sentence that he would not receive

today for the same offenses and one that is no longer necessary given Mr. Smith's age, poor health, and rehabilitation. Upon consideration of the extraordinary and compelling reasons presented and the sentencing factors of § 3553(a), Mr. Smith respectfully requests that this Court grant his motion for release.

Date: _____, 20__ Respectfully Submitted,

[*Include all contact information and a signature. Then, on separate pages include a List of Exhibits with attachments, any other materials required by the court, and a Certificate of Service.*]

G Appendix G: Guide to Understanding Citations

Most legal writing includes one or more citations, or reference to legal authority like a statute, regulation, or opinion in an earlier case. The citation shows where you can find the full text of that reference. As you perform legal research, you will probably get more familiar with understanding citations. "The Bluebook: A Uniform System of Citation" is the standard style guide for citations, but different courts have their own style rules or preferences.

Case Citations

The information in most case citations appears in the following order: (1) the case name, or names of the parties, separated by a "v." for "versus;" (2) the reporter information, starting with the volume number, the name of the reporter, and the page number; (3) the court that made the decision if it is not obvious from the reporter and the year of the decision. For example: ***Reeves v. Pettcox,*** 19 F.3d 1060 (5th Cir. 1994). There may also be extra information like a brief history of what happened in the case or a short description of how it applies in your case.

Case Name

The case name should be underlined or in italics. The names that appear are only the surnames (last names) of the parties. So, if the case is between John Doe and Jane Smith, the case name would be ***Doe v. Smith.*** In criminal cases, the state is the party bringing the action, so it will be listed by the state name or something else like "State," or "People." The case name is separated from the reporter information by a comma, which should not be underlined or italicized.

Reporter Information

The reporter information should be in regular font. The reporter is the official book where the case is published. These books have many volumes, so the citation tells you in which volume, and on what page, you can find the case. The name of the reporter is abbreviated, and below is a list of common reporters and their abbreviations.

Court and Date

The court name and year of published decisions go in parentheses following the reporter information. You must identify the court in parenthesis at the end of the citation only if it is not clear from the name of the reporter. For example, only U.S. Supreme Court cases are published in the U.S. Reports. For example, in the citation ***Brown v. Board of Ed.,*** 347 U.S. 483 (1954), the "U.S." refers to the U.S. Reports. States have their own reporters that they require you to use. So, if you are in New Jersey and see a case cited to a reporter listed as "N.J.," you know it is the New Jersey Supreme Court and only need to put the date in the parenthesis, not the court name. For example, in the citation ***State v. Henderson,*** 208 N.J. 208 (2011), the "N.J." refers to the N.J. Reporter and you do not need to list the name of the court along with the date.

Additional Information

Any additional information should be in separate parentheses after the court and date information. For example, if you see a cite to ***Kelo v. New London,*** 545 U.S. 469, 494 (2005) (O'Conner, J., dissenting), it is telling you to look for the information in Justice O'Conner's dissenting opinion.

Statute and Regulation Citations

A statute citation identifies where in a government's "code" you can find the law. A "code" is a collection of statutes published together in one place. It usually has three parts: (1) the "title number," similar to a volume number. Codes are divided into multiple titles, each with an identifying number; (2) the name of the code, abbreviated; and (3) the section in the code, usually identified by a "§," a symbol that means "section." Sections are like chapters in a volume. For example: 42 U.S.C. § 1983. This citation is to Title 42 of the United States Code, Section 1983.

Statutes may have subsections, which follow the section number in parentheses. For example, in 18 U.S.C. § 924 (c), the subsection is (c).

Regulations are cited the same way as statutes, but instead of citing to a code, you are citing to the collection of regulations.

Abbreviations within Citations

There are some rules of spacing with abbreviations:

- Do not use a space between abbreviated words when you abbreviate multiple words with a single capital letter. For example, New York is abbreviated N.Y., not N. Y.
- Use a space between longer abbreviations. For example, the Federal Supplement reporter is abbreviated F. Supp., not F.Supp.
- Treat numbers like a single letter and do not put a space. This includes when a reporter has more than one edition. For example, the Atlantic Reporter, Second Edition is abbreviated A.2d, not A. 2d.

Ordinals

Ordinals are numbers that refer to an order, like first or second. When writing any ordinal that would normally end in "d" (like 2nd or 3rd), drop the letter before the "d" in citations. For example, third is "3d," not "3rd."

Common Word Abbbreviations

The Bluebook and court style guides have tables of abbreviations for common words. This Guide provides the abbreviations and names for common reporters, common words in court names, and state names for easy reference.

