SMOKING IN PRISON

ACLU National Prison Project: Know Your Rights

Important Note: The law is always evolving. If you have access to a prison law library, it is a good idea to confirm that the cases and statutes cited below are still good law. Last updated June 2003.

The courts have generally held that there is no constitutional right to smoke in prison. [1] In some cases, courts have found that prohibiting smoking is not punishment (and thus not cruel and unusual punishment) unless it is "arbitrary, purposeless or intended to punish." [2] Courts have found several legitimate government objectives that are furthered by a no smoking policy such as (1) preventing damage to the jail, (2) allowing guards to smell other contraband, (3) protecting the health of smoking and non-smoking inmates and staff, and (4) eliminating the costs related to smoking. Thus, it is doubtful that any court will find the policy to be purposeless or intended to punish.
One case upheld the ban on inmate smoking although guards were allowed to smoke in designated areas. [3] However, some courts find that some policies violate the Constitution because they are too arbitrary. For example, allowing men but not women to smoke in prison might create a Fourteenth Amendment equal protection claim.

Coping With Withdrawal

Courts tend to encourage medical assistance to cope with the withdrawal from nicotine, but it is not an absolute requirement unless an inmate is suffering from a medical necessity other than that need for "adjustment assistance." One court held that the no smoking policy did not violate the cruel and unusual punishment clause in light of the fact that the jail offered counseling, medical assistance, and a video tape to help inmates quit smoking. The court stressed that "ideally" the jail should assist the inmates to cope with the no smoking policy. [4]

Exposure to Second-Hand Smoke

In 1993, the Supreme Court held that exposure to environmental tobacco smoke (or "second-hand smoke") may constitute cruel and unusual punishment if it is done with deliberate indifference, if it poses an unreasonable risk of serious damage to prisoners' health, and if the risk is sufficient to violate contemporary standards of decency. [5]

Before this decision, several courts had held that occasional or mild exposure to second-hand smoke is not unconstitutional unless a particular prisoner's medical condition requires a smoke-free environment, but that more prolonged and concentrated exposure could violate the Eighth Amendment. [6] Since the decision, the Third Circuit declared that prison officials were not entitled to qualified immunity when inmates brought an Environmental Tobacco Smoke [ETS] claim. [7] The Sixth Circuit held that a prisoner had a right not to be exposed to environmental smoke that presented a serious risk to his health and had to be removed from places where smoke hovered. [8] Also, the Circuit Court decided that the prison's deliberate failure to follow the

recommendations of medical personnel and remove the inmate from exposure to smoke were not erroneous.[9]

[1] See Washington v. Tinsley, 809 F. Supp. 518 (E.D. Pa. 1993).
[2] See Doughty v. Board of County Comm'rs for County of Weld, Colo., 731 F. Supp. 423, 428 (D. Colo. 1989); see also Reynolds v. Bucks, 833 F. Supp. 518, 520 (E.D. Pa. 1993).
[3] See Reynolds, 833 F. Supp. 518 (E.D. Pa. 1993).
[4] See Doughty, 731 F. Supp. 518 (D. Colo. 1989).
[5] Helling v. McKinney, 113 S. Ct. 2475 (1993).
[6] See, e.g., Franklin v. Or., Welfare Div., 662 F. 2d 517 (9th Cir. 1981).
[7] Atkinson v. Taylor, 316 F. 3d 257 (3rd Cir. 2003).
[8] Reilly v. Grayson, 310 F. 3d 519 (6th Cir. 2002).
[9] Id.