

PRISONER TRANSFERS

Prison officials may transfer prisoners from one prison to another without violating the Constitution, except under the special circumstances described below. The Supreme Court has held that a prisoner does not have a constitutional liberty interest in being confined in any particular institution, or in receiving a hearing or any other procedural protections before a transfer.[2] This rule applies even if the transfer: (1) is to a higher security institution, (2) is done in response to alleged misconduct, (3) causes a prisoner to lose program opportunities, or (4) interferes with visiting opportunities.[3] It also applies to transfers between state and federal facilities, from one state to another, from a county or city jail to a state prison, or between housing units in the same prison.[4]

Some prisons have regulations that require a hearing or some other protection before a transfer occurs, and a prisoner may want to find out whether his or her facility has these regulations and how to use them. However, procedural regulations on transfer do not create a constitutional due process right to those protections. At best, they may create a state law right that can be enforced in state court.[5]

Special Circumstances

There are some special transfer situations in which courts will recognize a constitutional liberty interest. For example, prisoners who are transferred to a mental hospital are entitled to a review.[6] Some courts have held that persons are entitled to a hearing before they are transferred to a "supermax" unit with very harsh conditions.[7]

Prisoners can also challenge transfers if they can show that the transfer decision was made in retaliation for filing a grievance or lawsuit, or for exercising other constitutional rights.[8]

Finally, pre-trial detainees have greater constitutional protection if a transfer interferes with their Sixth Amendment rights to effective assistance of counsel and to a speedy trial.[9]

Last updated 6/03.

[1] Much of the following information was taken from a book by John Boston & Daniel Manville called the Prisoners' Self-Help Litigation Manual (3d ed. 1995). We include case names and citations for those who have access to law libraries and who want to read the court decisions that support this information.

[2] See Meachum v. Fano, 427 U.S. 215, 224-25 (1976); Montanye v. Haymes, 427 U.S. 236, 242-43 (1976).

[3] See Bruscino v. Carlson, 854 F.2d 162, 167 (7th Cir. 1988) (higher security); Castaneda v. Henman, 914 F.2d 981, 983 (7th Cir. 1990) (alleged misconduct); Fort v. Reed, 623 F.

Supp. 1106, 1108 (E.D. Wash. 1985) (program opportunities); cf. Olim v. Wakinekona, 461 U.S. 238, 247-48, 103 S. Ct. 1741, 1746-47 (1983) (long distance transfers).

[4] See generally Olim v. Wakinekona, 461 U.S. 238 (1983), cited by Overton v. Bazzetta, 539 U.S. ___ (2003), as upholding incarceration several hours of flight away from home.

[5] See, e.g., Blake v. Commissioner of Correction, 390 Mass. 537, 457 N.E.2d 281, 282 (1983).

[6] See Baxstrom v. Herold, 383 U.S. 107, 115 (1965).

[7] Austin v. Wilkinson, 189 F.Supp. 2d. 719 (N.D. Ohio 2002).

[8] See Pratt v. Rowland, 65 F.3d 802, 806 (9th Cir. 1995); Baraldini v. Thornburgh, 884 F.2d 615, 620 (D.C.Cir. 1989); Bridges v. Russell, 757 F.2d 1155, 1156-57 (11th Cir. 1985); if the transfer seriously threatens a prisoner's life and safety, see Fitzharris v. Wolff, 702 F.2d 836, 839 (9th Cir. 1983); Gullantte v. Potts, 654 F.2d 1007, 1012-13 (5th Cir. 1981); or if a medical condition makes a transfer dangerous to a prisoner's health. See Roba v. United States, 604 F.2d 215, 218-19 (2^d Cir. 1979).

[9] See Covino v. Vermont Dep't of Corrections, 933 F.2d 128, 130 (2^d Cir. 1991); Cobb v. Aytch, 643 F.2d 946, 957-62 (3^d Cir. 1981); Muslim v. Frame, 854 F. Supp. 1215, 1229 (E.D. Pa. 1994).