Federal Court Reporters

U.S.	United States Reports (Supreme Court)
S. Ct.	Supreme Court Reporter (Supreme Court)
F.	Federal Reporter (Circuit Courts of Appeal and District Courts)
F. Supp.	Federal Supplement (District Courts)

Regional Reporters of State Cases

A.	Atlantic Reporter (Connecticut, Delaware, D.C., Maine, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, & Vermont)
N.E.	North Eastern Reporter (Illinois, Indiana, Massachusetts, New York, & Ohio)
N.W.	North Western Reporter (Iowa, Michigan, Minnesota, Nebraska, North Dakota, South Dakota, & Wisconsin)
P.	Pacific Reporter (Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Washington, & Wyoming)
S.E.	South Eastern Reporter (North Carolina, South Carolina, Virginia, & West Virginia)
S.W.	South Western Reporter (Arkansas, Kentucky, Missouri, Tennessee, & Texas)
S.	Southern Reporter (Alabama, Florida, Louisiana, Mississippi)

Court Names

App.	Appeals/Appellate
Cir. Ct.	Circuit Court (state)
Cir.	Circuit Court of Appeals (federal)
Cnty.	County
Crim.	Criminal
Ct.	Court
D.	District Court (federal)
Dist.	District Court(state)
Err.	Errors
Div.	Division
E.D.	Eastern District
Fed. Cl.	Court of Federal Claims
Jud.	Judicial
Juv.	Juvenile
Magis.	Magistrate
M.D.	Middle District
N.D.	Northern District
Prob.	Probate
S.D.	Southern District
Super. Ct.	Superior Court
Sup. Ct.	Supreme Court (other than U.S.)
W.D.	Western District

State Name Abbreviations within Citations

Ala.	Alabama
Alaska	Alaska
Ariz.	Arizona
Ark.	Arkansas
Cal.	California
Colo.	Colorado
Conn.	Connecticut
Del.	Delaware
Fla.	Florida
Ga.	Georgia
Haw.	Hawaii
Idaho	Idaho
Ill.	Illinois
Ind.	Indiana
Iowa	Iowa
Kan.	Kansas
Ky.	Kentucky
La.	Louisiana
Me.	Maine
Md.	Maryland
Mass.	Massachusetts
Mich.	Michigan
Minn.	Minnesota
Miss.	Mississippi
Mo.	Missouri
Mont.	Montana
Neb.	Nebraska
Nev.	Nevada
N.H.	New Hampshire
N.J.	New Jersey
N.M.	New Mexico
N.Y.	New York
N.C.	North Carolina
N.D.	North Dakota
Ohio	Ohio
Okla.	Oklahoma
Or.	Oregon
Pa.	Pennsylvania
R.I.	Rhode Island
S.C.	South Carolina
S.D.	South Dakota
Tenn.	Tennessee
Tex.	Texas
Utah	Utah
Vt.	Vermont
Va.	Virginia
Wash.	Washington
W. Va.	West Virginia
Wis.	Wisconsin
Wyo.	Wyoming

H Appendix H: Forms of Address

How to address officials when you send them letters or emails. In each entry, this information is listed:

The Official
The name and address
The salutation (***"Dear ..."*** to begin a letter)

An Attorney
Mr. John Jones, Esq. or Ms. Jane Jones, Esq.
(Address)
Dear Attorney Jones:

Attorney General (U.S.)
The Honorable John (or Jane) Jones
Attorney General
Washington, DC
Dear Attorney General Jones:

Attorney General (State)
The Honorable John (or Jane) Jones
Attorney General of (Name of State)
(Address)
Dear Attorney General Jones:

Clerk of a Court (State)
The Honorable John (or Jane) Jones
Clerk of Court
(Name of court)
(Address)
Dear Clerk Jones:

District Attorney
The Honorable John (or Jane) Jones
District Attorney of (city or county)
(Address)
Dear District Attorney Jones:

Judges, Federal Courts

Chief Justice of the U.S. Supreme Court
The Chief Justice
The Supreme Court
Washington, DC 20543
Dear Chief Justice Jones:

Associate Justice of the U.S. Supreme Court
Mr. Justice Jones or Madam Justice Jones
The Supreme Court
Washington, DC 20543
Dear Justice Jones:

Other Federal Court Judges

The Honorable John (or Jane) Jones
(Name of Court)
(Address)
Dear Judge Jones:

Judges, State Courts

Chief Justice (State Court)
Chief Justice Jones
The Supreme Court of (State)
(Address)
Dear Chief Justice Jones:

Associate Judge (State Court)
The Honorable John (or Jane) Jones
(Name of Court)
(Address)
Dear Judge Jones:

Elected Officials

Governor
The Honorable John (or Jane) Jones
Governor of (State)
(Capitol Address)
Dear Governor Jones:

Lt. Governor (State)
The Honorable John (or Jane) Jones
Lieutenant Governor of (State)
(Address)
Dear Lt. Governor Jones:

Mayor
The Honorable John (or Jane) Jones
Mayor of (City)
City Hall
(Address)
Dear Mayor Jones:

President of the United States
The President
The White House
Washington, DC 20500
Dear President Jones:

Representative (State)
The Honorable John (or Jane) Jones
(Name of state legislature, for example: Florida House of Representatives)
(Address)
Dear Representative Jones:

Representative (US)
The Honorable John (or Jane) Jones
United States House of Representatives
Washington, DC 20515
Dear Representative Jones:

Senate (State)
The Honorable John (or Jane) Jones
(Name of state legislature, for example: Massachusetts Senate)
(Address)
Dear Senator Jones:

Senator (U.S.)
The Honorable John (or Jane) Jones
United States Senate
Washington, DC 20510
Dear Senator Jones:

U.S. Attorney or Assistant U.S. Attorney
The Honorable John (or Jane) Jones
(Address)
Dear U.S. Attorney (or Asst. U.S. Attorney) Jones:

Prison Book Program
1306 Hancock Street, Suite 100
Quincy, MA 02169
website: prisonbookprogram.org